

# Agenda – Legislation, Justice and Constitution Committee

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Meeting Venue:	For further information contact:
Hybrid – Committee room 4 Tŷ Hywel and video conference via Zoom	P Gareth Williams Committee Clerk
Meeting date: 10 October 2022	0300 200 6565
Meeting time: 12.45	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

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## Pre-meeting (12.45 – 13.00)

- 1 Introductions, apologies, substitutions and declarations of interest**  
(13.00)
- 2 Scrutiny session with the Counsel General and Minister for the Constitution and the Permanent Secretary to the Welsh Government**  
(13.00 – 14.00) (Pages 1 – 23)  
Mick Antoniw MS, Counsel General and Minister for the Constitution  
Dr Andrew Goodall CBE, Permanent Secretary to the Welsh Government  
Attached Documents:  
LJC(6)-25-22 – Paper 1 – Briefing
- 3 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**  
(14.00 – 14.05) (Pages 24 – 25)  
Attached Documents:  
LJC(6)-25-22 – Paper 2 – Draft report

Affirmative Resolution Instruments



**Senedd Cymru**  
**Welsh Parliament**

**3.1 SL(6)262 – The Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) and (Coronavirus) (Revocation) Regulations 2022**

**3.2 SL(6)264 – The Homelessness (Priority Need and Intentionality (Wales) Regulations 2022**

**4 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3**  
(14.05 – 14.10)

**Made Negative Resolution Instruments**

**4.1 SL(6)266 – The Town and Country Planning (General Permitted Development etc.) (Amendment) (Wales) Order 2022**

(Pages 26 – 30)

[Order](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-25-22 – Paper 3 – Draft report

LJC(6)-25-22 – Paper 4 – Written Statement by the Minister for Climate Change, 30 September 2022

**Composite Draft Affirmative Instruments**

**4.2 SL(6)259 – The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022**

(Pages 31 – 32)

[Order](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-25-22 – Paper 5 – Draft report

## **5 Inter-Institutional Relations Agreement**

(14.10 – 14.15)

### **5.1 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Common Organisation of the Markets in Agricultural Products (Amendment) Regulations 2022**

(Pages 33 – 34)

Attached Documents:

LJC(6)-25-22 – Paper 6 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 3 October 2022

### **5.2 Correspondence and Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd: The Pests of Plants (Authorisations) (Amendment) Regulations 2022**

(Pages 35 – 38)

Attached Documents:

LJC(6)-25-22 – Paper 7 – Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd, 6 October 2022

LJC(6)-25-22 – Paper 8 – Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 5 October 2022

### **5.3 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2022.**

(Pages 39 – 40)

Attached Documents:

LJC(6)-25-22 – Paper 9 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 6 October 2022

## **6 Papers to note**

(14.15 – 14.20)

**6.1 Correspondence from the Children, Young People and Education Committee to the Minister for Education and Welsh Language: Legislative Consent Memorandum on the Schools Bill**

(Pages 41 – 42)

Attached Documents:

LJC(5)-25-22 – Paper 10 – Letter from the Children, Young People and Education Committee to the Minister for Education and Welsh Language, 3 October 2022

**6.2 Correspondence from the Counsel General and Minister for the Constitution to the Llywydd: Retained EU Law (Revocation and Reform) Bill**

(Pages 43 – 44)

Attached Documents:

LJC(6)-25-22 – Paper 11 – Letter from the Counsel General and Minister for the Constitution to the Llywydd, 5 October 2022

**6.3 Correspondence from the First Minister: UK–EU agreements**

(Pages 45 – 55)

Attached Documents:

LJC(6)-25-22 – Paper 12 – Letter from the First Minister, 6 October 2022

LJC(6)-25-22 – Paper 13 – Letter to the First Minister, 20 July 2022

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

(14.20)

**8 Scrutiny session with the Counsel General and Minister for the Constitution and the Permanent Secretary to the Welsh Government: Consideration of evidence**

(14.20 – 14.35)

**9 The Environmental Protection (Single-use Plastic Products) (Wales)  
Bill: Draft report**

(14.35 – 14.55)

(To Follow)

Attached Documents:

LJC(6)-25-22 – Paper 14 – Draft report

**10 Legislative Consent Memoranda**

(14.55 – 15.05)

(Pages 56 – 59)

Attached Documents:

