

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video Conference via Zoom	P Gareth Williams
Meeting date: 23 May 2022	Committee Clerk
Meeting time: 13.30	0300 200 6565
	SeneddLJC@senedd.wales

1 Introductions, apologies, substitutions and declarations of interest

(13.30)

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

(13.30–13.35)

Made Negative Resolution Instruments

2.1 SL(6)201 – The Education (Revocation of Assessment Arrangements in the National Curriculum and Miscellaneous Amendments) (Wales) Regulations 2022

(Pages 1 – 4)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)–15–22 – Paper 1 – Draft report

3 Written Statements under Standing Order 30C

(13.35–13.40)



3.1 WS-30C(6)009 – The Common Agricultural Policy (Cross Compliance Exemptions and Transitional Regulation) (Amendment) (EU Exit) Regulations 2022

(Pages 5 – 10)

Attached Documents:

LJC(6)-15-22 – Paper 2 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 16 May, 2022

LJC(6)-15-22 – Paper 3 – Written statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 13 May 2022

LJC(6)-15-22 – Paper 4 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 27 April 2022

LJC(6)-15-22 – Paper 5 – Commentary

4 Common frameworks

(13.40–13.45)

4.1 Report by the Climate Change, Environment, and Infrastructure Committee: Provisional Common Frameworks for Air Quality, and Chemicals and Pesticides

(Pages 11 – 21)

Attached Documents:

LJC(6)-15-22 – Paper 6 – Report by the Climate Change, Environment, and Infrastructure Committee, 18 May 2022

5 Inter-Institutional Relations Agreement

(13.45–13.50)

5.1 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Sea Fisheries (Amendment) Regulations 2022

(Pages 22 – 23)

Attached Documents:

LJC(6)-15-22 – Paper 7 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 18 May 2022

6 Papers to note

(13.50–13.55)

6.1 Correspondence from the House of Lords Constitution Committee to the Prime Minister Boris Johnson: Revision of the Cabinet Manual

(Pages 24 – 25)

Attached Documents:

LJC(6)-15-22 – Paper 8 – Letter from the House of Lords Constitution Committee to the Prime Minister Boris Johnson, 16 May 2022

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

(13.55)

8 Forward Work Programme

(13.55 – 14.10)

(To Follow)

Attached Documents:

LJC(6)-15-22 – Paper 9 – Committee engagement activity

SL(6)201 – The Education (Revocation of Assessment Arrangements in the National Curriculum and Miscellaneous Amendments) (Wales) Regulations 2022

Background and Purpose

The Curriculum and Assessment (Wales) Act 2021 establishes a new framework for a curriculum and makes provision about assessment for pupils and children in Wales.

These Regulations amend and disapply existing statutory assessments in the National Curriculum for Wales. These changes are being made in readiness for, or as a result of, the new Curriculum for Wales roll out. These Regulations also make changes to reporting and publication requirements place on schools, governing bodies and local authorities.

Assessment arrangements

Regulation 3 revokes the National Curriculum (Key Stage 2 Assessment Arrangements) (Wales) Order 2004 on 30 May 2022. That Order sets out the assessment arrangements for the final year of the second key stage (year 6 pupils). The revocation means that assessments under that Order will not take place in and after this school year (2021 to 2022).

Regulation 4 disapplies the National Curriculum (Key Stage 3 Assessment Arrangements) (Wales) Order 2005 for pupils in special schools from this school year (2021 to 2022) and revokes that Order for all other schools from 1 September 2024. That Order makes provision for the assessment of pupils in the final year of the third key stage in maintained schools in Wales (year 9 pupils). The revocation means that assessments under that Order will not take place for pupils in special schools in and after this school year (2021 to 2022) and for all other secondary schools from 1 September 2024.

Regulation 5 makes transitional provision in respect of the Education (National Curriculum) (Assessment Arrangements for Reading and Numeracy) (Wales) Order 2013. That Order applies to pupils in years 2 to 9. The tests required by the 2013 Order will continue to be administered by schools during the roll out of the new Curriculum for Wales to those years. The transitional provisions amend that Order so that it will continue to work with the new Curriculum for Wales.

Regulation 6 disapplies the National Curriculum (Assessment Arrangements for the Foundation Phase and the Second and Third Key Stages) (Wales) Order 2014 to coincide with the roll out of the new Curriculum for Wales. That Order is revoked on 1 September 2024, when all pupils who are assessed pursuant to that Order will be following the Curriculum for Wales (so that Order will no longer be needed).



