

# Agenda – Legislation, Justice and Constitution Committee

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| Meeting Venue:              | For further information contact:                                   |
| Video Conference via Zoom   | P Gareth Williams                                                  |
| Meeting date: 28 March 2022 | Committee Clerk                                                    |
| Meeting time: 13.30         | 0300 200 6565                                                      |
|                             | <a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a> |

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**1 Introductions, apologies, substitutions and declarations of interest**  
(13.30)

**2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**  
(13.30 – 13.35) (Page 1)

Attached Documents:

LJC(6)-11-22 – Paper 1 – Statutory instruments with clear reports

**Made Negative Resolution Instruments**

**2.1 SL(6)176 – The Renting Homes (Prescribed Forms) (Wales) Regulations 2022**

**3 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3**  
(13.35 – 13.45)

**Made Negative Resolution Instruments**

**3.1 SL(6)175 – The Renting Homes (Deposit Schemes) (Required Information) (Wales) Regulations 2022**

(Pages 2 – 3)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-11-22 – Paper 2 – Draft report

**3.2 SL(6)177 – The Renting Homes (Review of Decisions) (Wales) Regulations 2022**

(Pages 4 – 7)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-11-22 – Paper 3 – Draft report

**3.3 SL(6)178 – The Renting Homes (Safeguarding Property in Abandoned Dwellings) (Wales) Regulations 2022**

(Pages 8 – 9)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-11-22 – Paper 4 – Draft report

**Made Affirmative Resolution Instruments**

**3.4 SL(6)182 – The Coronavirus Act 2020 (Alteration of Expiry Date) (Wales) Regulations 2022**

(Pages 10 – 14)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-11-22 – Paper 5 – Draft report

LJC(6)-11-22 – Paper 6 – Written Statement by the First Minister, 21 March 2022

**Composite Negative Resolution Instruments**

**3.5 SL(6)180 – The Education (Student Loans) (Repayment) (Amendment) Regulations 2022**

(Pages 15 – 16)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-11-22 – Paper 7 – Draft report

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

(13.45 – 13.50)

**4.1 SL(6)118 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 23) Regulations 2021**

(Pages 17 – 24)

Attached Documents:

LJC(6)-11-22 – Paper 8 – Letter from the First Minister, 23 March 2022

LJC(6)-11-22 – Paper 9 – Letter to the First Minister, 2 March 2022

LJC(6)-11-22 – Paper 10 – Report

**5 Common frameworks**

(13.50 – 14.00)

**5.1 Correspondence from the Health and Social Care Committee to the Minister for Health and Social Services: Public Health Protection and Health Security; Blood Safety and Quality; and Organs, Tissues and Cells (apart from embryos and gametes) provisional common frameworks**

(Pages 25 – 42)

Attached Documents:

LJC(6)-11-22 – Paper 11 – Letter from the Health and Social Care Committee to the Minister for Health and Social Services, 21 March 2022

**5.2 Correspondence from the Common Frameworks Scrutiny Committee to the Secretary of State for Environment, Food and Rural Affairs: Provisional Chemicals and Pesticides Framework**

(Pages 43 – 44)

Attached Documents:

LJC(6)-11-22 – Paper 12 – Letter from the Common Frameworks Scrutiny Committee to the Secretary of State for Environment, Food and Rural Affairs, 23 March 2022

**5.3 Correspondence from the Common Frameworks Scrutiny Committee to the Secretary of State for Environment, Food and Rural Affairs: Provisional Animal Health and Welfare Common Framework**

(Pages 45 – 49)

Attached Documents:

LJC(6)-11-22 – Paper 13 – Letter from the Common Frameworks Scrutiny Committee to the Secretary of State for Environment, Food and Rural Affairs, 23 March 2022

**5.4 Correspondence from the Common Frameworks Scrutiny Committee to the Secretary of State for Environment, Food and Rural Affairs: Provisional Fisheries Management and Support Common Framework**

(Pages 50 – 53)

Attached Documents:

LJC(6)-11-22 – Paper 14 – Letter from the Common Frameworks Scrutiny Committee to the Secretary of State for Environment, Food and Rural Affairs, 23 March 2022

**6 Inter-Institutional Relations Agreement**

(14.00 – 14.05)

**6.1 Correspondence to the First Minister: Inter-Ministerial Standing Committee**

(Pages 54 – 55)

Attached Documents:

LJC(6)-11-22 – Paper 15 – Letter to the First Minister, 22 March 2022

## **7 Papers to note**

(14.05 – 14.15)

### **7.1 Correspondence from the Minister for Social Justice: Supplementary Legislative Consent Memorandum on the Nationality and Borders Bill**

(Pages 56 – 57)

Attached Documents:

LJC(6)-11-22 – Paper 16 – Letter from the Minister for Social Justice, 22 March 2022

### **7.2 Correspondence from the Minister for Finance and Local Government: Update on Flexible Voting Pilots**

(Pages 58 – 59)

Attached Documents:

LJC(6)-11-22 – Paper 17 – Letter from the Minister for Finance and Local Government, 23 March 2022

### **7.3 Correspondence from the Minister for Climate Change: Response to the Committee's report on Supplementary Legislative Consent Memoranda (Memorandum No. 3 and Memorandum No. 4) on the Building Safety Bill**

(Pages 60 – 62)

Attached Documents:

LJC(6)-11-22 – Paper 18 – Letter from the Minister for Climate Change, 24 March 2022

### **7.4 Correspondence from the Minister for Climate Change: UK Emissions Trading Scheme**

(Page 63)

Attached Documents:

LJC(6)-11-22 – Paper 19 – Letter from the Minister for Climate Change, 24 March 2022

- 8 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting**  
(14.15)
- 9 Legislative Consent Memorandum on the British Sign Language Bill – Consideration of legal advice note**  
(14.15 – 14.25) (Pages 64 – 67)  
[Legislative Consent Memorandum: British Sign Language Bill](#)
- Attached Documents:  
LJC(6)-11-22 – Paper 20 – Legal advice note
- 10 Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Elections Bill – Consideration of legal advice note**  
(14.25 – 14.35) (Pages 68 – 73)  
[Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) on the Elections Bill](#)  
[Report on the Welsh Government’s Legislative Consent Memorandum on the Elections Bill](#)
- Attached Documents:  
LJC(6)-11-22 – Paper 21 – Legal advice note  
LJC(6)-11-22 – Paper 22 – Letter from the Counsel General and Minister for the Constitution to the Legislation, Justice and Constitution Committee and Local Government and Housing Committee, 22 March 2022  
LJC(6)-11-22 – Paper 23 – Letter from the Counsel General and Minister for the Constitution to the Legislation, Justice and Constitution Committee and Local Government and Housing Committee, 16 February 2022
- 11 Supplementary Legislative Consent Memoranda (Memorandum No. 2 and Memorandum No.3) on the Animal Welfare (Kept Animals) Bill – Consideration of draft report**  
(14.35 – 14.45) (To Follow)

Attached Documents:

LJC(6)-11-22 – Paper 24 – Draft report

## **12 Welsh Tax Acts etc. (Power to Modify) Bill – Consideration of draft report**

(14.45 – 15.15)

(To Follow)

Attached Documents:

LJC(6)-11-22 – Paper 25 – Draft report

## **13 Common frameworks programme – Consideration**

(15.15 – 15.25)

(Pages 74 – 99)

Attached Documents:

LJC(6)-11-22 – Paper 26 – Briefing

## Statutory Instruments with Clear Reports 28 March 2022

### SL(6)176 – The Renting Homes (Prescribed Forms) (Wales) Regulations 2022

#### Procedure: Made Negative

These [Regulations](#) set out 38 prescribed forms of notice which may be used by landlords or contract-holders in particular circumstances where the Renting Homes (Wales) Act 2016 (the 2016 Act) requires or authorises either party to provide certain information in writing.

For example, there are forms that may be used by landlords to give notice to contract-holders:

- of an address to which documents intended for the landlord may be sent (Form RHW2);
- that a new rent will take effect on a specified date (Form RHW12);
- that the contract-holder must give up possession of a dwelling on a specified date (Form RHW16);
- that the landlord intends to make a possession claim to the court (Form RHW23);
- that the probation period is to be extended to a period of 18 months (Form RHW37).

Landlords and contract-holders may download these from the Welsh Government website and, once completed, they may be issued electronically in accordance with the 2016 Act. Some forms also include guidance notes in order to make their purpose more easily understandable.

**Parent Act:** Renting Homes (Wales) Act 2016

**Date Made:** 08 March 2022

**Date Laid:** 10 March 2022

**Coming into force date:**



# Agenda Item 3.1

## SL(6)175 – The Renting Homes (Deposit Schemes) (Required Information) (Wales) Regulations 2022

### Background and Purpose

Landlords frequently require tenants to pay a deposit as security in case of, for example, any potential damage to the property caused by the tenant. However, the deposit does not belong to the landlord and so any deposit paid must be properly protected. All deposits must be protected by the landlord through an authorised deposit scheme.

These [Regulations](#) require landlords to provide certain information about the deposit scheme to tenants in writing, including:

- details of the scheme administrator such as name, address, telephone number and email address;
- where the deposit is being held;
- how the deposit will be repaid at the end of the contract;
- what deductions can reasonably be taken from it by a landlord to cover, for example, unpaid rent or damage; and
- the procedure for settling any disputes that may arise between the two parties in relation to the deposit.

### 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

The following two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

#### **1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

Regulation 3(1)(b) refers to “any information supplied by the scheme administrator to the landlord which explains the operation of sections 45 to 47 of, and Schedule 5 to, the Act”. However, it is unclear whether scheme administrators will be under a duty to supply such information to landlords in the first place.



We would be grateful for clarity as to whether scheme administrators will be subject to such a duty.

## **2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

Regulations 3(1)(c) and 3(1)(e) refer to amounts being “paid or repaid” to contract-holders. However, in the context of deposits, it is unclear what the difference is between “paying” amounts to contract-holders and “repaying” amounts to contract-holders.

Does it depend on who paid the deposit in the first place, i.e.

- if the deposit was paid by the contract-holder, it will be repaid to the contract-holder, but
- if the deposit was paid by someone on behalf of the contract-holder, then the deposit will be paid (and not repaid) to the contract-holder?

While the 2016 Act expressly refers both to a deposit paid by a contract-holder and a deposit paid by someone on behalf of a contract-holder, that distinction is not clear in the Regulations.

### **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 required.

#### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**23 March 2022**



# Agenda Item 3.2

## SL(6)177 – The Renting Homes (Review of Decisions) (Wales) Regulations 2022

### Background and Purpose

These [Regulations](#) relate to two types of occupation contract under the Renting Homes (Wales) Act 2016 (the 2016 Act):

- (1) introductory standard contracts, and
- (2) prohibited conduct standard contracts.

An **introductory standard contract** is a specific type of contract that can be used by community landlords, or charities providing a landlord function, as an alternative to a secure contract when letting a dwelling to a contract-holder. This type of contract runs for an initial 12 months and then automatically converts into a secure contract, although the landlord can seek a court order to extend the introductory period to a total of 18 months. Introductory standard contracts allow community landlords and charities to ascertain during the introductory period whether a contract-holder can sustain a secure contract. In instances where the contract-holder has demonstrated they will not be able to sustain a secure contract, for example due to antisocial behaviour, the landlord can seek to terminate by giving notice under section 173 of the 2016 Act. This means an introductory standard contract can be terminated more easily than is possible under a secure contract.

A **prohibited conduct standard contract** is a specific type of contract that can be used as an alternative to terminating a secure contract where the contract-holder has breached the term of their secure contract regarding antisocial behaviour or other prohibited conduct. The landlord can apply to the court for a secure contract to be replaced with a prohibited conduct standard contract, which, if made, provides for a 12-month probationary period during which the landlord can seek to end the contract more easily by issuing a notice under section 173 of the 2016 Act. During the probationary period however, the landlord is required to provide social support to the contract-holder with the aim of preventing any further antisocial behaviour or prohibited conduct. The probationary period can be extended for a further six months if the landlord requests this and the court agrees.

These Regulations prescribe the procedure to be followed by landlords in connection with reviews requested by contract-holders in respect of:

- landlord decisions to terminate introductory standard contracts or prohibited conduct standard contracts;
- landlord decisions to extend introductory periods (of introductory standard contracts); and
- landlord decisions to extend probationary periods (of prohibited conduct standard contracts).



The procedure set out in the Regulations provides, for example, that

- any review must be undertaken by someone other than the person who took the original decision, and if the review is to be undertaken by someone within the same organisation, that person must be senior to the person who made the original decision;
- an oral hearing must take place if requested by the contract-holder to allow the contract-holder to make representations in person, or to be represented by another person;
- an oral hearing may be conducted virtually with the written consent of the contract-holder;
- whether there is an oral hearing or not, the contract-holder may make written representations to the landlord, which the landlord must consider;
- the landlord must give written notice to the contract-holder of a reasonably convenient time, date and location for the hearing.

## 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

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

The 2016 Act says that reviews of certain landlord decisions must be carried out by the landlord. For example, where a contract-holder requests a review of a landlord decision under section 203 of the 2016 Act, the landlord must carry out the review.

Regulation 3(1) of the Regulations says that a review “must be carried out by a person who was not involved in the decision under review”.

Should the Regulations, whether on their face or in a footnote, remind readers that regulation 3(1) must be read subject to the 2016 Act including, for example, section 203, which says that the person carrying out the review must still be the landlord?

### **2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

Regulation 3(1) says that a review must be carried out by a person who was not “involved” in the decision under review.



We would welcome clarification as to whether it possible that there may be no person available who was not involved in the decision under review. If so, how should a landlord comply with regulation 3(1)?

In many ways, this is also a question as to the meaning of being “involved” in the decision under review.

## Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

### **3. Standing Order 21.3(ii) – that that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

Where the contract-holder or the contract-holder’s representative fails to attend an oral hearing, regulation 9 gives the person carrying out the review two options:

- (a) to proceed with the hearing, or
- (b) to make directions about the review as that person considers appropriate, taking into account relevant circumstances, including any explanation for the absence.

Option (b) requires the person carrying out the review to consider the circumstances, including any explanation provided by the contract-holder or the contract-holder’s representative for the absence.

However, option (a) allows the person carrying out the review to proceed with the hearing in the absence of the contract-holder or the contract-holder’s representative, regardless of the circumstances. Should option (a) be subject to the requirement to take account of the circumstances and any explanation provided for the absence?

Similarly, where a contract-holder requests a postponement of an oral hearing, regulation 10 allows the landlord (not the person carrying out the review) to grant or refuse the request “as the landlord sees fit”. Should the landlord be required to take account of any relevant circumstances when deciding whether to grant or refuse the request for a postponement?

## Welsh Government response

A Welsh Government response is required.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**23 March 2022**



# Agenda Item 3.3

## SL(6)178 – The Renting Homes (Safeguarding Property in Abandoned Dwellings) (Wales) Regulations 2022

### Background and Purpose

These [Regulations](#) make provision regarding how property (other than the landlord's property) left in an abandoned dwelling must be dealt with. In general, they place a duty on a landlord to safeguard property left in the abandoned dwelling for four weeks from the day on which the contract has ended. The Regulations also make provision regarding the disposal of such property by a landlord.

### 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**

The Regulations set out what must happen to property that is in a dwelling that has been abandoned by a contract-holder. How does the Welsh Government envisage the Regulations should apply where the property is a pet / animal? Should the Regulations make express provision for such circumstances, rather than treat pets / animals in the same way as other forms of property?

#### **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**

Where a landlord exercises the right to dispose of property in accordance with regulation 3(3) or regulation 3(4) by selling the property, can the Welsh Government clarify how title in the



property transfers from the original owner of the property (whether that is the contract-holder or a third party) to the buyer of the property?

Further, what safeguards are in place for, and what remedies are available to, a third party who loses possessions because the possessions have been disposed of by a landlord in accordance with the Regulations?

### **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**

Under regulation 5, a landlord may apply any proceeds of a disposal (i.e. a disposal under regulation 3(3) or regulation 3(4)) towards expenses incurred by the landlord in complying with the Regulations. Further, if there is any remainder, the landlord may apply the remainder towards any rent arrears due under the occupation contract.

Did the Welsh Government give consideration to allowing (or even requiring) a landlord to apply any remainder towards other amounts that may be due from the contract-holder apart from rent arrears?

### **Welsh Government response**

A Welsh Government response is required.

#### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**23 March 2022**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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Welsh Parliament

**Legislation, Justice and Constitution Committee**

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# Agenda Item 3.4

## SL(6)182 – The Coronavirus Act 2020 (Alteration of Expiry Date) (Wales) Regulations 2022

### Background and Purpose

The Coronavirus Act 2020 (Alteration of Expiry Date) (Wales) Regulations 2022 (“these Regulations”) amend the Coronavirus Act 2020 (“the Act”).

The purpose of these [Regulations](#) is to extend the expiry date of certain provisions of the Act to the end of the day on 24 September 2022. They would otherwise expire at the end of the day on 24 March 2022.

Section 89(1) of the Act provides that the Act expires at the end of 2 years beginning with the day on which it is passed, subject to subsection (2) of that section and section 90 of the Act. Section 90(2) of the Act provides that a relevant national authority may by regulations amend the expiry date of provisions in the Act. The Welsh Ministers are a relevant national authority for Wales in relation to provisions of the Act that apply in relation to Wales and which would fall with the legislative competence of Senedd Cymru.

The relevant provisions which expire at the end of the day on 24 September 2022, in so far as they apply in relation to Wales are:

- Section 38(1) and Schedule 17 – Temporary continuity: education, training and childcare (Wales)

This provision gives the Welsh Ministers a power to issue temporary continuity directions to educational institutions, registered childcare providers and local authorities requiring them to take reasonable steps – or specific steps that the Welsh Minister consider reasonable – in connection with the provision of education, training, childcare (or services relating to these), or ancillary services and facilities, for a specified period.

It also gives the Welsh Ministers a power to issue notices to disapply or modify, for a period of one month, certain specified statutory requirements in education and childcare, where the Welsh Ministers consider the issuing of the notice to be an appropriate and proportionate action in all the circumstances relating to the incidence or transmission of coronavirus.

Whilst there is no requirement to extend the childcare or for Higher or Further Education provisions, there may be need to consider powers for schools to dis-apply or modify certain requirements, if there is further significant disruption during this academic year as a consequence of Covid.

- Section 82 - Business tenancies in England and Wales: protection from forfeiture etc.

Section 82 provides that a right of re-entry or forfeiture, under a relevant business tenancy, for non-payment of rent may not be enforced, by action or otherwise, during the “relevant



period". The moratorium was introduced in order to limit the significant impact on businesses from the series of interventions and restrictions that have been imposed on the Welsh economy throughout the pandemic. These provisions were included as an intervention to address the issues – particularly cash-flow.

The end of the relevant period for this provision was initially 30 June 2020. Subsequently, Welsh Ministers agreed to extend the moratorium on a number of occasions. Most recently, the "relevant period" was extended in relation to Wales until 25 March 2022 by The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2021. This has provided protection for relevant business tenants whilst also providing time for the development of the Commercial Rent (Coronavirus) Bill ("the Bill").

The proposal to extend Section 82 is to provide the Welsh Ministers continued opportunity to extend the relevant period if considered to be required in the context of the Bill.

## Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve 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 made for them to continue to have effect.

The procedure for regulations made by the Welsh Ministers under the Act is provided by sections 94(2) and (6) of the Coronavirus Act 2020.

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

*Whilst the Act engages 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 spread 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 1 of the First Protocol (protection of property) and Article 2 of the First Protocol (right to education) are key articles of the ECHR engaged by the provisions of the Act which are being extended.*

*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 to that aim. 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 provisions of Act 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 control the rate of transmission of the coronavirus, taking into account the scientific evidence.*

## **Welsh Government response**

A Welsh Government response is not required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**24 March 2022**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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**Legislation, Justice and Constitution Committee**



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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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|              |                                                                                      |
|--------------|--------------------------------------------------------------------------------------|
| <b>TITLE</b> | <b>The Coronavirus Act 2020 (Alteration of Expiry Date) (Wales) Regulations 2022</b> |
| <b>DATE</b>  | <b>22 March 2022</b>                                                                 |
| <b>BY</b>    | <b>First Minister, Mark Drakeford MS</b>                                             |

The Coronavirus Act 2020 (the Act) granted the Welsh Ministers emergency powers to respond to the pandemic. The Act received Royal Assent on 25 March 2020. The majority of the temporary provisions within the Act will expire at the end of the day on 24 March.

Today, I have laid the Coronavirus Act 2020 (Alteration of Expiry Date) (Wales) Regulations 2022 to extend two temporary provisions for a period of six months.

The provisions are:

### **Section 82 – Business tenancies in England and Wales: protection from forfeiture etc**

Section 82 provides that a right of re-entry or forfeiture, under a relevant business tenancy, for non-payment of rent may not be enforced, by action or otherwise, during the “relevant period”.

The moratorium was introduced to limit the significant impact on businesses from the series of interventions and restrictions that have been imposed on the Welsh economy throughout the pandemic. These provisions were included as an intervention to address the issues – particularly cash-flow.

The end of the relevant period for this provision was initially 30 June 2020. Subsequently, the Welsh Ministers agreed to extend the moratorium on a number of occasions. Most recently, the “relevant period” was extended in relation to Wales until 25 March 2022 by The Business Tenancies (Extension of Protection from Forfeiture etc) (Wales) (Coronavirus) (No. 3) Regulations 2021.

This has provided protection for relevant business tenants whilst also providing time for the Welsh Government to engage with the UK Government in the development of the Commercial Rent (Coronavirus) Bill. This Bill is currently progressing through the UK Parliament and is expected to provide continued protection for business tenancies falling in scope of the Bill, whilst also providing for a bespoke arbitration regime in certain circumstances

The proposal to extend Section 82 is to provide the Welsh Ministers continued opportunity to extend the relevant period if it is considered to be required in the context of the Bill.

### **Section 38 (Schedule 17) – Temporary continuity: education and training and childcare**

These provisions give the Welsh Ministers a power to issue temporary continuity directions to educational institutions, registered childcare providers and local authorities requiring them to take reasonable steps – or specific steps that the Welsh Minister consider reasonable – in connection with the provision of education, training, childcare (or services relating to these), or ancillary services and facilities, for a specified period.

Before giving the direction, the Welsh Ministers must have regard to any advice from the Chief Medical Officer for Wales (or his deputies) relating to the incidence or transmission of coronavirus, and must determine that giving the direction is a necessary and proportionate action for, or in connection with the continued provision, as relevant, of education, training or childcare etc.

It also gives the Welsh Ministers a power to issue notices to disapply or modify, for a period of one month, certain specified statutory requirements in education and childcare, where the Welsh Ministers consider the issuing of the notice to be an appropriate and proportionate action in all the circumstances relating to the incidence or transmission of coronavirus.

While there is no requirement to extend the childcare or higher or further education provisions, there may be need to consider powers for schools to dis-apply or modify certain requirements, if there is further significant disruption during this academic year as a consequence of the pandemic.

This is very much a contingency measure – we are not planning or expecting to use this provision in the six-month extension window unless necessary.

The Regulations are scheduled for debate on 29 March.

## SL(6)180 – The Education (Student Loans) (Repayment) (Amendment) Regulations 2022

### Background and Purpose

These [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.

Borrowers begin repayment of their student loan once their earnings are above a certain threshold. Plan 2 borrowers (those ordinarily resident in Wales or an EU student studying in Wales who began an undergraduate course on or after 1 September 2012) repay 9% of their earnings that are above that threshold.

These Regulations amend the 2009 Regulations to:

- implement a one year freeze on the Plan 2 student loan repayment threshold (at its current level of £27,295) and the interest rate thresholds for Welsh borrowers; and
- maintain the repayment threshold bands and lower and higher interest rate threshold bands at the current levels for borrowers who are resident overseas.

### Procedure

Composite Negative

The 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 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 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**

These Regulations have been made as a composite instrument, meaning that they 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, these Regulations have been made in English only.

The Explanatory Memorandum provides that:

*“Given the composite nature of the 2009 Regulations and that no routine Parliamentary processes exist by which to lay bilingual regulations before Parliament, these Regulations will exceptionally be 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**

**21 March 2022**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—

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**Legislation, Justice and Constitution Committee**

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

[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

23 March 2022

Dear Chair,

I am writing in response to your letter of 2 March in relation to the Legislation, Justice and Constitution Committee's consideration of the response we provided to the Committee to your letter of 8 February regarding the Health Protection (Coronavirus Restrictions) (No.5) (Wales) (Amendment) (No.23) Regulations 2021.

I am pleased to confirm that the following Summary Impact Assessments (SIA) have now been published:

- 3 June 2021 review (including the allowing six individuals from six households to mix indoors; up to 30 people outdoors; an extension to 'extended households' and opening of ice rinks)
- 15 July 2021 review (including the rule of six to meet indoors in private dwellings, indoor events; ice rinks; night clubs and adult entertainment centres; residential visits and gathering outdoors)
- August 2021 – alert level zero baseline measures

The documents can be accessed here: [Impact assessments: coronavirus | GOV.WALES](#)

The assessments were undertaken at the time of the relevant review, but unfortunately they were not published due to an administrative oversight caused by the sheer volume of work underway to deal with the Coronavirus pandemic. I apologise to the committee for this and can confirm we have modified the process to ensure this will not happen again.

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

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

[Gohebiaeth.Mark.Drakeford@llyw.cymru](mailto:Gohebiaeth.Mark.Drakeford@llyw.cymru)  
[Correspondence.Mark.Drakeford@gov.wales](mailto: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.

I welcome the committee's recognition of our revised approach to reviewing previous impact assessments and whether they remain valid. I note your point about summarising the main equality issues that arise and will endeavour to do so in future Explanatory Memorandums.

Yours sincerely,

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

**MARK DRAKEFORD**

The Rt Hon. Mark Drakeford MS  
First Minister of Wales

2 March 2022

Dear Mark

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 23) Regulations 2021

Thank you for your response, dated 8 February 2022, to our letter of 21 January in relation to our report on the above Regulations. We considered your response at our meeting of 14 February.

You note in your response that the fast-moving nature of the pandemic can lead to delays in the publication of Summary Impact Assessments (SIAs), which we fully understand.

We note that your officials are currently reviewing the SIA process for changes made to The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (the principal Regulations), and that the review has already identified three SIAs which are approaching publication. We also note that those anticipated SIAs relate to reviews of coronavirus restrictions undertaken on 3 June 2021, 15 July 2021, and August 2021 – which, by the time they are published, appears to us to amount to a considerable and unreasonable delay in publication. We would therefore welcome an explanation as to how you aim to avoid such delays to the publication of SIAs in future in relation to the reviews of coronavirus restrictions.

At our meeting of 28 February we considered The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 5) Regulations 2022 and its accompanying Explanatory Memorandum (EM). We found the following passage in the EM to provide an acceptable assessment of the impact of the Regulations, and as such we did not raise a merits reporting point in relation to the publication of an accompanying impact assessment report:

*Given that these amended Regulations are easing existing measures, the previous summary impact assessments, which include equality impact assessments, published on 16 September 2021, 2 November 2021 and 18 January 2022, have been reviewed and remain valid. Any removal of legal restrictions are likely to lessen the identified negative impacts.*

We welcome this new approach, and would therefore expect future EMs accompanying regulations which amend the principal Regulations to include an explanation of which previous impact assessments, if any, remain valid. We would also welcome a brief summary of the main equality issues that arise; we note that such an approach we note was taken in the EM for The Education (School Day and School Year) (Wales) (Amendment and Revocation) Regulations 2022, and we found it particularly helpful.