LJC(6)-25-22 – Paper 15 – Briefing

**11 Legislative Consent Memoranda on the UK Infrastructure Bank Bill:  
Draft report**

(15.05 – 15.10)

(Pages 60 – 81)

Attached Documents:

LJC(6)-25-22 – Paper 16 – Draft report

LJC(6)-25-22 – Paper 17 – Letter from the Climate Change, Environment and Infrastructure Committee to the Minister for Finance and Local Government, 3 October 2022

**12 Forward Work Programme**

(15.10 – 15.20)

(To Follow)

Attached Documents:

LJC(6)-25-22 – Paper 18 – Briefing

Document is Restricted

# Agenda Item 3

## Statutory Instruments with Clear Reports 10 October 2022

### **SL(6)262 – The Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) and (Coronavirus) (Revocation) Regulations 2022**

#### **Procedure: Affirmative**

These Regulations:

- Revoke the temporary coronavirus-related amendments made in 2020<sup>1</sup> to requirements on providers of care home services, wholly or mainly for adults, and on domiciliary support services for adults. These amendments aimed to support the provision of emergency social care for adults, where this was required as a result of the spread of coronavirus, and to simplify pre-employment checks required for new residential and domiciliary care workers, in situations where this information was hard to access.
- Amend the description of 'Category C' premises<sup>2</sup> to clarify that they include relevant premises and establishments in respect of which a person had been registered under any relevant Act (i.e. any Act, other than the Regulation and Inspection of Social Care (Wales) Act 2016, which previously provided regulatory control and oversight of accommodation-based services in Wales).

**Parent Act:** The Regulation and Inspection of Social Care (Wales) Act 2016

**Date Made:** Not stated

**Date Laid:** Not stated

**Coming into force date:** 01 November 2022

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<sup>1</sup> By the Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) (Coronavirus) Regulations 2020 (SI 2020/570)

<sup>2</sup> In regulation 49 of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (SI 2017/1264)



# Statutory Instruments with Clear Reports

## 10 October 2022

### **SL(6)264 – The Homelessness (Priority Need and Intentionality) (Wales) Regulations 2022**

#### **Procedure: Affirmative**

These Regulations amend the Housing (Wales) Act 2014 (“the 2014 Act”) and the Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015 (“the 2015 Regulations”).

Regulation 2 amends the 2014 Act to specify a further description of a person as having a priority need for accommodation for the purposes of Chapter 2 of Part 2 of that Act. That Chapter places duties on local housing authorities to help people who are homeless or threatened with homelessness.

Regulation 3 makes a corresponding change to the Homelessness (Intentionality) (Specified Categories) (Wales) Regulations 2015.

The main effect of the Regulations will be that a person who is street homeless, and a person with whom the person who is street homeless may reasonably be expected to reside, will be considered as having priority need for accommodation. The changes made by these Regulations will enable local authorities to continue to adopt homelessness assistance policies which closely follow the emergency homelessness response to the coronavirus pandemic.

**Parent Act:** The Housing (Wales) Act 2014

**Date Made:** Not stated

**Date Laid:** Not stated

**Coming into force date:** 24 October 2022



# Agenda Item 4.1

## **SL(6)266 – The Town and Country Planning (General Permitted Development etc.) (Amendment) (Wales) Order 2022**

### **Background and Purpose**

The Town and Country Planning (General Permitted Development) Order 1995 (the “GPDO”), as amended, allows some development to be undertaken, within certain parameters, without the need to submit a planning application. This is known as “permitted development”.

The Town and Country Planning (General Permitted Development etc.) (Amendment) (Wales) Order 2022 (“the 2022 Order”) amends the GPDO. The effects of such amendments include:

- permitting local planning authorities and the Welsh Ministers to direct that any particular development permitted under article 3 of the GPDO is not to apply in relation to a specified area;
- introducing a new Schedule 2A. Schedule 2A sets out new procedures which must be followed in making, varying or withdrawing any direction that is made under article 4(1) of the GPDO. In addition, Schedule 2A introduces two types of direction that can be made: a direction with immediate effect and a direction without immediate effect;
- removing the requirement for the Welsh Ministers to confirm an article 4 direction, instead requiring, in most cases, the local planning authority to give notice to the Welsh Ministers following confirmation of a direction.
- amending Part 3 (changes of use) of Schedule 2 to the GPDO by inserting two new classes, Class I and Class J.
  - o Class I introduces a number of new permitted development rights for unlimited changes of use, including mixed uses, between use Class C3 (Dwellings, used as sole or main residences); use Class C5 (Dwellings, used otherwise than as sole or main residences) and use Class C6 (Short-term lets). The permitted development is subject to limitations.
  - o Class J introduces a number of new permitted development rights from use as a betting office to use within Class A1 (shops); or Class A2 (financial and professional services); or mixed use of either Class A1 or Class A2, plus a single flat. Class J also permits a change of use from a mixed use as a betting office and a single flat to use within Class A1 or Class A2, or a mixed use of either Class A1 or Class A2, plus a single flat, and to use as a betting office. The permitted development is subject to limitations.