Regulation 7 revokes the National Curriculum (Moderation of Assessment Arrangements for the Second and Third Key Stages) (Wales) Order 2015 from 30 May 2022. That Order provides for the moderation of all statutory teacher assessments of pupils in maintained schools in Wales in the final year of the second and third key stages (years 6 and 9 respectively). This will mean that moderation under that Order will not take place in, and after, this school year (2021 to 2022).

Regulation 8 revokes Parts 3 and 4 of the National Curriculum (Desirable Outcomes, Educational Programmes and Baseline and End of Phase Assessment Arrangements for the Foundation Phase) (Wales) Order 2015 and fully revokes that Order on 1 September 2022. Parts 3 and 4 of that Order provide for assessments of pupils in the reception year and the final year of the foundation phase (year 2) respectively. This will mean that assessments under Part 3 will not take place after this school year and assessments under Part 4 will not take place in, or after, this school year (2021 to 2022).

Reporting requirements

Regulation 9 amends the Head Teacher's Report to Parents and Adult Pupils (Wales) Regulations 2011 so that head teachers are not required to report on the results of the statutory assessments that are revoked by these Regulations.

Regulation 10 amends the School Performance Information (Wales) Regulations 2011, which regulate the transfer of information relating to the educational performance of pupils from head teachers to school governing bodies, local authorities and the Welsh Ministers. Specifically, regulation 10:

- removes the requirement on a governing body of a maintained school to provide the results of the statutory assessments that are revoked by these Regulations; and
- substitutes a new Schedule 2, the effect of which is that the results of the reading and numeracy tests are excluded from the statutory assessments information that must be sent by a governing body of a school to the local authority that maintains that school.

Regulation 11 amends regulation 5 of the School Information (Wales) Regulations 2011 so as to remove the requirement for school local authorities to distribute copies of the composite prospectus without charge to parents and pupils who are in the final year at the school and might transfer to other such schools.

Procedure

Negative.

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



Technical Scrutiny

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

Merits Scrutiny

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

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

These Regulations revoke certain orders but do not revoke orders that amend those principal orders.

Regulation 3 revokes the National Curriculum (Key Stage 2 Assessment Arrangements) (Wales) Order 2004 (“2004 Order”) on 30 May 2022. The 2004 Order was amended by:

- the Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (“2005 Qualifications Order”); and
- the National Curriculum (Amendments to the Key Stage 2 and Key Stage 3 Assessment Arrangements) (Wales) Order 2011 (“2011 Order”).

As the 2004 Order is being revoked, it would seem appropriate to specifically revoke paragraph 14 of Schedule 2 to the 2005 Qualifications Order, which amends the 2004 Order.

Although regulation 4(2)(b) revokes the 2011 Order, that revocation does not occur until 1 September 2024. As the 2004 Order is being revoked on 30 May 2022, it would seem appropriate to specifically revoke article 2 of the 2011 Order, which amends the 2004 Order, on 30 May 2022.

Additionally, regulation 4 revokes the National Curriculum (Key Stage 3 Assessment Arrangements) (Wales) Order 2005 (“2005 Key Stage 3 Order”) on 1 September 2024. The 2011 Order, which amends the 2005 Key Stage 3 Order is revoked on 1 September 2024 but these Regulations do not revoke the School Curriculum in Wales (Miscellaneous Amendments) Order 2008, which also amend the 2005 Key Stage 3 Order.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

17 May 2022



Ein cyf/Our ref: LG/0237/22

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

Huw.irranca-davies@senedd.wales

16 May 2022

Dear Huw,

Following my letter of 27 April, I wish to inform you the Common Agricultural Policy (Cross Compliance Exemptions and Transitional Regulation) (Amendment) (EU Exit) Regulations 2022 have now been laid in the UK Parliament. A [Written Statement by the Welsh Government](#) was laid before the Senedd in accordance with Standing Order 30C on 13 May.

The regulations amend Regulation (EU) 1308/2013 to alter changes made by Regulation (EU) 2020/2220, insofar as they concern Article 55 on apiculture programmes and Article 167a on olive oil marketing rules.

I have agreed, in this case, to give consent to Victoria Prentis MP, Minister for Farming, Fisheries and Food, to make provision to remedy the failure of retained EU law to operate effectively in Wales. This is through the powers granted in section 8 of the European Union (Withdrawal) Act 2018.