Should any future amendments to the principal Regulations not be accompanied by such an assessment, we will continue to raise, the requirement of regulation 8(1)(d) of the Equality Act (Statutory Duties) (Wales) Regulations 2011, as a merits reporting point; that is, for the Welsh Ministers to make arrangements to publish reports of equality impact assessments.

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies

Chair

# SL(6)118 - The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 23) Regulations 2021

## Background and Purpose

Part 2A of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”) enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

[The Health Protection \(Coronavirus Restrictions\) \(No. 5\) \(Wales\) \(Amendment\) \(No. 23\) Regulations 2021](#) (“the Regulations”) are made in exercise of the powers conferred by sections 45C(1) and (3)(c) and 45F(2) of the 1984 Act in response to the threat to public health which is posed by the incidence and spread of COVID-19.

The Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (the “principal Regulations”), with effect from 20 December 2021, to:

- list specifically allowing or requiring employees to work from home as a reasonable measure which employees may be required to take in accordance with the duty under Step 3 of regulation 16;
- place a new duty, under regulation 18B, on individuals to work, or provide voluntary or charitable services, from home where it is reasonably practicable for them to do so;
- create an offence under regulation 42A where a person, without reasonable excuse, contravenes the requirement in regulation 18B.

## Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is dissolved or in recess for more than four days) of the date they were made for them to continue to have effect.

## Technical Scrutiny

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



## Merits Scrutiny

The following four 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 Welsh Government's justification for any potential interference with human rights. In particular, we note the following 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 spread 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 restrictions and 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 the coronavirus, taking into account the scientific evidence."*

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

*"Given the ongoing threat arising from coronavirus and the need for a prompt public health response, there has been no public consultation in relation to these Regulations. However, engagement has taken place with various stakeholders including the Equalities Division of the Welsh Government."*



### **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 is no equality impact assessment for the Regulations and ask the Welsh Government to explain what arrangements it has made, in respect of the Regulations, to publish reports of equality impact assessments in accordance with regulation 8(1)(d) of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.

While it is noted that the Explanatory Memorandum states, “... *summary impact assessments are in preparation which will include impacts relating to working from home*”, it is unclear whether these will include an equality impact assessment and, in any event, they are not currently available to the citizen for the purpose of assessing the equalities impact of the new provisions being introduced by the Regulations.

### **4. 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**

Beyond the following statement, the Explanatory Memorandum does not set out or link to any specific evidence on which the Welsh Government relies when making provision under the Regulations:

*“The Welsh Ministers are of the opinion that the restrictions and requirements set out in the principal Regulations, as amended by these Regulations, are necessary and proportionate as a public health response to the current threat posed by coronavirus, particularly the rapid rise in Omicron cases.”*

We note, however, the following from the First Minister, Mark Drakeford MS’, written statement of 17 December 2021:

*“At the last review of the coronavirus regulations on 9 December, I set out that we would move from a three-week to a one-week review to ensure we have the right measures in place to keep Wales safe in response to the emerging omicron variant.*

*This fast-moving, more transmissible variant is here in Wales and is spreading quickly.*

.....

*The number of confirmed cases of omicron infections is rising every day in Wales – and across the UK. By the end of the month omicron will likely become the dominant form of the virus. We are still learning about this new form of coronavirus. But all the information we have tells us we are facing a very serious situation.”*

Bearing in mind the additional statutory duty the Regulations impose under new regulation 18B, particularly the creation of an offence in new regulation 42A, we would be grateful if the Welsh Government could set out the relevant evidence that supports the significant tightening of restriction around home working at this time.



## Welsh Government response

A Welsh Government response is required in relation to points 3 and 4 above only.

## Committee Consideration

The Committee considered the instrument at its meeting on 10 January 2022 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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**Legislation, Justice and Constitution Committee**

Eluned Morgan MS  
Minister for Health and Social Services  
Welsh Government

21 March 2022

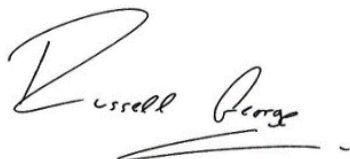
Dear Eluned

**Provisional common frameworks**

Thank you for your letters of 17 January 2022 regarding the Public Health Protection and Health Security; Blood Safety and Quality; and Organs, Tissues and Cells (apart from embryos and gametes) provisional common frameworks.

Our views on these provisional common frameworks are set out in the annex. I look forward to receiving your response by **Monday 9 May**.

Yours sincerely



Russell George MS  
Chair, Health and Social Care Committee

cc Tracey Cooper, Chief Executive, Public Health Wales  
Huw Irranca-Davies MS, Chair, Legislation, Justice and Constitution Committee, Welsh Parliament  
Baroness Andrews, Chair, Common Frameworks Scrutiny Committee, House of Lords  
Colm Gildernew MLA, Committee for Health, Northern Ireland Assembly  
Gillian Martin MSP, Health, Social Care and Sport Committee, Scottish Parliament  
William Wragg MP, Chair, Public Administration and Constitutional Affairs Committee, House of Commons

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

# Annex: Public Health Protection and Health Security; Blood Safety and Quality; and Organs, Tissues and Cells (apart from embryos and gametes) provisional common frameworks

## Risks and benefits of the common framework approach

1. The purpose of common frameworks is to establish common approaches in some areas that were previously governed by EU law, but that are within areas of competence of the devolved governments or legislatures.<sup>1</sup> They are a key tool for intergovernmental working and discussion on approaches to law and policy now that the UK is no longer a member of the EU.
2. The Public Health Protection and Health Security (PHPHS), Blood Safety and Quality (BSQ) and Organs, Tissues and Cells (apart from embryos and gametes) (OTC) common frameworks set out how the Governments will work together and make decisions on regulatory alignment and divergence in the post-Brexit context.
3. The structures provided by these common frameworks could enhance joint working and promote a shared approach to tackling common challenges. They could offer opportunities for the Welsh Government to influence and inform decisions taken by other Governments, as well as providing defined routes for engagement at an international level.
4. However, the common frameworks also present potential risks, such as relinquishing regulatory freedom in favour of a common approach, making it harder for Welsh stakeholders to influence decisions, and risking blurring accountability to individual Parliaments.
5. Such benefits and risks are not unique to the common frameworks that we have considered, but cut across the whole common frameworks programme. In February 2022, the Scottish Parliament Constitution, Europe, External Affairs and Culture Committee concluded that:

*"[...] Common Frameworks [...] have the potential to resolve the tensions within the devolved settlement through managing regulatory divergence on a consensual basis while facilitating open trade within the UK internal market.*

*261. But the Committee believes there is a risk that the emphasis on managing regulatory divergence at an inter-governmental level may lead to less transparency*

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<sup>1</sup> Joint Ministerial Committee (EU Negotiations), [Communique](#), 16 October 2017

*and Ministerial accountability and tension in the balance of regulations between the Executive and the Legislature".<sup>2</sup>*

6. The correspondence we have received from the Welsh Government in respect of common frameworks has not always clearly articulated the risks and benefits of working through those frameworks, or how they might be managed.

**Recommendation 1:** The Welsh Government should explain how it will identify and manage risks associated with and arising from the PHPHS, BSQ and OTC common frameworks on an ongoing basis, including how information about such risks will be shared with Senedd committees.

## **Implications for making Welsh law and policy**

7. The PHPHS, BSQ and OTC common frameworks require Governments to discuss and agree approaches to law and policy, and set out processes for resolving any disputes or disagreements that arise. As such, the frameworks could, in practice, limit the exercise of devolved competence.

8. This will not only affect the Welsh Government as it makes policy or prepares legislation, but will also affect the development of Senedd Bills. For example, Members who wish to table amendments to Bills passing through the Senedd, or committees that plan to introduce committee Bills, may need to consider the implications of relevant common frameworks, and potentially how to engage with these intergovernmental arrangements.

9. It could also make it more difficult for stakeholders in Wales to influence the development of Welsh law and policy.

10. When the Governments agreed principles for common frameworks, they agreed that they should "maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules."<sup>3</sup> We regard this as an important principle.

11. In its report in February, the Scottish Parliament Constitution, Europe, External Affairs and Culture Committee recommended that:

*"...there should be a similar agreement between the Scottish Government and Scottish Parliament that, as a minimum, there should be no dilution of public consultation or of parliamentary scrutiny."<sup>4</sup>*

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<sup>2</sup> Scottish Parliament Constitution, Europe, External Affairs and Culture Committee, *UK Internal Market inquiry*, 22 February 2022, p.42

<sup>3</sup> Joint Ministerial Committee (EU Negotiations), *Communique*, 16 October 2017

<sup>4</sup> Scottish Parliament Constitution, Europe, External Affairs and Culture Committee, *UK Internal Market inquiry*, 22 February 2022, p.36

**12.** Thought should be given to whether such an agreement between the Senedd and the Welsh Government would be helpful.

**Recommendation 2:** The Welsh Government should set out how it will ensure that the PHPHS, BSQ and OTC frameworks will maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as was afforded by current EU rules.

**Recommendation 3:** The Welsh Government should seek intergovernmental agreement that the PHPHS, BSQ and OTC common frameworks will lead to no dilution of public consultation or of parliamentary scrutiny in policymaking or the legislative process.

**Recommendation 4:** The Welsh Government should explain how it will ensure that these common frameworks will not limit the role of the Welsh Government, the Senedd, or stakeholders in Wales when making law and policy for Wales. This should include how the Welsh Government will facilitate the engagement of committees or Members of the Senedd with the common frameworks if required, to ensure that frameworks do not represent a barrier to the operation of the Senedd's legislative procedures.

## Transparency

**13.** We recognise that the process of reaching four-Government agreement on common frameworks is necessarily iterative and can be complex. It was helpful that initial draft versions of the BSQ and OTC provisional common frameworks were published in early 2021. However, it is far from ideal that the final provisional frameworks were not published for scrutiny until the end of 2021, especially as they have already been in operation since the end of the transition period on 31 December 2020.

**14.** The frameworks will, rightly, remain under review. This is especially important in the context of learning from the response to the COVID-19 pandemic.

**15.** However, the frameworks themselves include limited information about ongoing reporting to Parliaments and stakeholders, engagement with stakeholders, or scrutiny of changes proposed during review and amendment processes. We explore each of these issues below.

### Reporting on the operation of frameworks

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**16.** In November 2021, the House of Lords Common Framework Scrutiny Committee noted its disappointment that the PHPHS framework did not include a commitment to ongoing engagement with Parliament. It stated that:

*"Transparency in this area should include regular statements to legislatures on the functioning of this framework. We recognise that there are a number of initial*

*reviews of the framework scheduled and instead would suggest coinciding the planned three-yearly reviews with such engagement.*

*We recommend that the framework should be updated to include a commitment to update each of the 4 UK legislatures on the ongoing functioning of this framework after the conclusion of the three-yearly reviews.”<sup>5</sup>*

**17.** It made similar comments in December 2021 in respect of the BSQ and OTC frameworks.<sup>6</sup>

**18.** In a letter to the Fifth Senedd’s External Affairs and Additional Legislation Committee in January 2020, the then Counsel General and Brexit Minister committed to “lay a report before the Senedd at least annually, which provides an assessment of the functioning of each Common Framework”.<sup>7</sup> We welcome this commitment from the Welsh Government.

**19.** In November 2021, the Counsel General told the Senedd’s Legislation, Justice and Constitution Committee that the four Governments had “committed to future reporting on the frameworks as part of the process for the oversight of the frameworks within the Intergovernmental Relations Review”, and that this would assist Senedd committees in monitoring frameworks in the longer term.<sup>8</sup>

**20.** In January 2021, in response to questions about how the Senedd and stakeholders would be updated on the continuing operation of the frameworks, including any changes, the Minister for Health and Social Services told us that:

*“The **expectation** is that reports on frameworks will be public documents once they are signed off by portfolio Ministers and will be made available to the relevant committees in the four nations as well as relevant stakeholders.”<sup>9</sup> [emphasis added]*

**21.** The Counsel General repeated this ‘expectation’ in oral evidence to the Legislation, Justice and Constitution Committee on 31 January 2022.<sup>10</sup> In a letter to that Committee in March 2022, he stated

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<sup>5</sup> Letter from the Chair of the House of Lords Common Framework Scrutiny Committee to the Minister of State for Health, 23 November 2021

<sup>6</sup> Letter from the Chair of the House of Lords Common Framework Scrutiny Committee to the Minister of State for Health, 14 December 2021

<sup>7</sup> Letter from the Counsel General and Brexit Minister to the External Affairs and Additional Legislation Committee, 23 January 2020

<sup>8</sup> Letter from the Counsel General and Minister for the Constitution to the Legislation, Justice and Constitution Committee, 19 November 2021

<sup>9</sup> Letter from the Minister for Health and Social Services (BSQ and OTC common frameworks), 17 January 2022

<sup>10</sup> Legislation, Justice and Constitution Committee, RoP [paragraph 54], 31 January 2022

that the “exact format of the annual reporting mechanism is currently being worked through at an official level”.<sup>11</sup>

**22.** We appreciate that the frameworks and associated reporting are intergovernmental arrangements, and that the Welsh Government may not be able unilaterally to guarantee that these joint reports will be published. Nevertheless, we are concerned that full agreement has not yet been reached on this important point of transparency, and that a commitment to publishing reports is not included in the frameworks.

**Recommendation 5:** In line with the recommendations made by the House of Lords Common Framework Scrutiny Committee, the Welsh Government should secure intergovernmental agreement to update the PHPHS, BSQ and OTC common frameworks to include a commitment to update legislatures on the ongoing functioning of the frameworks after the conclusion of each review.