The 2022 Order also amends the Town and Country Planning (Compensation) (Wales) (No.2)



Regulations 2014 (SI 2014/2693 (W.268)) (“the 2014 Regulations”) by adding a new class of development into the list of permitted development rights for which compensation on withdrawal of the right is limited in various ways provided in the 2014 Regulations. Minor amendments are also made to the 2014 Regulations.

## Procedure

Negative.

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

Article 2(4) inserts a new Schedule 2A into the GPDO. Paragraph 1(12) of the new Schedule 2A states that a local planning authority may, by making a subsequent direction, withdraw any direction made by it under Article 4(1) of the GPDO. Paragraph 1(14) of the new Schedule 2A goes on to state that where the local planning authority makes a direction under paragraph 1(12), paragraphs 1(1) to 1(11) of Schedule 2A will apply (subject to an exception not directly relevant to this reporting point).

Paragraphs 1(1) to 1(11) of Schedule 2A set out various requirements that must be followed when a direction is made under Article 4(1) of the GPDO. It is not clear which of these requirements must still be followed when a direction is made under paragraph 1(12) of Schedule 2A. The wording of paragraph 1(14) indicates that all of the requirements in paragraphs 1(1) to 1(11) will apply, but this does not appear to be viable in practice. For example, paragraph 1(4)(c) of the new Schedule 2A requires that a notice which is given of a direction must state that the direction is given under Article 4(1), but this would not be the case if the notice relates to a direction made under paragraph 1(12). The Welsh Government is therefore asked to explain how applying paragraphs 1(1) to 1(11) of the new Schedule 2A to directions made under paragraph 1(12) will work in practice.

### **2. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In article 2(2), the opening words in the English text state “**For** article 4-” but the corresponding Welsh text is translated as meaning “**In** article 4”. “For” is normally used when describing which provision or words are to be substituted. However, it is actually describing the location of where the amendments will be inserted and should be “In”.



In addition, in footnote (2) on page 3 of the 2022 Order, in the second line, there is an difference between both language texts. In the Welsh text, the list of sections includes “61(1) and (3)” which is consistent with those cited in the preamble, whereas the English text only states “61(1)”.

## **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**

**4 October 2022**



Senedd Cymru

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

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**Legislation, Justice and Constitution Committee**



Llywodraeth Cymru  
Welsh Government

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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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<b>TITLE</b>	<b>Changes to planning legislation and policy for second homes and short-term lets</b>
<b>DATE</b>	<b>30 September 2022</b>
<b>BY</b>	<b>Julie James MS, Minister for Climate Change</b>

On 4 July the First Minister and the Leader of Plaid Cymru announced a package of measures to tackle the issue of second homes and short-term lets in Wales. This included a land use planning element with the introduction of three new use classes. These three new use classes will give local planning authorities the ability, where they have evidence, to make local amendments to the planning system through an Article 4 Direction, allowing them to consider whether planning permission is required to change from one use class to another and to control the number of additional second homes and short-term lets in an area. These changes to planning legislation were consulted upon from [November 2021 to February 2022](#) and have now been agreed as follows:

- The Town and Country Planning (Use Classes) Order 1987 (the UCO) is being amended to create new use classes for 'Dwellinghouses, used as sole or main residences' (Class C3), 'Dwellinghouses, used otherwise than as sole or main residences' (Class C5) and 'Short-term Lets' (Class C6);
- The Town and Country Planning (General Permitted Development) Order 1995 (the GPDO) is being amended to allow permitted changes between the new use classes, C3, C5 and C6. These permitted development rights can be dis-applied within a specific area by an Article 4 Direction made by a local planning authority on the basis of robust local evidence.