Regards,



Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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



Llywodraeth Cymru
Welsh Government

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

The Common Agricultural Policy (Cross Compliance Exemptions and Transitional Regulation) (Amendment) (EU Exit) Regulations 2022

13 May 2022

BY **Lesley Griffiths AS/MS**
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

Members of the Senedd will wish to be aware we are giving consent to the Secretary of State exercising a subordinate legislation-making power in a devolved area in relation to Wales.

Agreement was sought by Victoria Prentis, Minister for Farming, Fisheries and Food, to make a Statutory Instrument (SI) titled The Common Agricultural Policy (Cross Compliance Exemptions and Transitional Regulation) (Amendment) (EU Exit) Regulations 2022 to apply in relation to Great Britain.

The above titled SI will be made by the Secretary of State in exercise of powers conferred by The European Union (Withdrawal) Act 2018.

The SI amends Regulation (EU) 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 9/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, to ensure the effective operation of provisions concerning apiculture programmes and olive oil marketing rules.

The regulations were laid before Parliament on 11 May to come into force on 12 May.



Ein cyf/Our ref: LG/0237/22

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

Huw.Irranca-Davies@senedd.wales

27 April 2022

Dear Huw,

I am writing to inform you of my consent being granted for a Statutory Instrument being made by the UK Government which contains elements within the competence of Welsh Ministers.

The Common Agricultural Policy (Cross Compliance Exemptions and Transitional Regulation) (Amendment) (EU Exit) Regulations 2022 (henceforth the Regulations) will amend Regulation (EU) 1308/2013 to alter the effect of the amendments made by Regulation (EU) 2020/2220, insofar as they concern Article 55 on apiculture programmes and Article 167a on olive oil marketing rules. As there were no practical changes made during the period in which Regulation (EU) 2020/2220 applied in Wales, no monitoring of the delivery of this SI will be required.

I am agreeing, in this case, to give consent to Victoria Prentis, the Minister for Farming, Fisheries and Food, to make provision to remedy the failure of retained EU law to operate effectively in Wales. This is through the powers granted in section 8 of the European Union (Withdrawal) Act 2018. The Welsh Ministers are the Appropriate Authority for REUL 1308/2013 in relation to Wales, but the Secretary of State can legislate in relation to Wales with the consent of the Welsh Ministers.

The period for which I am giving consent is limited to the passage of the Regulations. These regulations do not have a practical impact over a period of time, they only make retained EU law operable in Wales. As such, no review mechanism is needed and longer-term constitutional arrangements will not be affected.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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

We anticipate the Regulations being the last of the corrective SIs which relate to the Common Organisation of the Markets in Agricultural Produce. Their policy rationale is, therefore, to maintain the operability of retained EU legislation in Wales. This SI applies to Wales with regards to apiculture programmes and olive oil marketing rules because of the small impact of these two aspects of the legislation, and the expediency of working on a UK-wide basis to correct inoperable retained EU legislation.

Wales' interests remain protected with the passage of the Regulations, as Welsh Ministers retain the option of amending them in future on a Wales-only basis.

Welsh Government officials discussed and refined the Regulations over a period of weeks with counterparts in DEFRA, the Scottish Government and DAERA. The UK Government continue to recognise the areas in which the Regulations apply to Wales as within the competence of Welsh Ministers. DEFRA officials have been aware of the need to seek the consent of Welsh Ministers for these Regulations, insofar as they apply to Wales, throughout their development.

Regards,

A handwritten signature in cursive script that reads "Lesley Griffiths". The signature is written in black ink and is positioned above the printed name and title.

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

UK MINISTERS ACTING IN DEVOLVED AREAS

009 - The Common Agricultural Policy (Cross Compliance Exemptions and Transitional Regulation) (Amendment) (EU Exit) Regulations 2022

Laid in the UK Parliament: 11 May 2022

Sifting

Subject to sifting in UK Parliament?	N/A
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Background

These Regulations are proposed to be made by the UK Government under section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

These Regulations amend retained CAP legislation to ensure it operates effectively now that the UK is no longer an EU member state. They amend retained EU law:

- relating to rural development funding from European funds and the programme durations of certain schemes,
- relating to retained cross-compliance rules in order that they will not conflict with obligations under new domestic land management schemes,
- to remove ineffective references to “Member States” and requirements to make reports to the European Commission, which are no longer necessary in the UK now the transition period has concluded.