If this commitment is not included in the frameworks, the Welsh Government should confirm that joint reports on the frameworks will nevertheless be published in line with its stated expectation.

If intergovernmental agreement on this point cannot be secured, the Welsh Government should explain the reasons why intergovernmental reports will not be published, and confirm that it will nevertheless publish unilateral annual reports in line with its previous commitment.

## Stakeholder engagement

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**23.** The PHPHS, BSQ and OTC frameworks offer limited commitments on stakeholder engagement. All three frameworks provide that the parties may use third parties to provide advice in certain circumstances. The BSQ and OTC frameworks also include commitments to communicate changes to the frameworks to stakeholders.

**24.** We note that following scrutiny of the BSQ and OTC frameworks, the House of Lords Common Framework Scrutiny Committee stated:

*“While we note the commitment to communicate changes in the frameworks to stakeholders, we regret the absence of a commitment to more meaningful ongoing stakeholder engagement. In our Committee’s March 2021 report, we concluded that frameworks were weakened by the lack of stakeholder consultation and recommended that future reviews of frameworks should include an open and well-publicised stakeholder consultation process that reaches beyond the small number*

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<sup>11</sup> Letter from the Counsel General and Minister for the Constitution to the Legislation, Justice and Constitution Committee, 2 March 2022

*of stakeholders previously consulted. We believe that this is necessary in these frameworks as it is with other frameworks.”<sup>12</sup>*

**25.** The House of Lords Committee recommended that the frameworks should be updated to “include an ongoing commitment to stakeholder engagement” including an open consultation process as part of the first two-year review.<sup>13</sup> In respect of the PHPHS framework, it similarly recommended that the first three-year review should include an open consultation process with stakeholders.<sup>14</sup>

**26.** In this context, we welcome the Welsh Government’s commitment to engage with “relevant stakeholders during the review or amendment process as appropriate”.<sup>15</sup>

**27.** We agree with our colleagues in the House of Lords that there must be ongoing, open and meaningful engagement with stakeholders on the operation of these frameworks. We believe that this should be provided for within the frameworks themselves.

**Recommendation 6:** In line with the recommendations made by the House of Lords Common Framework Scrutiny Committee, the Welsh Government should secure intergovernmental agreement to update the PHPHS, BSQ and OTC common frameworks to include:

Provision that the first review of each framework should include an open consultation process with stakeholders.

Commitment to ongoing stakeholder engagement.

Should either of these outcomes not be secured, the Welsh Government should explain the reasons why not, and outline what will be done instead to ensure that there is ongoing, open and meaningful engagement with stakeholders across the UK.

Scrutiny of changes during review and amendment

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**28.** The PHPHS, BSQ and OTC frameworks do not offer a role for parliamentary scrutiny of changes proposed during review and amendment processes.

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<sup>12</sup> [Letter from the Chair of the House of Lords Common Framework Scrutiny Committee to the Minister of State for Health](#), 14 December 2021

<sup>13</sup> [Letter from the Chair of the House of Lords Common Framework Scrutiny Committee to the Minister of State for Health](#), 14 December 2021

<sup>14</sup> [Letter from the Chair of the House of Lords Common Framework Scrutiny Committee to the Minister of State for Health](#), 23 November 2021

<sup>15</sup> Letter from the Minister for Health and Social Services (BSQ and OTC common frameworks), 17 January 2022; Letter from the Minister for Health and Social Services (PHPHS common frameworks), 17 January 2022

**29.** In the Minister for Health and Social Services' letter to us on 17 January 2022 she suggested that Senedd committees will be notified if changes are made:

*"If changes are made to the frameworks then these will be notified to Senedd committees in order for them to carry out the level of scrutiny they deem appropriate and necessary."*<sup>16</sup>

**30.** The Counsel General told the Senedd's Legislation, Justice and Constitution Committee on 31 January 2022 that the Welsh Government was open to considering recommendations made by the Senedd or stakeholders as part of the process of reviewing the frameworks.<sup>17</sup> In a letter to that Committee on 2 March 2022, he confirmed that the Welsh Government would notify the Senedd and stakeholders when a common framework is reviewed, and consider their recommendations before the review process concludes.<sup>18</sup>

**31.** We welcome this commitment. While scrutiny of any changes that have been made is clearly important, it would doubtless be more effective to ensure that the Senedd and other Parliaments are able to scrutinise any proposed changes before they are made. It would also be helpful for us to be notified in sufficient time in advance of any planned review to enable us to take an informed decision about whether any detailed work is required to help inform the development of any proposed changes.

**32.** To avoid duplication, it would also be helpful for such notification to include information about how and when stakeholders will be engaged in any particular review, and how and when any consultation responses will be made public.

**Recommendation 7:** The Welsh Government should confirm that it will notify Senedd committees in advance of reviews of the PHPHS, BSQ and OTC common frameworks and ensure that committees have an opportunity to scrutinise any proposed changes. Notifications should include information about the proposed approach to consultation with stakeholders.

## **Dispute resolution**

**33.** We welcome the Minister for Health and Social Services' commitment to notify the relevant Senedd committee(s) of any disputes raised under the three common frameworks. We recognise that the dispute resolution process set out in the frameworks comprises a number of stages, with only those disputes that cannot be resolved at official level to be escalated to Ministers.

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<sup>16</sup> Letter from the Minister for Health and Social Services (BSQ and OTC common frameworks), 17 January 2022

<sup>17</sup> Legislation, Justice and Constitution Committee, RoP [paragraph 52], 31 January 2022

<sup>18</sup> Letter from the Counsel General and Minister for the Constitution to the Legislation, Justice and Constitution Committee, 2 March 2022

**Recommendation 8:** To ensure proportionality, the Welsh Government need only notify Senedd committees of disputes arising under the common frameworks that are escalated to Ministerial level.

**34.** We note that the frameworks do not specify any timelines or time limits for dispute resolution. The BSQ and OTC frameworks state that when disputes arise, the making of legislation may be postponed until all four Governments are in agreement on how to proceed.

**35.** It is possible, therefore, that the resolution of disputes could result in delay to Welsh Government legislation or policy decisions, with knock on implications for the time available for scrutiny, implementation or spending.

**Recommendation 9:** The Welsh Government should set out its views on whether any time limits should be specified within the dispute resolution process.

**36.** The common frameworks were published before the Intergovernmental Relations Review was completed, but note that they would be updated to reflect the Review's outcomes.

**37.** We note that the Review has now been completed, and that it includes a revised inter-ministerial dispute resolution process through which disputes over common frameworks can be escalated.<sup>19</sup>

**Recommendation 10:** The Welsh Government should confirm that, before they are finalised, the PHPHS, BSQ and OTC common frameworks will be updated to reflect the new inter-ministerial dispute resolution process set out in the review of intergovernmental relations published in January 2022.

## Provisional PHPHS common framework

### Background

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**38.** The provisional PHPHS common framework sets out how the UK Government, devolved governments and public health agencies will work together on public health protection and health security outside the EU.

### UK Health Protection Committee: transparency of operation

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**39.** The PHPHS framework states that the UK Health Protection Committee (UK HPC) has agreed a shared work programme. It also explains that the UK HPC is replacing the EU Health Security Committee (EU HSC) in the domestic context. We note that the EU HSC publishes information about

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<sup>19</sup> UK Government, *Policy paper: review of intergovernmental relations*, 13 January 2022

its work, including its rules of procedure, membership, background documents, and reports on its activity.<sup>20</sup>

**40.** We believe that there should be similar transparency about the work and operation of the UK HPC.

**Recommendation 11:** The Welsh Government should seek intergovernmental agreement that the UK Health Protection Committee should publish and provide regular updates on its shared work programme. This should include the publication of reports of its meetings.

## Resources and capacity

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**41.** The PHPHS framework states that the parties have agreed that the implementation of the shared work programme will be delivered within their existing resources, and will not be contingent on allocation of new resources by any party.

**42.** Public Health Scotland gave evidence to the Scottish Parliament's Health, Social Care and Sport Committee on 21 December 2021, during which it raised concerns about its ability to deliver its responsibilities under the work programme within its existing resources, particularly within the context of the ongoing response to the COVID-19 pandemic:

*"In the programme that has been set by the Health Protection Committee, Scotland has been identified as the lead in three areas—review of disease notifications, analysis of the four-nations working groups and a look at the evolving science of genomics with regard to collaborations, co-operation and sharing of data sets and information. Those are big pieces of work.*

*I can speak only for Public Health Scotland, but I have to say that we would be extremely hard-pressed to contribute meaningfully to those pieces of work and reviews."<sup>21</sup>*

**43.** In the Minister for Health and Social Services' letter to us of 17 January 2022, she acknowledged that the UK HPC and Four Nation Health Protection Oversight Group (HPOG) work programme, which underpins the PHPHS common framework, would "require resources to ensure that Wales can make a full and ongoing contribution and an assessment of the resources required is currently

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<sup>20</sup> See European Commission, [Health Security Committee](#) and [Health Security Committee reports on COVID-19 outbreak](#) [accessed February 2022]

<sup>21</sup> Scottish Parliament Health, Social Care and Sport Committee, [Official Report](#), 21 December 2021

underway".<sup>22</sup> On 12 January 2022, Public Health Wales told us that resourcing for Wales' representation on the UK HPC and the HPOG would be met from existing budgets.<sup>23</sup>

**Recommendation 12:** The Welsh Government and Public Health Wales should confirm whether they have any concerns about the potential resource or capacity implications associated with the work programmes of the UK Health Protection Committee or the Health Protection Oversight Group. This should include setting out the outcome of the assessment of resources referred to by the Minister for Health and Social Services in her letter of 17 January 2022, and, if the work programme is to be resourced from within existing budgets, details of where the funding and staff resource allocated to the work programme has been transferred from.

**Recommendation 13:** The Welsh Government and Public Health Wales should ensure that the work programmes published by the UK Health Protection Committee and the Health Protection Oversight Group include details of which bodies will be responsible for carrying out which activities, and how such activities will be resourced.

## Representation and secretariat

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**44.** The framework provides that the rotating chair of the UK HPC will be supported by a secretariat provided by the UK Department of Health and Social Care, whereas the rotating chair of the HPOG will be supported by a secretariat from the UK Health Security Agency (UKHSA). In each case, the framework provides that each nation may also designate a secretariat to support the group's progress alongside the permanent representative.

**45.** Therefore, while the chairs of the UK HPC and the HPOG will rotate between the four nations, the secretariats will be provided primarily by UK bodies.

**Recommendation 14:** The Welsh Government and Public Health Wales should explain why there will not be a joint secretariat established for the UK Health Protection Committee or the Four Nation Health Protection Oversight Group. They should also indicate whether they intend to designate any supporting secretariat for either group.

## International obligations

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**46.** The framework recognises that public health protection policy aims to protect populations living across geographical regions and international boundaries. It states that it takes an "all hazards" approach to cross-border health protection and health security. As such, it takes into account

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<sup>22</sup> Letter from the Minister for Health and Social Services (PHPHS common framework), 17 January 2022

<sup>23</sup> Letter from Public Health Wales, 12 January 2022

international obligations in these areas, such as the WHO's International Health Regulations (IHR) and UK-EU requirements agreed in the Trade and Cooperation Agreement (TCA).

**47.** In her letter of 17 January 2022, the Minister for Health and Social Services advised that the framework would enable the four Governments to formulate common stances and approaches where appropriate, and to strengthen coordination in other areas. This could include developing UK-wide approaches to public health issues that could be communicated to international partners, including the WHO, the European Centre for Disease Control (ECDC) and EU Member states.

**Recommendation 15:** The Welsh Government should ensure that information about international activity within the scope of the PHPHS common framework is included in its regular reports to the Senedd on the operation of the common frameworks. This should include:

Recent activity carried out by the Welsh Government or Public Health Wales.

Details of common stances agreed with other parties to the framework for the purpose of international engagement.

Information about upcoming international developments or obligations that would be within the scope of the framework.

#### Relations between UK and EU agencies

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**48.** In December 2021, the UKHSA signed a Memorandum of Understanding (MoU) with the ECDC.<sup>24</sup>

**49.** However, we note that Public Health Scotland told the Scottish Parliament's Health, Social Care and Sport Committee that it had some concerns about the extent of devolved engagement in the process of agreeing the MoU:

*"We are not quite there yet, because the current technical committee has 15 representatives from the UK Health Security Agency but only one from Wales, two from Northern Ireland and three from Scotland. Some work is therefore needed to make sure that we are adequately represented in those technical discussions."<sup>25</sup>*

**50.** The TCA provides that UK access to the EU's Early Warning and Response System (EWRS) for communicable diseases can be granted on request. However, it is not clear from the framework documents and MoU whether this has been secured.

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<sup>24</sup> UK Government, [Press release: UKHSA signs memorandum of understanding with ECDC](#), 2 December 2021

<sup>25</sup> Scottish Parliament Health, Social Care and Sport Committee, [Official Report](#), 21 December 2021

**Recommendation 16:** The Welsh Government and Public Health Wales should explain how they engaged in the process of developing and agreeing the Memorandum of Understanding with the European Centre for Disease Control, and how Wales will engage with the ECDC through the PHPHS common framework.

**Recommendation 17:** The Welsh Government should confirm whether UK access to the EU's Early Warning and Response System (EWRS) has been secured, and, if not, whether access will be requested through the PHPHS common framework.

## Provisional BSQ and OTC common frameworks

### Background

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**51.** The provisional BSQ and OTC common frameworks set out how the UK Government and devolved governments will work together and manage divergence in these policy areas outside the EU.