The two Statutory Instruments being introduced to give effect to these changes are:

- The Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2022; and [https://www.legislation.gov.uk/wsi/2022/994/pdfs/wsi\\_20220994\\_mi.pdf](https://www.legislation.gov.uk/wsi/2022/994/pdfs/wsi_20220994_mi.pdf)

- The Town and Country Planning (General Permitted Development etc.) (Amendment) (Wales) Order 2022.

[https://www.legislation.gov.uk/wsi/2022/997/pdfs/wsi\\_20220997\\_mi.pdf](https://www.legislation.gov.uk/wsi/2022/997/pdfs/wsi_20220997_mi.pdf)

The Statutory Instruments come into force on 20 October 2022.

As set out in the consultation, complementary changes are also being made to section 4.2 of *Planning Policy Wales* (PPW). These policy changes make it explicit that, where relevant, the prevalence of second homes and short-term lets in a local area must be taken into account when considering housing requirements and policy approaches in Local Development Plans (LDPs).

To assist local planning authorities with making Article 4 Directions and to simplify and expedite the process, subsequent changes are also being made to the GPDO and related legislation. These changes formed part of the 'Permitted Development' consultation which took place between [16 November 2021 and 15 February 2022](#). I have today written to local authorities to set out more information on the steps to be taken where a local planning authority wishes to pursue the possible introduction of an Article 4 Direction.

## **SL(6)259 – The Greenhouse Gas Emissions Trading Scheme (Amendment) (No. 3) Order 2022**

### **Background and Purpose**

The UK Emissions Trading Scheme (“ETS”) was established by the Greenhouse Gas Emissions Trading Scheme Order 2020 (the “principal Order”) as a UK-wide greenhouse gas emissions trading scheme. The UK ETS runs for ten scheme years, beginning in 2021. Operators of certain industrial installations and certain aircraft operators are required to monitor, report on and surrender “allowances” which are equivalent to their greenhouse gas emissions, for each scheme year.

This Order amends the principal Order to include flights from Great Britain to Switzerland within the definition of aviation activity, thus bringing them within the scope of the UK ETS, to require the recalculation of entitlements to a free allocation of allowances to take account of the new category of historic aviation activity, and to permit applications for a free allocation of allowances on the basis of this historic aviation activity by persons who have not previously applied for a free allocation of allowances.

### **Procedure**

Draft Affirmative.

A draft of the Order has been laid before Senedd Cymru, the United Kingdom Parliament, and the Scottish Parliament. The draft must be approved by each of those legislatures before it can be made by His Majesty.

### **Technical Scrutiny**

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

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

The Order has been laid before Senedd Cymru, the United Kingdom Parliament, and the Scottish Parliament. The Order has been made in English only. The Welsh Government’s Explanatory Memorandum states as follows (at paragraph 2.4):

*As the Order in Council will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.*

### **Merits Scrutiny**

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



## **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.**

The UK ETS is a scheme developed for the four nations of the UK. However, currently, Northern Ireland is unable to pass affirmative legislation. As such, this Order relates to Great Britain only at the current time. The Welsh Government's Explanatory Memorandum states as follows:

*2.5 While the UK ETS is a 4-nation scheme currently Northern Ireland cannot pass affirmative legislation as the Assembly have failed to nominate a Speaker and an Executive has not been formed. As a result, officials have secured Ministerial approval from Northern Ireland to proceed in the first instance with legislation covering Great Britain only.*

*2.6 The legislation covering the flights from Great Britain (England, Scotland and Wales) to Switzerland, would be in effect from 1 January 2023. The legislation covering flights from Northern Ireland to Switzerland would be implemented as soon as the Northern Ireland Assembly is able to progress legislation.*

### **Welsh Government response**

A Welsh Government response is not required.

#### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**5 October 2022**



Senedd Cymru

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

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**Legislation, Justice and Constitution Committee**

Ein cyf/Our ref: MA-LG-22734-22

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

[huw.Irranca-Davies@senedd.wales](mailto:huw.Irranca-Davies@senedd.wales)

3rd October 2022

Dear Huw

### **The Common Organisation of the Markets in Agricultural Products (Amendment) Regulations 2022**

I wish to inform the Committee I am giving consent to the Secretary of State for Environment, Food and Rural Affairs to lay The Common Organisation of the Markets in Agricultural Products (Amendment) Regulations 2022 on 8 November 2022.

The Regulations make various technical amendments to retained EU and EU derived domestic legislation relating to marketing standards for agricultural products.