These Regulations will, among other things, ensure the effective operation of provisions concerning apiculture (beekeeping) programmes and olive oil marketing rules.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 13 May 2022 regarding the effect of these Regulations. However, at the time of writing, the Regulations are not yet in force (while the written statement says they came into force on 12 May 2022).

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Julie James MS
Minister for Climate Change

18 May 2022

Dear Minister,

Provisional Common Frameworks for Air Quality, and Chemicals and Pesticides

Thank you for your letter, dated 5 April 2022, in relation to the provisional Common Frameworks for Air Quality, and Chemicals and Pesticides.

I am pleased to attach a copy of the Committee's report, Common Frameworks - Report 1: Provisional Common Frameworks for Air Quality, and Chemicals and Pesticides, which has been laid before the Senedd today.

I hope you will be able to accept our recommendations and pursue the necessary changes with your counterparts in the other UK governments before finalising the Frameworks.

I look forward to receiving a response from you in due course.

I am copying this letter to Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee.

Regards,



Llyr Gruffydd MS,
Chair, Climate Change, Environment and Infrastructure Committee

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

Common Frameworks – Report 1

Provisional Common Frameworks for Air Quality, and Chemicals and Pesticides

1. Background

1. Following the UK's decision to leave the European Union, the UK Government and the devolved governments in Wales, Scotland and Northern Ireland agreed to create common UK wide approaches - or 'Common Frameworks' (hereafter referred to as 'Frameworks') - in policy areas previously governed by EU law, but that are within the competence of the devolved governments or legislatures.
2. Once Frameworks have been provisionally approved by the UK and devolved governments, they are shared with relevant committees to enable scrutiny. Following scrutiny, Frameworks will be reviewed, updated, and receive final clearance by the UK and devolved governments.
3. Since the end of the transition period on 31 December 2020, most Frameworks have operated on an interim basis across the UK at official level.

Our approach

4. In January 2022, the Committee agreed its approach to scrutiny of Frameworks that fall within its remit. Based on initial analysis of the Framework summaries and on-going policy developments, the Committee chose to prioritise scrutiny of the following provisional Frameworks: Air Quality, Chemicals and Pesticides, Resources and Waste, and UK Emissions Trading System.
5. The Committee took evidence from the Minister for Climate Change ('the Minister') on the provisional Frameworks for Air Quality, and for Chemicals and Pesticides, at its meeting on 17 February 2022. The Committee subsequently wrote to the Minister seeking further information



and/or clarification on a number of issues. The exchange in correspondence can be found on [Senedd Cymru's website](#).

6. At the time of writing this report, the provisional Frameworks for Resources and Waste and for the UK Emissions Trading System have yet to be published.

2. Development of the Frameworks

7. The Committee was pleased to hear that the Minister's experience, and that of her officials, that the intergovernmental development of the Frameworks has been positive. In particular, we welcome the Minister's comments that the Frameworks "have been very useful in bringing together policy officials from across the four Governments in areas where there's previously been very little dialogue, and, in some cases, it's really improved intergovernmental relations". We hope this will continue throughout the ongoing operation of the Frameworks.

Stakeholder engagement

8. In giving evidence, the Minister said the "Department for Environment, Food and Rural Affairs consulted a wide range of stakeholders from each nation on behalf of us all". She provided examples of stakeholders in Wales who had been consulted during the development of Frameworks.

9. When asked why a summary of responses had not been published to help improve transparency, the Minister said, "Responses provided to the stakeholder engagement exercises were on a confidential basis. Any release of this date [sic] would be subject to four-government agreement and obtaining consent of respondents". It is unclear why the decision was taken for these engagement exercises to be held on a confidential basis.

Drafting matters

10. We acknowledge the Frameworks are intergovernmental agreements, which have been written with policy practitioners in mind, and are necessarily technical in places. As a result, they do not make for easy reading for the wider audience. In parts the Frameworks are difficult to follow and lack clarity. This does not help transparency or aid wider audience understanding of how future decisions on policy and law that may impact them will be made. We would like the Minister to make every effort to secure improvements in accessibility of the Frameworks before they are finalised.