### Review of retained EU law

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**52.** The UK Government has set out its intention to legislate to enable retained EU law to be amended more easily.<sup>26</sup>

**53.** In her letter of 17 January 2022, the Minister for Health and Social Services stated that any proposed amendment or repeal of retained EU law would be undertaken through a "separate process" to the frameworks.<sup>27</sup>

**54.** However, the UK Government has subsequently said that it is:

*"...committed to the proper use of Common Frameworks and will not seek to make changes to retained EU law within Common Frameworks without following the ministerially-agreed processes in each framework".<sup>28</sup>*

**55.** Managing divergence between different parts of the UK in areas covered by retained EU law is a core purpose of the common frameworks programme. It is therefore important that any amendment or repeal of retained EU law in common framework areas be taken through the relevant common frameworks, not a "separate process".

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<sup>26</sup> UK Government, *The benefits of Brexit: how the UK is taking advantage of leaving the EU*, January 2022

<sup>27</sup> Letter from the Minister for Health and Social Services (BSQ and OTC common frameworks), 17 January 2022

<sup>28</sup> UK Government, *The benefits of Brexit: how the UK is taking advantage of leaving the EU*, January 2022, p.33

**Recommendation 18:** The Welsh Government should confirm that any proposed amendments or repeals of retained EU law within the scope of the BSQ or OTC common frameworks will be undertaken through the common frameworks and not by a separate process.

**Recommendation 19:** The Welsh Government should commit to notifying the Senedd, including the relevant committee(s), of any proposals to amend or repeal retained EU law within the scope of the BSQ or OTC frameworks that would affect Wales or Welsh patients.

## UK Internal Market Act 2020

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**56.** Part of the purpose of the BSQ and OTC frameworks is to ensure the smooth functioning of the UK internal market.

**57.** The UK Internal Market Act 2020 (the 2020 Act) sets out new market access principles in law. In essence, the principles aim to allow goods permitted or imported into any one part of the UK to be sold or supplied in any other part, with some exceptions. The UK and devolved Governments have agreed a process for considering UK Internal Market Act exclusions in common framework areas.<sup>29</sup>

**58.** The Welsh Government's view is that the 2020 Act implicitly diminishes the powers of the Senedd and the Welsh Government.<sup>30</sup>

**59.** In her letter of 17 January 2022, the Minister for Health and Social Services confirmed that these common frameworks do intersect with the 2020 Act, and referred to the agreed process for agreeing exclusions.<sup>31</sup> However, neither of the common frameworks includes any reference to the 2020 Act or to the exclusion process.

**60.** In December 2021, the House of Lords Common Frameworks Scrutiny Committee highlighted that the UK Government had previously acknowledged the interaction between the 2020 Act and the frameworks. That Committee felt that even though it was "unlikely for there to be conflicts between these frameworks and the Act, we believe an approach that is prepared for that eventuality should be preferred". It recommended, therefore, that the "frameworks should be updated to reference its interaction with the UK Internal Market Act 2020 and acknowledge the process for agreeing exemptions from that Act".<sup>32</sup> We agree with our colleagues in the House of Lords.

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<sup>29</sup> UK Government, *Guidance: process for considering UK Internal Market Act exclusions in common framework areas*, 10 December 2021

<sup>30</sup> Welsh Government, *Written Statement: legal challenge to the UK Internal Market Act 2020*, 18 January 2021

<sup>31</sup> Letter from the Minister for Health and Social Services (BSQ and OTC common frameworks), 17 January 2022

<sup>32</sup> *Letter from the Chair of the House of Lords Common Framework Scrutiny Committee to the Minister of State for Health*, 14 December 2021

**Recommendation 20:** The Welsh Government should explain the impact of the UK Internal Market Act 2020 on the movement of blood, organs, tissues and cells, including any risks to the practical effect of Welsh legislation and policy, and whether it is considering requesting any exclusions from the Act.

**Recommendation 21:** In line with the recommendation made by the House of Lords Common Framework Scrutiny Committee, the Welsh Government should secure intergovernmental agreement to update the BSQ and OTC common frameworks to refer to their interaction with the UK Internal Market Act 2020 and acknowledge the process for agreeing exemptions from that Act.

## Northern Ireland Protocol and divergence from the EU

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**61.** Under the Northern Ireland Protocol, any changes to EU law on the safety and quality of blood, organs, tissues and cells must be applied in Northern Ireland.

**62.** The frameworks provide information about how Governments will consider the implications of changes to law and policy in Northern Ireland and Great Britain for divergence, but offers limited detail about how this will work in practice.

**63.** In December 2021, the House of Lords Common Framework Scrutiny Committee welcomed the updated language in the frameworks relating to the Northern Ireland Protocol, describing it as “a great improvement”. But that Committee felt that there was still a need for the frameworks to include additional detail to tailor the commitment to the specific processes of these frameworks, as:

*“The current language does not make clear at what point in the EU legislative process measures that will be implemented in Northern Ireland through the Protocol will be submitted for the risk assessment process”.*<sup>33</sup>

**Recommendation 22:** In line with the recommendation made by the House of Lords Common Framework Scrutiny Committee, the Welsh Government should secure intergovernmental agreement to update the BSQ and OTC common frameworks to include additional detail on when changes introduced in Northern Ireland through the Protocol on Ireland/Northern Ireland will be considered in these frameworks.

**64.** The Minister for Health and Social Services told us in January 2022 that she was aware that the European Commission planned to revise the EU Directives on the safety of blood, tissues and cells early in 2022.<sup>34</sup> She stated that the Welsh Government would, with the other Governments in the UK, consider what implications such changes might have. She added:

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<sup>33</sup> [Letter from the Chair of the House of Lords Common Framework Scrutiny Committee to the Minister of State for Health](#), 14 December 2021

<sup>34</sup> European Commission, [Revision of the EU legislation on blood, tissues and cells](#) [accessed February 2022]

*"We would not propose to make any unilateral changes in Wales, preferring to take a joint approach with the rest of the UK in respond to any changes in the EU, providing that the detail of any such joint approach is appropriate for Wales".<sup>35</sup>*

**Recommendation 23:** The Welsh Government should explain how it will assess the risks and benefits for Wales of keeping pace with changes in Northern Ireland and the EU, as opposed to maintaining the status quo in Great Britain, and what position it will take in intergovernmental discussions on these matters.

#### International obligations

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**65.** Part of the purpose of common frameworks is to ensure compliance with international obligations.

**66.** In respect of blood, organs, tissues and cells, Wales must comply with WHO standards and with new UK-EU obligations contained in the Withdrawal Agreement and TCA.

**67.** The frameworks mention that Governments will share information on UK, EU and international issues, but do not go into detail. However, in her letter to us on 17 January 2022, the Minister for Health and Social Services told us that:

*"These frameworks do not specifically cover international obligations – and so do not alter current obligations with which organisations are already familiar".<sup>36</sup>*

**Recommendation 24:** The Welsh Government should secure intergovernmental agreement to update the BSQ and OTC common frameworks to include detail of how Governments in the UK will work together on international and UK-EU obligations relating to blood, organs, tissues and cells. This should include how Wales will be represented in relevant discussions at the WHO and at UK-EU forums.

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<sup>35</sup> Letter from the Minister for Health and Social Services (BSQ and OTC common frameworks), 17 January 2022

<sup>36</sup> Letter from the Minister for Health and Social Services (BSQ and OTC common frameworks), 17 January 2022

# Agenda Item 5.2



HOUSE OF LORDS

Common Frameworks Scrutiny Committee

House of Lords

London

SW1A 0PW

Tel: 020 7219 8664

[hlcommonframeworks@parliament.uk](mailto:hlcommonframeworks@parliament.uk)

23 March 2022

The Rt Hon George Eustice MP  
Secretary of State for Environment, Food and Rural Affairs  
Department for Environment Food & Rural Affairs  
Seacole Building  
2 Marsham St  
London  
SW1P 4DF

Dear George,

Thank you for the Chemicals and Pesticides Provisional Framework that was published on 3 February and considered by the Committee on 22 March. We appreciate this framework being privately shared with our secretariat before its publication so we could prepare for scrutiny in a timely fashion. Whilst I want to confirm the Committee's intention to produce recommendations for this framework, there are several areas where we would first welcome more information.

We were concerned that little to no detail was given about the majority of the working groups outlined in the framework and displayed in the diagram under the 'Decision making' heading. On page 31, the framework states that "Decisions made at the working group will mostly be routine or technical; full details are set out in the terms of reference (ToR) for each group." Page 11 also refers to groups having terms of reference. However, no terms of reference are provided. Could you provide the terms of reference for all of the working groups that appear in the diagram? Additionally, we are extremely concerned about the sheer number of working groups outlined and the risk that this framework could become overly bureaucratic. This is a problem we have seen repeatedly in a number of DEFRA frameworks. Could you clarify if these working groups were already in operation before the development of the framework?

We were very concerned about how this framework deals with dissatisfaction from the Northern Ireland Executive on decisions made relating to GB-only proposals. In other frameworks, we note the NIE have been given the opportunity to trigger the full dispute resolution process if they have serious concerns about decisions made concerning a GB-only proposal. For example, the Fertilisers framework, Plant Varieties and Seeds framework, and Organics framework, all state that "Where issues or concerns raised by the relevant Northern Ireland Executive Minister(s) in respect of GB-only proposals have not been satisfactorily addressed, they will have the right to trigger a review of the issue as set out in the dispute resolution process." In the course of the dispute resolution process, the NIE is represented at each stage, and therefore plays a role in the final decision. However, in this

framework, we read that NIE Ministers will have the right to trigger a review of an issue in a way that is “akin to the dispute resolution mechanism, albeit that the final decision will rest with the UKG, SG and WG.” This seems to contradict the JMC principle that frameworks “will lead to a significant increase in decision-making powers for the devolved administrations.” Why should the NIE not play a role in making the final decision? Why does this framework approach this issue differently to other DEFRA frameworks?

We also note with concern that this framework is unique in that it references Article 16 of the Protocol on Ireland/Northern Ireland: “Should a significant difference arise, which would lead to economic, societal, or environmental difficulties for Northern Ireland, under Article 16 of the Northern Ireland Protocol this would trigger a ‘significant issue’ review of the Common Framework to address and see if any amendments are required”. In light of the political tension surrounding Article 16, we are concerned that reference to it might be interpreted as intention for it to be triggered. Could you clarify when this section of the framework was written? Could you also clarify why this framework refers to Article 16 while other DEFRA frameworks we have so far considered do not?

We were not clear on the initiation of the dispute resolution process. On page 14, we read that “If officials do not agree in day-to-day discussions when making decisions ... issues discussed at a working level can be escalated initially to the CDB, PDB, BDB or UKCGG, or to senior officials in line with the Common Framework’s dispute avoidance and resolution mechanism.” However, this is not reflected in the governance arrangement diagram on page 47, where no senior officials appear, and it is not clear why senior officials are listed as an option on the same level as working groups. Page 14 causes further confusion, as it outlines that if the UKCGG cannot make a decision, it should be “escalated to senior officials” who can then escalate an issue to the Senior Officials Programme Board. This contradicts page 38, which outlines that the UKCGG escalate straight to the SOPB. It is also unclear what the difference is between senior officials and the SOPB. Could you clarify how the dispute resolution process operates?

We note that the framework states that “The Parties will collaborate to develop criteria to determine when regulatory decisions, issues, or information should be escalated to the UKCGG, or to the working groups sitting under it. These will be developed, agreed, and reviewed by the UKCGG as required.” Could you confirm if this collaboration has begun yet? If it has, could you give details of any criteria that have been drawn up?

Finally, we welcome that the framework contains information on areas that will be monitored. Could you confirm who will be responsible for monitoring?

In order to facilitate the swift scrutiny of this framework, we ask that you respond within 5 working days.

Yours sincerely,

Baroness Andrews  
Chair of the Common Frameworks Scrutiny Committee

# Agenda Item 5.3



HOUSE OF LORDS

Common Frameworks Scrutiny Committee

House of Lords

London

SW1A 0PW

Tel: 020 7219 8664

[hlcommonframeworks@parliament.uk](mailto:hlcommonframeworks@parliament.uk)

23 March 2022

The Rt Hon George Eustice MP  
Secretary of State for Environment, Food and Rural Affairs  
Department for Environment Food & Rural Affairs  
Seacole Building  
2 Marsham St  
London  
SW1P 4DF

Dear George,

Thank you for your letter of 7 March replying to our questions about the Animal Health and Welfare Provisional Framework. It clarified many of the issues the Committee were concerned about. We are now writing to provide our final recommendations.

We are extremely concerned about the amount of care that has been taken to ensure the framework was drafted to a high quality. You assured us that “A number of quality control checks were applied to the documents. These included consideration by departmental officials and their counterparts in the devolved governments followed by a centralised review process conducted by Cabinet Office officials with their devolved counterparts, and then sign-off by the Common Frameworks Programme Board.” It is therefore alarming that so many areas of this framework were outdated, inaccurate, or confusing. For example, page 56 states that the SOPB is “set out at Annex 5.1 below”, but this is not the case. On page 24, we are also told the dispute process is outlined in figure 2, but no diagram is labelled figure 2. The acronym ‘ORB’ is used to refer to more than one group, and several acronyms are not expanded at their first use. There are references in the framework to groups and processes that were only relevant before EU Exit, such as the ‘EU Exit Programme Board’ and “operational readiness projects”. If rigorous quality control checks did take place, as you state they did, we have not seen evidence of it - simple errors such as those listed should not have been able to be overlooked. The Committee are therefore extremely concerned that this indicates there is a lack of focus on common frameworks in Government.

**High-quality, transparent, and consistent common frameworks are essential for successful intergovernmental working; and to provide strong foundations for a cooperative Union. They must be taken seriously and all efforts should be made to draft them carefully and accurately. We recommend that far greater effort is taken to ensure all frameworks are drafted to a high standard before they are approved.**

**We recommend that existing inaccuracies in the framework, such as those outlined above, are corrected.**

We welcome the provision of more information about discussion groups in your letter. Although we recognise that you did not feel this information was important to include in the framework, we feel it is important the framework provides comprehensive information on all the working groups involved in its operation.