11. We note that parts of the Air Quality Framework have not been updated to reflect UK-EU arrangements, agreed in December 2020. Reference is made to the risk of a no deal Brexit, to

updates being required to reflect future arrangements, if any are agreed, and to the end of the transition period as a future date. In addition, both Frameworks will need to be updated to reflect the outcome of the intergovernmental relations review. We trust the necessary updates will be made to the Frameworks before they are finalised.

Recommendation 1. The Welsh Government should explain the rationale for holding the stakeholder engagement exercises to inform the development of the Frameworks on a confidential basis. It should also explain to what extent this is common practice within the Welsh Government.

3. Impact of the Frameworks on future Welsh policy and laws

12. In giving evidence, the Minister asserted the Frameworks do not impact on the Welsh Government's plans or devolved competence. The Minister said they do not impinge upon the Welsh Government's ability to make separate policy or laws for Wales and that "divergence between the four nations will continue to be possible".

13. While that may be the case, the Frameworks form part of the UK's post-Brexit constitutional arrangements and provide for joint decision-making between the four governments. If disagreements arise, a dispute can be raised which, in practice, could limit the ways Welsh Government and Senedd can exercise powers to make laws for Wales, and how Welsh stakeholders can influence law making.

14. The Frameworks have also yet to be stress tested. It is not possible, at this stage, to determine the appetite for divergence in the future or the degree of divergence that will be acceptable to all four governments. Nor is it possible to determine how successful the Frameworks will be in managing divergence or resolving disagreements and disputes in a timely manner. We intend to keep a watching brief over these matters during the course of this Senedd, informed by the reports on the functioning of the Frameworks, which the Welsh Government has committed to (see paragraph 29).

Scope of the frameworks

15. The principles for common frameworks state that they should maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as afforded by EU rules. In written correspondence, the Minister states that:

"domestic policies and law which do not change relevant retained EU law are not within scope of these Common Frameworks. If a policy development in Wales was thought to impact upon the other nations then it would, however, be discussed via the Framework and vice versa."

16. However, the Frameworks do not make this clear.

Parliamentary developments

17. In her letter, the Minister said where "decisions concern matters of mutual interest, such decisions will be made jointly while respecting the legislative and executive freedoms where they exist of each of the Governments." This refers to decisions made by governments, but ignores the fact that decisions are also made by parliaments, for example, by amending Bills. In the case of a Clean Air (Wales) Bill, for example, the Senedd might agree amendments that impact on "matters of mutual interest". It is unclear whether decisions by one parliament take precedence over intergovernmental decisions, or how the Frameworks address conflicting parliamentary decisions on "matters of mutual interest".

Clear Air (Wales) Bill

18. During our scrutiny of the Minister, we sought clarification on whether and how the Air Quality Framework will impact on the Welsh Government's planned Clean Air (Wales) Bill ('the Bill'). The Minister explained the provision within the Bill which relates to air quality targets falls within the scope of the Framework. She added, "However, the power to set targets is within the executive competence of the Welsh Ministers and within legislative competence of the Senedd". The Minister provided assurance that the Framework "will not have a limiting impact on the content of the Clean Air Bill" and had no bearing on the timing of the introduction of the Bill.

19. In February 2022, the First Minister indicated his intention to introduce the Bill no later than summer 2023. We remain frustrated by the time taken to bring forward the Bill. We note the Welsh Government's summary of responses to its consultation on the White Paper on the Bill has yet to be made available.

Recommendation 2. The Welsh Government should explain how it will ensure the Senedd's ability to influence future Welsh policy and law will not be limited by intergovernmental decisions made under the Frameworks.

Recommendation 3. The Welsh Government should seek intergovernmental agreement to clarify the scope of the Frameworks. The Frameworks should more clearly set that only changes

to law and policy in areas where previously decided at EU level will be bound by requirements for joint decision making and the dispute resolution process.

Recommendation 4. The Welsh Government should explain the process to be used, and potential impact of a decision made by the Senedd which is incompatible with intergovernmental decisions made under the Frameworks. It should also explain how the Frameworks address conflicting parliamentary decisions on “matters of mutual interest”.

Recommendation 5. The Welsh Government should confirm its intention to introduce the Clean Air (Wales) Bill no later than summer 2023. It should also commit to publishing the summary of responses to the White Paper on the Bill as soon as possible, and before the end of this summer term at the latest.

4. The ongoing functioning of the Frameworks

Prospects for future divergence

20. On 31 January 2022, the UK Government announced plans to make it easier to amend or remove retained EU law. This raises potential concerns regarding the Welsh Government’s ambitions to maintain or exceed standards currently in place. The Committee welcomes the UK Government’s commitment to take any such changes through the common frameworks process.

21. In giving evidence, the Minister advised that the UK Government’s plans could not lead to a “bonfire of regulations” in Wales, Scotland and Northern Ireland, and that the Framework “would still hold” if that were to happen in England. While we welcome the Minister’s assurances, we remain concerned of the potential impact of such actions on future Welsh policy and legislation, and the risk of intergovernmental disagreements as outlined by the Minister.

Dispute resolution

22. The Frameworks set out a process for resolving disagreements and disputes between the UK governments. Where disputes cannot be resolved at official level, they can be escalated until they reach Ministerial level. The Frameworks provide Ministerial disputes can be escalated to intergovernmental structures as a method of last resort.

23. In giving evidence, the Minister explained that she would expect a dispute to halt the activities of the government causing the dispute while the matter is resolved. In her letter, the Minister added that, “the dispute resolution mechanism can be utilised should a government

consider another government's policy to be damaging e.g. not compliant with international standards or have significant deleterious impacts in other countries."

24. In certain circumstances, the Frameworks permit the governments to "agree to disagree" unless this leads to disruption, has a detrimental effect or negatively impacts the ability to meet Framework principles. Alternative views on this may also be escalated to the dispute resolution process.

25. We are concerned that the combined impact of this could potentially lead to delays to the introduction of Welsh policy and legislation in practice.

26. We welcome the Welsh Government's commitment to notify the Senedd of any disputes raised under the Framework. When asked to clarify at what stage and how the Welsh Government will inform the Committee/the Senedd of disputes, the Minister told us "the post-finalisation reporting mechanism being devised for the frameworks includes the reporting of any disputes raised under a framework". The exact arrangements for reporting disputes remain unclear.

27. As a minimum, we expect the Senedd to be notified of any disputes that are escalated to Ministerial level. Notification should be provided as soon as practicable following escalation. We also expect the Senedd to be notified of the outcome of any such disputes.

Reporting to parliaments

28. Since the start of the Common Framework programme, much emphasis has been placed on the key role of parliamentary scrutiny in the development of Frameworks. We believe parliamentary scrutiny of the ongoing functioning of the Frameworks is equally important. We are disappointed, therefore, that the Frameworks fail to take account of this. There is no reference to ongoing parliamentary engagement and no mechanism to support scrutiny of the Frameworks once they are fully operational.

29. Notwithstanding the above, we note the Welsh Government has committed to reporting annually to the Senedd on the ongoing functioning of the Frameworks. This is a welcome development. We also note that the four governments are considering how best to report on the operation of each framework, but we are not aware of any agreement being reached.

Role of parliaments in reviewing the Frameworks

30. Both Frameworks set out the process for reviewing and amending the Frameworks (referred to as the Review and Amendment Mechanism, or 'RAM'). They provide for a regular

review every 3 years, or sooner if a ‘significant issue’ arises. There is no reference to the role of parliaments in the review process.

31. The Minister’s evidence, and that of the Counsel General to the Legislation, Constitution and Justice Committee, suggests the Welsh Government is willing to provide an active role for the Senedd in reviewing the Frameworks. We note the Welsh Government has committed to notify the Senedd of the review points and to consider recommendations made by the Senedd before the review process concludes. We welcome this. We are not aware of similar commitments being given by the other UK governments to their respective legislatures.

Recommendation 6. The Welsh Government should commit to ensuring that annual reports on the ongoing functioning of the Frameworks include, as a minimum:

- any changes or proposed changes in policy or law made within the policy area covered by the Framework;
- an assessment of whether divergence has taken place and of any impacts on the policy area covered by the Framework;
- an assessment of whether the Frameworks have imposed constraints, including practical constraints, on the exercise of devolved competence within the policy area covered by the Framework;
- an assessment of on-going compliance with international obligations, including between the UK and EU; and
- an assessment of the impact of the UK Internal Market Act 2020 on Welsh legislation in the Framework areas.

Recommendation 7. The Welsh Government should provide further explanation of the circumstances under which a policy may be considered “damaging”.

Recommendation 8. The Welsh Government should seek intergovernmental agreement to formally notify UK parliaments of any disputes that are escalated to Ministerial level, and of the outcomes of those disputes. The Frameworks should be amended to reflect this. In the case of the Senedd, notifications should be provided via Written Statements.