**We recommend that the framework is updated to provide terms of reference for the Chief Veterinary Officers (CVOs), Veterinary Risk Group (VRG), Outbreak Readiness Board (ORB), and Disease Emergency Response Committee (DERC).**

We welcome you providing clarity that the VRG reports to the CVOs. However, we were disappointed that you did not provide a response as to who the ORB and DERC report to.

**We recommend that the framework is updated to state that the VRG reports to the CVOs, and to provide clarity on who the ORB and DERC report to.**

We were disappointed that your letter did not address our concerns as to whether the CVOs are a discussion or decision-making fora. In Annex 2, the CVOs are listed as a “Discussion fora”. Yet on page 32, the CVOs are listed alongside the decision-making groups.

**We recommend that the framework is updated to clarify what type of group the CVO is, and that any contradictory statements are removed.**

We were also disappointed that your letter did not address our concerns over the ORB. On page 20 we read that an existing discussion group is the “Outbreak Readiness Board (ORB)” which is overseen by the ADPG (page 60). Yet on page 59 the “Operational Readiness Board (ORB)” are mentioned, whose chair sits on the ADPG. Annex 2 also lists the “Operational Readiness Board” as a discussion group. The framework must be clear on who the ORB are, and if it is two groups or one.

**We recommend that the framework is updated to provide clarity on the ORB.**

We welcome that you pledge in your letter to rewrite the section of the framework that states the AAHPG, ADPG and TBLG can all “schedule additional meetings or consider relevant issues through a written procedure.”

**We recommend that the framework is updated to make it clear that groups can agree to consider issues through written correspondence, where appropriate, rather than having to hold a meeting. The confusing line that the AAHPG, ADPG and TBLG can all “schedule additional meetings or consider relevant issues through a written procedure” should be removed.**

We welcome the additional information that you provided on the chairs of working groups.

**We recommend that the framework is updated to stipulate that:**

- **The chair of the SOPB is rotated between officials from the UK government and devolved governments;**

- **The chair of the AAHPG is DEFRA’s Deputy Director for Exotic and Endemic Disease Control; and**
- **The chair of the ADPG is DEFRA’s Director of Animal and Plant Health and Welfare.**

On page 22, we read that decision-making groups may commission work where required to help inform their decision making. However, “The scope and who is involved in that work should be decided at a joint decision-making group or between all four CVOs”. You clarified that the joint decision-making group is made up of the ADPG, AWPG, AAHPG and TBLG.

**We recommend the framework is updated to clarify that the joint decision-making group is made up of the ADPG, AWPG, AAHPG and TBLG.**

The recommendations above all relate to the fact that we do not think the framework is clear in how groups interact with one another. This could be done through a clearer diagram or tables, or via an annex clearly setting out interactions between the groups.

**We recommend that the framework is updated to make it clearer how groups interact with one another.**

In the section of the framework that lists SOPB members, we read “Membership of the EU Exit Programme Board comprises of the following...” The SOPB’s terms of reference also refer to ‘operational readiness projects’ on several occasions. You have confirmed both of these terms are outdated.

**We recommend that the framework is updated to remove reference to the EU Exit Programme Board and operational readiness projects.**

Your letter also clarified that on page 71 the reference to the Animal Policy Group (APG) is incorrect and should refer to the Animal Disease Policy Group.

**We recommend that the framework is updated to remove reference to the Animal Policy Group.**

We welcome the detailed information you provided on the Office for SPS Trade Assurance. In light of this information, we feel the statement in the framework that “The UK Office for SPS Trade Assurance ... will not have a substantial role in the Framework” is incorrect.

**We recommend that the framework is updated to remove the statement that “The UK Office for SPS Trade Assurance ... will not have a substantial role in the Framework”. The framework should be updated to outline that although the Office does not have a policy role, it plays an important role in the UK’s SPS system. As such it may be well placed to coordinate the handling/coordination of some types of dispute that arise under the terms of the Framework, and to support the Animal Disease Policy Group (ADPG) in carrying out a review of the Framework.**

We were not clear on the review process. We noted that page 34 stated that “There is an option for an independent review panel to be brought in to review the Framework if one or more Parties wishes to trigger a review. The appointed reviewer would collectively agree a body to undertake this review”. This seemed to contradict page 23 where the “ADPG

would collectively agree a body and the impartiality level to undertake this review”. We were also concerned by page 23’s assertion that “after the first review, “the frequency of reviews should be proposed by ADPG to the relevant decision-makers”. It was unclear who the relevant decision-makers were. We appreciate you providing clarity on these concerns.

**We recommend that it is made clear in the framework that Parties should suggest changes to the framework to the ADPG, who review the framework, and can consider changes in their review. It should be made clear the ADPG has the power to appoint an alternative reviewer. It should be made clear that after the first review has been carried out, the ADPG will agree the frequency of subsequent reviews. It should be stated that other relevant decision makers should be informed by the ADPG of its decision(s), such as the Animal Welfare Policy Group, Aquatic Animals Health Policy Group, and TB Liaison Group.**

The framework itself claims that “the Framework should recognise the fact that diseases do not respect borders and this requires a coordinated approach for prevention and control.” However, [recent correspondence with DAERA](#) highlights that the Republic of Ireland were not consulted in the development of the framework. The Government have acknowledged that the island of Ireland is “a single epidemiological unit for the purposes of animal health and welfare”.<sup>1</sup> As such, coordination with the Irish Government should be a central feature of this framework, and it is alarming that this cooperation has not already occurred

**We recommend that the framework respects the fact that the Island of Ireland is a single epidemiological unit for the purposes of animal health and welfare. Therefore, the opinion and feedback of the Irish Government is sought on this common framework, and that the Irish Government is treated as a key stakeholder in future reviews of the framework.**

**We recommend that the framework is updated to outline the processes used to facilitate communication between Northern Ireland and the Republic of Ireland on matters relating to animal health and welfare.**

The Committee was disappointed to see that the process for agreeing exclusions from the UK Internal Market Act 2020 was not contained in the framework. We appreciate that in your 10 March letter you said that your officials would work closely with other government departments and the devolved administrations to see if the text could be included. We reiterate that the UK Internal Market Act exclusions process must be set out in relevant frameworks as paragraph 2b of the exclusions process guidance states. Failure to do so jeopardises respecting the autonomy of the devolved administrations within their areas of competence. It should be clearly set out in relevant common frameworks as an essential process agreed for the wider Programme. We are writing to the devolved administrations to seek their views on this matter.

**We recommend that the framework is updated to include text setting out the UK Internal Market Act exclusions process.**

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/638135/6.3703\\_DEXEU\\_Northern\\_Ireland\\_and\\_Ireland\\_INTERACTIVE.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638135/6.3703_DEXEU_Northern_Ireland_and_Ireland_INTERACTIVE.pdf)

We are disappointed to note the absence in this framework of any commitments on ongoing engagement with Parliament. We note the absence of any commitments in the texts of these frameworks to publish reviews of the frameworks or to update legislatures on the outcomes of reviews. The Government has separately committed to improving transparency in Intergovernmental Relations. Transparency in this area should include regular statements to legislatures on the functioning of these frameworks.

**We recommend that the framework should be updated to include a commitment to update the House of Lords, House of Commons and the three devolved legislatures on the ongoing functioning of the framework after the conclusion of the scheduled reviews.**

We understand that each of the four governments are currently receiving views on this Provisional Framework from their respective legislatures. We therefore look forward to your response to this letter once these have been received, and our recommendations have been considered, together with the final version of the framework.

Yours sincerely,

Baroness Andrews  
Chair of the Common Frameworks Scrutiny Committee

# Agenda Item 5.4



HOUSE OF LORDS

Common Frameworks Scrutiny Committee

House of Lords

London

SW1A 0PW

Tel: 020 7219 8664

[hlcommonframeworks@parliament.uk](mailto:hlcommonframeworks@parliament.uk)

23 March 2022

The Rt Hon George Eustice MP  
Secretary of State for Environment, Food and Rural Affairs  
Department for Environment Food & Rural Affairs  
Seacole Building  
2 Marsham St  
London  
SW1P 4DF

Dear George,

Thank you for your letter of 15 March replying to questions about the Fisheries Management and Support Framework Outline Agreement (FOA) and Memorandum of Understanding (FFMoU). It provided helpful answers to many of the Committee's queries. We are now writing to provide our final recommendations.

We welcome your clarification with regards to the structure of the Fisheries Management and Support common framework. It is helpful to now know the common framework itself is not the single document that combines the FOA and the FFMoU, but in fact is also made up of the other separate documents, including the Fisheries Act, the Joint Fisheries Statement (JFS), the Fisheries Management Plans (FMPs), the Operational Agreements (OAs), the FFMoU, and the FOA. Nevertheless, we are concerned that this structure was not made sufficiently clear, as set out in the FOA and FFMoU document. On the common frameworks GOV.UK page, all that is published for Fisheries Management and Support is the single document containing the FOA and FFMoU.

**We recommend that the FOA and FFMoU are reviewed to make clearer the structure of the Fisheries Management and Support common framework. The common frameworks GOV.UK page should also be updated to ensure that the other separate documents that make up the common framework are published, and listed alongside, the FOA and FFMoU document.**

Your letter confirmed that the Fisheries Senior Steering Group (SSG) is currently facilitating discussion between senior officials in DEFRA and the devolved administrations, and not any other similar forum or structure.

**We recommend that the FOA and FFMoU are updated to state that the SSG is the active forum for discussion between senior officials in DEFRA and the devolved administrations, and that references to "or a similar forum", and "or a similar structure" are removed.**

Your letter clarified the difference between the role of senior officials in the SSG and the Senior Officials Programme Board (SOPB).

**We recommend that the FOA and FFMoU are updated to set out clearly the difference between the role of the SSG and the SOPB, stating that the SOPB has a wider remit that oversees engagement between the four governments in areas that span across the Environment, Food and Rural Affairs portfolio; and that it provides broader coordination, oversight, and direction to all DEFRA-devolved government groups.**

Now we have a clearer understanding of the structure of the common framework, we accept that the FOA is there to summarise and provide context to the other documents. We also welcome that the other documents that make up the common framework are actively managed and have robust review processes, and that the FOA will be revised when the other documents are updated. However, we believe that this only strengthens the need for a coordinated review of the functioning of the common framework as a whole.

**We recommend that the functioning of the Fisheries Management and Support common framework should be regularly reviewed as a whole, and the FOA be subject to regular updates where relevant to reflect changes made to the other documents within the common framework.**

We were concerned by the use of language in the FOA on page 9, and from page 30 within the FFMoU. This was with respect to the UK Government facilitating the attendance of the devolved administrations at UK-EU meetings, where the agenda includes an item concerning implementation in an area of devolved competence. Currently, the text states that the UK Government “should facilitate” the attendance of the devolved administrations at such meetings. While international agreements is a reserved area, the implementation of international agreements remains devolved. Every effort should be made to respect the devolution settlements and ensure the devolved administrations are present at such meetings. This would also ensure adherence to the JMC principle that common frameworks will “lead to a significant increase in decision-making powers for the devolved administrations.”<sup>1</sup>

**We recommend that the text in the FOA and FFMoU is updated to state that the UK Government “will” facilitate the attendance of the devolved administrations at EU-UK meetings, where an agenda item concerns implementation in an area of devolved competence. This would ensure adherence to the JMC principles underpinning the Common Frameworks Programme and that the devolution settlements are respected.**

The Committee was again disappointed to see that the process for agreeing exclusions from the UK Internal Market Act 2020 was not contained in the FOA and FFMoU. We appreciate that in your 10 March letter you said that your officials would work closely with other government departments and the devolved administrations to see if the text could be included. We reiterate that the UK Internal Market Act exclusions process must be set out in relevant frameworks as paragraph 2b of the exclusions process guidance states. Failure to do so jeopardises respecting the autonomy of the devolved administrations within their

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<sup>1</sup> Page 5, [Frameworks Analysis 2021 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

areas of competence. It should be clearly set out in relevant common frameworks as an essential process agreed for the wider Programme. We are writing to the devolved administrations to seek their views on this matter.

**We recommend that the FOA and FFMoU are updated to include text setting out the UK Internal Market Act exclusions process.**

We are disappointed to note the absence in the FOA and FFMoU of any commitments on ongoing engagement with Parliament on the functioning of the common framework as a whole. While component documents such as the JFS will be subject to regular reporting, this is not sufficient. The Government has separately committed to improving transparency in Intergovernmental Relations. Transparency in this area should include regular statements to legislatures on the functioning of whole common frameworks.

**We recommend that the FOA and FFMoU should be updated to include a commitment to update the House of Lords, House of Commons and the three devolved legislatures on the ongoing functioning of the common framework as a whole after the conclusion of scheduled reviews.**

Regarding the Subsidy Control Bill and the OA on Fisheries Funding, we welcome your assurances that officials in DEFRA are working closely with the devolved administrations in drafting the Funding Chapter of the OA. We also note that DEFRA will continue to engage with the devolved administrations as the Bill progresses through Parliament. However, we remain concerned about how provisions in the Bill can be harmonised with the explicit equality of the Parties provided for in the Fisheries Management and Support common framework.

**We recommend that the Government carefully consider how the Subsidy Control Bill might contradict the aims of common frameworks and impede their successful operation. Decisions made through cooperation between the devolved powers via a common framework should take priority in areas where the Subsidy Control Bill is relevant.**

**We recommend that the FOA and FFMoU is updated to include that reviews should analyse how the common framework as a whole is interacting with the Subsidy Control Bill. This information should be presented at the regular updates to legislatures we have recommended.**

We also note in your letter that you provide no clear timeline for publication of the Operational Agreements (OAs). They will clearly be a key component of the common framework. Consequently, we can only consider the Fisheries Management and Support Provisional Framework to be partially published.