Recommendation 9. The Welsh Government should confirm it will lay annual reports on the ongoing functioning of the Frameworks before the Senedd.

Recommendation 10. The Welsh Government should seek intergovernmental agreement on a clearly defined role for UK parliaments in reviewing the Frameworks. This should include commitments to:

- notify parliaments of the review points;
- seek the views of parliaments on any proposed changes to the Frameworks;
- consider recommendations of parliaments before the review process concludes; and
- report back to parliaments on the outcome of reviews.

The Frameworks should be amended to reflect these commitments.

5. Ongoing stakeholder communication and engagement

32. The Frameworks include limited reference to ongoing communication and engagement with external stakeholders. Both Frameworks commit the UK governments “to deliver timely and consistent messages to stakeholders by utilising current methods of stakeholder engagement”. However, they provide no indication of when and how stakeholders will feed into the decision making processes set out in the Framework.

33. In evidence to the Committee, the Minister told us “stakeholders will continue to be consulted on developments in policy in the usual way”. Nonetheless, we are concerned there is a risk that the Frameworks may make it more difficult for stakeholders to positively influence the development of policy and law in areas covered by these Frameworks. We seek assurance from the Minister in relation to this.

34. The Minister’s letter said that “Much of the returned feedback from stakeholders on the Chemicals and Pesticides provisional Framework in the initial round of engagement was policy specific rather than framework related.” It would be useful to know whether and how that feedback will inform future Welsh Government policy.

35. Given our concerns outlined above, we believe it is important that stakeholders are able to feed into the review process for the Frameworks. We welcome the Welsh Government’s commitment to notify stakeholders of the review points and of any recommendations made by the Senedd during the review process. However, there remains a lack of clarity on whether the

Welsh Government intends to undertake meaningful consultation with stakeholders as part of the review process to enable them to inform the outcome of reviews.

Recommendation 11. The Welsh Government should further explain when and how stakeholders will feed into the decision making process set out in the Frameworks. It should also explain how it will ensure that the Frameworks do not limit the role of stakeholders in the development of policy and law in areas covered by those Frameworks.

Recommendation 12. The Welsh Government should explain whether and how the feedback on matters relating to chemicals and pesticides policy received from stakeholders during the development of the Framework will be used to inform future Welsh Government policy in this area.

Recommendation 13. The Welsh Government should seek intergovernmental agreement to meaningful consultation with stakeholders as part of the review process. It should also seek agreement for a summary of responses to all consultation to be made publicly available in order to enhance transparency. The Frameworks should be amended to reflect this.

6. Regulatory standards: chemicals and pesticides

36. In commenting on whether the Welsh Government intends to keep pace with EU standards on chemicals, the Minister said, “[its] aim is for UK REACH to come to provide as high a level of protection for human health and the environment in Wales as EU REACH did when we were a member state, as quickly as possible.” She added the Welsh Government is “determined that UK REACH should meet its core aim”, but “it will take time to make the legislation we inherited fully fit for purpose in a GB context”.

37. The European Commission is in the process of revising EU REACH as part of its [Chemicals Strategy for Sustainability](#) and has recently published a [Restrictions Roadmap](#), which sets out planned restrictions. When asked whether the Welsh Government plans to follow suit, the Minister said “We are working with the other administrations under the Common Framework to prioritise improvements to UK REACH, focusing on areas most in need of attention in a GB context following EU Exit”.

Recommendation 14. The Welsh Government should set out:

- the risk associated with having UK REACH legislation that is not yet “fully fit for purpose in a GB context” and

- the timescales governments are working towards to deliver UK REACH legislation that is “fully fit for purpose”.

Recommendation 15. The Welsh Government should report back to the Committee on any emerging issues following the creation of UK REACH, in particular in relation to its impact on manufacturers and businesses in Wales.

Recommendation 16. The Welsh Government should provide details of any work that is being undertaken by governments, or that they plan to undertake, to determine the impact of changes to EU REACH on the UK.



Llywodraeth Cymru
Welsh Government

Our ref MA-LG-0750-22

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

Cc: Counsel General and Minister for the Constitution

18 May 2022

Dear Huw

The Sea Fisheries (Amendment) Regulations 2022

The above named regulations (the "2022 Regulations") relate to measures which apply to the seabass fishery which extends beyond the Welsh Zone. In order for them to be effective, they need to apply on a UK basis and apply to all vessels operating in UK waters. In particular the 2022 Regulations make amendments to the quantities of seabass that can be retained as bycatch during the operation of fishing gears being used to target other species. The measures will extend the avoidance of the wasteful discarding of seabass.

These measures were agreed with the European Commission during the consultations on shared fishing opportunities for 2022 which concluded in December 2021.

I have given my consent to the Secretary of State for Environment, Food and Rural Affairs to make the 2022 Regulations, so the provisions therein apply in Wales. The 2022 Regulations were laid before the Houses of Parliament on 29 April and the SI is subject to the negative procedure.

When there is a need to maintain regulatory fisheries frameworks across the UK, it is appropriate I consent to the UK Government legislating on our behalf on the seabass fishery which is shared with other Administrations in the UK.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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

I am copying this letter to the Counsel General and Minister for the Constitution and writing in similar terms to the Chair of the Environment, Trade and Rural Affairs Committee.

Regards

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping 'L' and 'G'.

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

Agenda Item 6.1



HOUSE OF LORDS

Select Committee on the Constitution

House of Lords
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The Prime Minister
10 Downing Street
London
SW1A 2AA

16 May 2022

Dear Prime Minister,

Government Response to the Lord's Constitution Committee report – Revision of the Cabinet Manual (6th Report, Session 2021-22, HL Paper 34)

I write on behalf of the Constitution Committee following the Government's 7 February response to our report *Revision of the Cabinet Manual*.

As noted in our report and Lord True's response, the Cabinet Manual's role is to record—rather than prescribe—constitutional rules and conventions. We recognise that the Cabinet Manual is an executive document and, as Lord True wrote in his letter, its content—and adherence to that content—is ultimately a matter for you, the Prime Minister.

Nonetheless, we reiterate our recommendation that you make clear, in the foreword to the next edition, the duty on all ministers to adhere to the constitutional principles in the Cabinet Manual. We would be grateful to receive the Government's views on this recommendation.

We also note that there have been significant constitutional developments since the Cabinet Manual was first published in 2011, including, for example, further devolution of powers, the UK's departure from the European Union and changes to the way in which Parliament is dissolved. Given that the updated Cabinet Manual will serve to guide ministers as to the constitutional rules pertaining both to recent developments and longer standing constitutional matters, we consider it prudent to secure a high level of consensus on its content. It is therefore appropriate that this Committee—along with the relevant committees in the House of Commons—be meaningfully consulted, in line with the spirit of consultation that was evident when the first edition of the Cabinet Manual was produced in 2010–2011.¹ We recommend this consultation should include the sharing of draft revisions to the manual with relevant committees in a timely manner, allowing for sufficient scrutiny and feedback. We would be grateful if you could confirm if this is your intention.

We note that Lord True's letter describes the Cabinet Manual as “a UK Government document signed off by UK Ministers, accountable to the UK Parliament”. While we do not contest this, we suggest that as a record of UK constitutional rules it applies to all four nations of the UK. We therefore reiterate our recommendation that the Government should formally consult the relevant committees in the devolved legislatures on any draft

¹ Constitution Committee, [Revision of the Cabinet Manual](#) (6th report, Session 2021-2022, HL paper 24), paras 8–9

revisions to the Cabinet Manual. This would be in line with the Prime Minister's role as Minister for the Union, which includes responsibility to "ensure that all of government is acting on behalf of the entire United Kingdom: England, Northern Ireland, Scotland and Wales."¹ We would welcome confirmation on whether this is the Government's intention.

Our report recommended a draft be produced by July 2022. While we note the Government's commitment to publish an updated version of the Cabinet Manual by the end of this Parliament, we would be grateful for an indication of the proposed timeline for this.

I am copying this letter to Rt Hon Steve Barclay MP, Chancellor of the Duchy of Lancaster, Lord True, Minister of State, Cabinet Office, William Wragg MP, Chair, House of Commons Public Administration and Constitutional Affairs Committee, Clare Adamson MSP, Convener of the Scottish Parliament's Constitution, Europe, External Affairs and Culture Committee, Huw Irranca-Davies MS, Chair of the Senedd Legislation, Justice and Constitution Committee and the Northern Ireland Assembly Committee for the Executive Office.

Yours sincerely,



Baroness Drake
Chair of the Constitution Committee