**We recommend that when the OAs published, they are also laid before the legislatures for formal scrutiny as part of the Common Frameworks Programme.**

We understand that each of the four governments are currently receiving views on this Provisional Framework from their respective legislatures. We therefore look forward to

your response to this letter once these have been received, and our recommendations have been considered, together with the final version of the framework.

Yours sincerely,

Baroness Andrews  
Chair of the Common Frameworks Scrutiny Committee

**Legislation, Justice and  
Constitution Committee**

Rt Hon Mark Drakeford MS  
First Minister

22 March 2022

Dear Mark,

First meeting of the Inter-Ministerial Standing Committee, 23 March 2022

Thank you for your letter of 18 March in which you notified us that the first meeting of the Inter-Ministerial Standing Committee will take place tomorrow, on 23 March, and that you and the Counsel General and Minister for the Constitution will represent the Welsh Government.

In your letter you said that the agenda includes items on the crisis in Ukraine, UK legislation, and the Levelling Up White Paper, and that the Committee would also undertake a stocktake of the implementation of the Intergovernmental Relations (IGR) Review.

We discussed your letter in our committee meeting yesterday and, given the recent correspondence we have considered regarding various legislative consent memoranda for UK Bills and intergovernmental meetings, we wanted to share with you some observations which we would invite you to reflect on as you prepare to participate in this inaugural meeting. We believe these are important matters that are relevant to agenda items covering UK legislation and the implementation of the IGR review.

1. The recent development regarding the Professional Qualifications Bill and the UK Government progressing with the Bill through its final stages in the House of Commons while in breach of the legislative consent convention is both unfortunate and disconcerting. We acknowledge that such instances are rare. However, given these developments have occurred in parallel with the governments of the UK securing a new working relationship, we are concerned that the agreed new intergovernmental processes have not delivered a positive result and have not led to a resolution of the areas of concern between the governments.

2. The recent statement made by the Minister for Economy **on 10 March** that the first meeting of the UK-EU Relations Inter-Ministerial Group (IMG) was called with only two hours' notice is also worrying. The Counsel General told us on 14 March that he hoped these were "early teething troubles". We hope sincerely that the UK Government, and all other governments in the UK when appropriate, will seek to ensure that future meetings of IMGs are called with reasonable notice and operate as per the aims of the outcome of the IGR Review.
3. We are also concerned about the apparent breakdown of intergovernmental working in relation to the passage of the Cultural Objects (Protection from Seizure) Bill, as outlined in the Deputy Minister for Arts and Sport, and Chief Whip's **letter of 16 March**. The UK Government's refusal to include a carve out from the application of paragraph 11(1)(a) of Schedule 7B to the *Government of Wales Act 2006* at the request of the Welsh Government, and its subsequent decision to amend the Bill to remove the Bill's application to Wales completely, appears to represent a breakdown in communication between governments and a failure to resolve a problem that should in our view be relatively straightforward to overcome.

We are therefore concerned that the new intergovernmental processes are not having an immediate impact and that, should the underlying causes of these problems not be addressed as a matter of urgency, the initial progress made on IGR could stall unnecessarily, reducing the benefits that the new arrangements were intended to bring.

We look forward to receiving an update on the outcome of the meeting.

I am copying this letter to Mick Antoniw MS, the Counsel General and Minister for the Constitution, the Rt Hon Elin Jones MS, the Llywydd; the Rt Hon Michael Gove MP, the Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations; the Northern Ireland Assembly's Committee for the Executive Office, the Scottish Parliament's Constitution, Europe, External Affairs and Culture Committee, the House of Lords' Constitution Committee, and the House of Commons' Public Administration and Constitutional Affairs Select Committee.

Yours sincerely,



Huw Irranca-Davies  
Chair

# Agenda Item 7.1

Y Gweinidog Cyfiawnder Cymdeithasol  
Minister for Social Justice



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref MA-JH-1187-22

Huw Irranca-Davies MS  
Chair,  
Legislation, Justice and Constitution Committee  
Senedd Cymru  
[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

22 March 2022

Dear Huw,

I am writing to inform you that on 8 March the House of Lords agreed amendment 64A to the Nationality and Borders Bill, which inserts new clause 62 into Part 4 of the Bill, attached below.

The Bill is now at its Final Stages and the House of Commons will be considering the House of Lords amendments today. This unfortunately leaves no opportunity for the Senedd to consider and scrutinise the amendment before the Final Stage is completed. This also means the UK Government are proceeding with the Bill without securing legislative consent from the Senedd, or indeed any of the Devolved Governments. This is wholly unacceptable and is a breach of the Sewel convention.

My intentions were to lay a SLCM regarding this amendment. However the Bill received its Third Reading in the Lords on 14 March and has now commenced final stages of consideration of amendments ('Ping Pong'). During this stage it is likely amendments agreed in the Lords will be overturned and further amendments made.

Given there are uncertain and unpredictable times ahead regarding both the UK Parliament and UK Government timetable and process of the Bill, I have taken the decision to withhold laying a SLCM regarding new clause 62 introduced by amendment 64A. Once there is certainty around the Bill, and the outcomes at the UK level are clear I will take appropriate action in response to any further amendments made.

Yours sincerely,

**Jane Hutt AS/MS**  
Y Gweinidog Cyfiawnder Cymdeithasol  
Minister for Social Justice

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

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

[Gohebiaeth.Jeremy.Miles@llyw.cymru](mailto:Gohebiaeth.Jeremy.Miles@llyw.cymru)  
[Correspondence.Jeremy.Miles@gov.wales](mailto:Correspondence.Jeremy.Miles@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.

## 62 Age assessments: restrictions

- (1) Age assessments under section 54 or 55 must only be undertaken if there is significant reason to doubt the age of the age-disputed person.
- (2) A person conducting age assessments under section 54 or 55 must be a local authority social worker.
- (3) Age assessments must be undertaken in accordance with the Association of Directors of Children's Services Age Assessment Guidance or equivalent guidance in Scotland, Wales and Northern Ireland.
- (4) When an age assessment is conducted, a process must be used that allows for an impartial multi-agency approach, drawing on a range of expertise, including from—
  - (a) health professionals,
  - (b) psychologists,
  - (c) teachers,
  - (d) foster parents,
  - (e) youth workers,
  - (f) advocates,
  - (g) guardians, and
  - (h) social workers.
- (5) When making regulations under section 56, the Secretary of State must not specify scientific methods unless the Secretary of State receives written approval from the relevant medical, dental and scientific professional bodies that the method is both ethical and accurate beyond reasonable doubt for assessing a person's age.
- (6) Any organisation developed to oversee age assessments must be independent of the Home Office.
- (7) The standard of proof for an age assessment is reasonable degree of likelihood.



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref : MA/RE/0853/22

Huw Irranca-Davies MS  
Chair, Legislation, Justice and Constitution Committee  
[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

23 March 2022

Dear Huw,

I am writing to the Committee to provide you with an update on the legislation which has been made to underpin the electoral pilots which are being delivered in Wales as part of the Local Government Elections in May 2022.

As you will be aware on 9 November 22, the Counsel General and Minister for Constitution issued a written statement updating members on progress and confirming that four local authorities were working with the Welsh Government to develop electoral pilots in their areas. [Written Statement: Update on Flexible Voting Pilots \(9 November 2021\) | GOV.WALES](#). The purpose of the pilots is to see if we can make it easier for people to vote by offering flexibility on when and where they can vote. The pilots will bring the ballot box closer to people's day to day lives. They are a step in ensuring elections in Wales are as accessible as possible and that everyone who wants to vote can vote. The learning from the pilots will be used to inform longer term improvements to the way people vote and to help reduce the democratic deficit.

Pilots will operate in four areas:

**Blaenau Gwent** – the centrally-located Ebbw Vale Learning Zone will be used as an advance polling station for all residents of the county, including students of the college who are eligible to vote at the elections. Advance voting will be available on the Tuesday and Wednesday before election day.

**Bridgend** - polling stations in certain low turnout wards will be open for advance voting on the Tuesday and Wednesday before election day. A new advance polling station will also be created in a school on the Tuesday before election day for use by students registered at that school who are eligible to vote in specified wards.

**Caerphilly** – the council offices at Ystrad Mynach will be used as an advance polling station for all residents of the county on the weekend before election day.

**Torfaen** – the council offices at Pontypool will be used as an advance polling station for all residents of the county on the weekend before election day.

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Correspondence.Rebecca.Evans@gov.wales](mailto:Correspondence.Rebecca.Evans@gov.wales)  
[Gohebiaeth.Rebecca.Evans@llyw.cymru](mailto: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.

The four orders that have been made in order to deliver these pilots have been developed and made in accordance with section 10 of the Representation of the People Act 2000 (RPA 2000). They are no procedure orders so have not been laid before the Senedd. A formal consultation process in respect of the orders was also undertaken with the Electoral Commission as required by section 10(1A) of the RPA 2000. The Commission supports the making of the orders and the orders will come into force on 23 March 2022. They can be found here:

[The County Borough of Caerphilly \(Electoral Pilot Scheme\) Order 2022 | GOV.WALES](#)  
[The County Borough of Bridgend \(Electoral Pilot Scheme\) Order 2022 | GOV.WALES](#)  
[The County Borough of Torfaen \(Electoral Pilot Scheme\) Order 2022 | GOV.WALES](#)  
[The County Borough of Blaenau Gwent \(Electoral Pilot Scheme\) Order 2022 | GOV.WALES](#)

The Counsel General and Minister for Constitution has also issued a written statement updating Senedd members on progress which can be found here:

[Written Statement: Update on Flexible Voting Pilots \(23 March 2022\) | GOV.WALES](#)

Yours sincerely,



**Rebecca Evans AS/MS**

Y Gweinidog Cyllid a Llywodraeth Leol  
Minister for Finance and Local Government



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

[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

24 March 2022

Dear Huw

Thank you for the Committee's report of 17 March on the Supplementary Legislative Consent Memoranda (Memorandum No. 3 and Memorandum No. 4) on the Building Safety Bill (the Bill). The recommendations made by the Committee together with my response are provided below.

**Recommendation 1.** *The Minister should, in advance of the debate on the relevant legislative consent motion, provide a further and full explanation as regards the statements made in paragraph 48 of Memorandum No. 3, and specifically address our concerns outlined in paragraphs 80 and 81 of our report.*

## Response

Routes to redress for homeowners are complex with a number of industry codes of practice in place, which makes it difficult for consumers to navigate. When something goes wrong, clearly house builders and warranty providers should meet their obligations and put things right. However, there are gaps in protection currently which need to be plugged and the control over such situations is very much one-sided in favour of the developer. The New Homes Ombudsman ("NHO") seeks to address that balance so that dispute resolution is fair for all.

Operating different systems across different parts of the UK will not assist in reducing the complexity for homeowners. A standard approach, implemented at a single point in time across participating parts of the UK (currently England, Wales and Scotland), will reduce confusion for complainants and developers.

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Julie.James@llyw.cymru](mailto:Gohebiaeth.Julie.James@llyw.cymru)  
[Correspondence.Julie.James@gov.Wales](mailto:Correspondence.Julie.James@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.

It is acknowledged that the Senedd has competence to pass comprehensive legislation which could achieve substantially the same effect as the NHO provisions within the Building Safety Bill. However, we have stated we will take a pragmatic approach to using UK legislation, in achieving the Welsh Government's objectives in devolved areas.

In paragraph 81 of its report on SLCM No.3, the Committee asked *'is the Minister of the view that seeking such consent would permanently remove from and therefore reduce the Senedd's competence as set out in the 2006 Act?'* Had the Welsh Government not secured the relevant amendment to add the NHO to the "cross-border" bodies in Schedule 7B of the Government of Wales Act 2006, the requirement to obtain consent of a UK Government Minister prior to legislating for a Wales-specific redress mechanism could have potentially impacted upon the Senedd's ability to freely legislate in this regard. However, as such an amendment has been secured, the Senedd is not required to obtain consent of a UK Government Minister before removing or modifying functions of the NHO.

***Recommendation 2.*** *We again ask the Minister, and all the Welsh Ministers, to ensure that legislative consent memoranda laid before the Senedd contain full, accurate and transparent information, in addition to delivering what is required by Standing Order 29.*

## **Response**

I recognise the importance of clear legislative consent memoranda to enable the committee, and other interested parties, to assess legislation that affects Wales. I will ask my officials to liaise with their counterparts over how amendments are referenced to enable clearer cross referencing.

In responding to some of the other points made within your report, I offer the following additional response. I note your disappointment with my view that *"it is practical and appropriate for the NHO provisions to be commenced by the Secretary of State"*, however as the NHO will be implemented at a single point in time I believe it is appropriate for the Secretary of State to commence the provisions. This will also help with the clarity of communication around the NHO.

I acknowledge your view that *"We do not consider it sufficient or appropriate that the Senedd (or the Welsh Ministers) will not have a formal role before the Secretary of State issues and approves a code of practice about the standards of conduct and quality of work expected from members of the NHO scheme"*, however for the reasons provided in response to Recommendation 1, there is a strong argument as to why the NHO should be cross border rather than a Wales only entity. Furthermore, the [UK Government response](#) to the consultation: [Redress for Purchasers of New Build Homes and the New Homes Ombudsman](#), which explored the detail of the proposed legislation and how a NHO will be delivered, details that 91% of respondents agreed that the New Homes Ombudsman remit should be UK-wide.

Officials have worked very closely with the UK Government to ensure that Welsh Ministers have a formal and purposeful role. The express provisions on the face of the Bill to "consult" place a statutory duty on the Secretary of State to consult with Welsh Ministers on various aspects of the NHO provisions, including the issuing, revising or replacing of a code of practice. We expect engagement at an early formative stage, with the Welsh Ministers' views being taken into account when finalising proposals.

The provisions within the Bill reflect the extent of the productive co-operation and engagement with the UK Government.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

**Julie James AS/MS**  
Y Gweinidog Newid Hinsawdd  
Minister for Climate Change

Julie James AS/MS  
Y Gweinidog Newid Hinsawdd  
Minister for Climate Change

Eich cyf/Your ref  
Ein cyf/Our ref

24 March 2022

Dear Huw Irranca-Davies MS,

I wrote to you in July 2021 regarding the development of legislation related to the UK Emissions Trading Scheme (UK ETS). The aim of the UK ETS is to incentivise decarbonisation in aid of meeting our greenhouse gas reduction target of net-zero emissions by 2050. To ensure the scheme remains fit for purpose the UK ETS Authority, comprising of the four Governments of the UK, is launching the “Develop UK ETS” consultation on 25 March 2022, which will run for 12 weeks.

The consultation aims to move the scheme towards becoming net-zero compliant while ensuring businesses remain internationally competitive. Additionally, it aims to prevent carbon leakage and identify areas of improvement throughout the scheme’s operation.

The consultation reflects our existing commitment to align the UK ETS cap to a net zero trajectory by January 2024, allowing industry notice to prepare for changes in the market. It includes a review of free allocations to ensure we protect businesses most exposed to carbon pricing. Additionally, there will be exploration of expanding the UK ETS to additional appropriate sectors within the first UK ETS review, with implementation no earlier than 2026.

There are no immediate legislative implications that will arise from the consultation. However, I am writing to you to maintain transparency and keep you informed as the consultation progresses. I will be publishing a written statement tomorrow and a joint UK ETS Authority Government Response is expected in the autumn of 2022.

I am also sharing this update with the Climate Change, Environment and Infrastructure Committee and the Economy Trade and Rural Affairs Committee.

Yours sincerely



**Julie James AS/MS**  
Y Gweinidog Newid Hinsawdd  
Minister for Climate Change

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Julie.James@llyw.cymru](mailto:Gohebiaeth.Julie.James@llyw.cymru)  
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# Agenda Item 9

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

Document is Restricted



Llywodraeth Cymru  
Welsh Government

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

John Griffiths MS  
Chair, Local Government and Housing Committee

Senedd Cymru  
Cardiff Bay  
CF99 1SN

[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)  
[SeneddHousing@senedd.wales](mailto:SeneddHousing@senedd.wales)

22 March 2022

Dear Huw and John,

I am writing to inform the Committees on progress in relation to the Elections Bill (the Bill) which is currently progressing through the House of Lords Committee stage. The UK Government tabled amendments for consideration and make provision falling within the legislative competence of the Senedd. Therefore, I have today laid a Supplementary Legislative Consent Memorandum (Memorandum No.2) (SLCM) before the Senedd.

In my letter of 16 February I informed you I would be giving further consideration to these amendments alongside the approach to the wider Bill. Unfortunately due to negotiations and discussions with the UK Government in respect of a number of the Bill's provisions, I am only now in a position to provide you with an update. I apologise for the lateness of this update, but hope you will agree with me we are now in a far better position in relation to this Bill.

As you will recall, following the introduction of the Bill in July 2021 I laid an LCM on 9 September 2021. The LCM confirmed I could not recommend consent to the Bill as introduced, and would prefer to consider some of the issues raised through Senedd legislation.

I'm pleased to report as a result of positive engagement with the UK Government, we have successfully sought carve out amendments to the Bill in order to remove devolved Welsh elections from the scope of various provisions. As a result, my previous concerns, set out in the original LCM, regarding undue influence, the Electoral Commission, notional expenditure and other political finance measures have been addressed by the UK Government amendments tabled on 28 February.

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Mick.Antoniw@llyw.cymru](mailto:Gohebiaeth.Mick.Antoniw@llyw.cymru)  
[Correspondence.Mick.Antoniw@gov.Wales](mailto:Correspondence.Mick.Antoniw@gov.Wales)

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

A summary of these are below:

### ***Undue Influence - Clause 8 and Schedule 5***

The tabled amendments insert a new section 114A in the Representation of the People Act 1983 (the 1983 Act) which provides that the new undue influence offence as inserted by that provision only applies to UK Parliamentary elections and local government elections in England. The existing offence of undue influence in section 115 of the 1983 Act is therefore preserved for Senedd elections and local government elections in Wales.

There is a situation where section 114A of the 1983 Act will continue to be relevant to Senedd elections. This is due to Schedule 1A to the Government of Wales Act 2006 (GOWA) which disqualifies a person from being a Senedd Member or a candidate in an election to be a Senedd Member in circumstances where they cannot be elected to the House of Commons as a result of committing a corrupt practice under the 1983 Act. As the new offence in section 114A will meet the definition of a 'corrupt practice', individuals who are prevented from being a Member of the UK Parliament as a result of committing that offence will also be prevented from being a Senedd Member.

In our view it is appropriate that the Bill does not amend Schedule 1A to GOWA to change its effect. This Schedule was recently inserted into GOWA by the Senedd and Elections (Wales) Act 2020. Changing the criteria by which individuals are disqualified from being a Senedd Member would represent a significant change to the current regime. We will in due course, fully consider the implications arising from section 114A of the 1983 Act with a view to determining whether it may be necessary to bring forward Senedd legislation to amend the existing regime.

### ***Clause 14 - Strategy and Policy Statement***

The tabled amendments amend the new section 4(3A) to be inserted in the Political Parties Elections and Referendums Act 2000 (PPERA) by carving out Welsh devolved functions from the scope of any Strategy and Policy Statement which is to be published by the Secretary of State under that provision.

### ***Clause 18(1) - Notional expenditure: use of property etc on behalf of candidates and others***

The tabled Government amendment addresses the concerns previously raised by the Welsh Government by amending section 90C of the 1983 Act so provision is no longer made in relation to the application of the rules on campaign expenditure for candidates at local government elections in Wales.

### ***Clause 19 - Codes of practice on expenses***

Clause 19(2) as originally drafted would have modified the functions of the Welsh Ministers in relation to devolved elections by amending the power of the Welsh Ministers to issue a code of practice by the Electoral Commission under paragraph 14A of Schedule 4A to the 1983 Act, as well as the Welsh Ministers power to designate the date on which a code of practice under paragraph 14A comes into force. The amendments tabled on 28 February address the concerns raised by the Welsh Government by omitting functions conferred on the Welsh Ministers in relation to devolved elections.

### ***Clause 20 - Authorised persons not required to pay expenses through election agent***

Clause 20(1) amended section 73 of the 1983 Act so that expenses incurred under section 75 in relation to local government elections by a third party do not have to be paid by the election agent. The tabled amendment carves out expenses incurred in relation to local government elections in Wales from the amendments to the 1983 Act.

#### ***Clause 24 - Restriction on which third parties may incur controlled expenditure***

The original provisions inserted a new section 89A into PPERA which had the effect of restricting which third parties may incur controlled expenditure. The original provisions would have captured expenditure incurred in relation to Senedd elections. Those elections have been carved out from the provisions by the amendments tabled on 28 February which limit the scope of the clause to UK parliamentary general elections or general elections to the Northern Ireland Assembly.

#### ***Clause 25 - Third parties capable of giving notification for purposes of Part 6 of PPERA***

The original provisions conferred a regulation making power on the Secretary of State alone to amend section 88(2) PPERA to the effect of amending by way of adding, removing or varying the descriptions of third parties. The tabled amendment addresses our concerns by limiting the exercise of the Secretary of State's regulation making power for the purposes of periods involving parliamentary general elections or general elections to the Northern Ireland Assembly.

#### ***Clause 26 - Recognised third parties: changes to existing limits etc***

This provision amended various sections of PPERA to require third-party campaigners to give a notification to the Electoral Commission at a lower level of spending than is currently required. The tabled amendments address our concerns by ensuring that the provision only applies in relation to periods involving parliamentary general elections or general elections to the Northern Ireland Assembly.

#### ***Clause 27 - Joint campaigning by registered parties and third parties***

This clause amended section 94(6) of PPERA to make provision so that third-party campaigners and political parties who are working together on a joint campaign will both report any associated spending and identify the parties involved in the arrangement. The tabled amendments address our concerns by ensuring that the provision only applies in relation to periods involving parliamentary general elections or general elections to the Northern Ireland Assembly.

I have laid an SLCM because amendments have been tabled to the Digital Imprints provisions which, in my view engage the requirement for Senedd consent. They are summarised below and are detailed further in the SLCM:

#### ***Digital Imprints***

As set out in the original LCM, our view on this remains that whilst there is no disagreement with the policy intent, this concerns electoral transparency which, so far as devolved elections are concerned, falls within devolved competence and requires Senedd consent. A number of UK Government amendments to the digital imprint provisions were made to the Bill during Commons Report Stage. Additional amendments were tabled on 28 February in advance of House of Lords Committee stage. The amendments contain provision which applies to devolved elections and taken as a whole can be viewed as relating to a non-reserved matter, namely intending to regulate transparency of electoral material published

online and to ensure that readers and recipients of that electoral material understand who has published material online.

### ***Intimidation (Disqualification)***

Another area that the UK Government has not looked to carve out Wales is in respect of Part 5 of the Bill 'Disqualification of Offenders for Holding Elective Office, etc.' Our position towards these provisions is set out in paragraphs 29 to 33 of the original LCM and paragraphs 55 to 58 of the SLCM. Part 5 introduces a new electoral sanction in the form of a disqualification order which is intended to provide additional protection to those who participate in elections and contribute to the political debate, and deter individuals from carrying out acts of intimidation against them.

We have stated we are not opposed in principle to the provisions on intimidation, as it is important to protect participants in the democratic process.

It is the UK Government's view that the intimidation disqualification order relates to the reserved matter of criminal proceedings (which includes sentencing) and so the legislative consent process is not engaged. As such, the UK Government stated that it would not be considering an amendment to remove the application of the disqualification order to devolved elections and elected offices in Wales.

We disagree with the UK Government's position that legislative consent is not required. The relevant Bill clauses are making provision with regard to devolved matters due to the impact that they have on qualification for membership of the Senedd and local authorities in Wales. We firmly maintain the position that every legislature should have the freedom to determine its own disqualification regime for the elections for which it is responsible.

Given our disagreement with the UK Government in these two areas relate to competence, rather than policy intent, we recommend the Senedd give consent in these two areas. In so doing, we maintain that we are able to further consider these issues in consultation with stakeholders in Wales and, if necessary, consider the options for bringing forward legislation in the future.

I am copying this letter to all Members of the Senedd.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style and is underlined with a single horizontal line.

**Mick Antoniw AS/MS**

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

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/4516/21

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

John Griffiths MS  
Chair  
Local Government and Housing Committee

Senedd Cymru  
Cardiff Bay  
Cardiff CF99 1SN

[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)  
[SeneddHousing@senedd.wales](mailto:SeneddHousing@senedd.wales)

16 February 2022

Dear Huw and John,

I note that both the Legislation, Justice and Constitution Committee, and the Local Government and Housing Committee published reports on the Welsh Government's Legislative Consent Memorandum (LCM) on the Elections Bill in early December 2021. I would like to thank the Committees for providing their views on the matters raised in the LCM. The Legislation, Justice and Constitution Committee report contained recommendations for the Welsh Government, which I respond to below.

#### Recommendation 1

*Following the completion of the Bill's passage through the UK Parliament, the Counsel General should issue a statement on the implications of the legislation for devolved elections in Wales.*

Response: Accept. The UK Government has not confirmed with the Welsh Government when the Bill will complete its passage through the UK Parliament, therefore I am unable to provide a firm indication as to the timing of the statement at this time.

#### Recommendation 2

*The Counsel General should confirm at the earliest opportunity his intention to bring forward a Welsh Bill on electoral law in time for the next Senedd general election in 2026.*

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Mick.Antoniw@llyw.cymru](mailto:Gohebiaeth.Mick.Antoniw@llyw.cymru)  
[Correspondence.Mick.Antoniw@gov.Wales](mailto: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.

Response: Accept. As set out in the LCM, it is my preference to consider some of the issues covered by the Bill in separate Senedd legislation in due course. As you will be aware, our legislative plans are set out on an annual basis through our Legislative Programme. It is my intention to bring forward a Bill in time for the next Senedd election, but this will of course need to be considered alongside other demands on the Legislative Programme.

### Recommendation 3

*The Counsel General should at the earliest opportunity:*

- *confirm the outcome of his discussions with the UK Government about amending the Bill including in relation to clauses 12 and 13 relating to the Electoral Commission;*
- *explain the nature of the amendments being sought, including the extent to which they relate to a devolved purpose;*
- *advise when, if appropriate, he intends to bring forward a Supplementary Legislative Consent Memorandum related to the tabling of amendments in accordance with Standing Orders 29.2*

Response: Accept.

Discussions are ongoing with the UK Government. We are seeking amendments to remove devolved Welsh elections from the scope of the Bill, and I will update the Committee following the conclusion of those discussions.

### Recommendation 4

*The Welsh Government should include a commentary on the extent of co-operation and engagement with the UK Government in all Legislative Consent Memoranda that are required by virtue of Standing Order 29.*

Response: Accept in principle. We will consider the amendment of the formal guidance for completing Legislative Consent Memoranda as part of our engagement with the Business Committee's review of the LCM process to make this a requirement. In the meantime, when preparing Legislative Consent Memoranda, we will ensure they inform Members of the extent of co-operation and engagement with the UK Government. However, as you will appreciate, there is a need to respect confidentiality, and we may not always be in a position to share all the information we receive.

### **Amendments tabled by UK Government**

I also wanted to make you aware that the UK Government has tabled a number of amendments to the Bill during January, relating to online absent voting applications voter identification provisions and digital imprints. I am giving further consideration to these amendments alongside the approach to the wider Bill, and I will update you in due course.

I hope both the above responses to the recommendations and the update on amendments are helpful. I will continue to keep both Committees updated as the Bill progresses.

Yours sincerely,



### **Mick Antoniw AS/MS**

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

# Agenda Item 13

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

Document is Restricted