The relevant amendments are summarised below:

#### Part 2 Chapter 1 (Regulations 2-4)

Regulations 2 to 4 make operability amendments to address deficiencies in retained direct EU legislation relating to marketing standards:

- Regulation 2 amends Annex 14 of Council Regulation (EC) 1234/2007 concerning marketing standards for hatching eggs and chicks and poultrymeat by inserting definitions of “relevant authority” and “third country” and replacing references to the European Community and Member States.
- Regulation 3 amends Commission Regulation (EC) 543/2008 on poultrymeat marketing standards to substitute a reference to a directive with corresponding domestic legislation, and to remove a reference to a provision which has been omitted; it also updates a reference to a European Norm standard which has been replaced.
- Regulation 4 updates the same European Norm reference in Annex 7 of the CMO regulation.

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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.

Part 3, Chapter 1 (Regulation 14)

Regulation 14 makes an operability amendment to the Hops Certification Regulations 1979. Regulation 3(1)(f) of the Hops Certification Regulations 1979 is now surplus to requirement due to provisions made by the United Kingdom Internal Market Act 2020 which guarantee that hops and hop products can continue to be moved from Northern Ireland to Great Britain providing that they meet with requirements for sale in Northern Ireland. As such, this instrument operates to omit Regulation 3(1)(f) from the 1979 Regulations to ensure clarity.

It is normally the policy of the Welsh Government to legislate for Wales in matters of devolved competence. However, in certain circumstances there are benefits in working collaboratively with the UK Government where there is a clear rationale for doing so. On this occasion, I am giving my consent to these Regulations, which make corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency, and to ensure consistency and coherence of the statute book. The amendments have been considered fully and there is currently no divergence in policy.

Regards,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

**Lesley Griffiths AS/MS**

Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd  
Minister for Rural Affairs and North Wales, and Trefnydd

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

6 October 2022

Dear Huw

I am writing to inform the Committee I have given my consent to the Secretary of State to lay The Pests of Plants (Authorisations) (Amendment) Regulations 2022 in relation to Wales. I have laid a Written Statement which can be found at: <https://gov.wales/written-statement-pest-plants-authorisations-amendment-regulations-2022>

The Regulations intersect with devolved policy and will apply to Wales. The provisions could be made by Welsh Ministers in exercise of our own powers. The Regulations extend to England, Scotland, and Wales.

The current GB scientific authorisation regime issues authorisations which allow pests or plants, plant products and other material which would normally be prohibited, to be imported into or moved within Great Britain for official testing, scientific or educational purposes, trials, varietal selections, or breeding. Only designated quarantine stations or confinement facilities, which have been approved as suitable to contain the specified material, are eligible for an authorisation to introduce and store these materials.

The amendments will reduce the administrative burden on authorisation holders and GM plant health services. Amendments will be made the Letter of Authorisation (LoA) to allow multiple movements of permitted material. Information, which is not seen to help GM plant health services assess the biosecurity risk of the specified material will be removed. This amendment will remove the requirement for third countries of origin to endorse the import of the specified material into GB. Third country National Plant Protection Organisations (NPPOs) of the country of origin are not involved in the authorisation process and have no control over the material they are endorsing. This amendment will also add an obligation for the competent authority of the territory from which specified material is to be moved, to endorse the movement of the material to another territory within GB. This provides

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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.

assurance that places of destination for these movements meet the requirements of a designated quarantine station or confinement facility.

Although the Welsh Government's general principle is that the law relating to devolved matters should be made and amended in Wales, on this occasion, it is considered appropriate for the substance of the amendments to apply to Wales. This is because there is no policy divergence between the Welsh and UK Government in this matter. This ensures a coherent and consistent statute book with the regulations being accessible in a single instrument. In addition, there is an urgent need to introduce this legislation, to protect biosecurity in Wales. I consider legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes, especially given the urgent nature of the Regulations, nor a prudent use of Welsh Government resources given other important priorities.

These Regulations do not have implications for the Programme for Government. Preventing the entry of plant pests and diseases supports the majority of well-being goals in the Well-being of Future Generations (Wales) Act and will have a direct, positive contribution to the "a healthier Wales" and a 'resilient Wales' goals, together with associated impacts on the goals of "a prosperous Wales" and "a globally responsible Wales".

The Regulations were made in exercise of the powers conferred by Article 8(5) and 48(5) of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants. The Statutory Instrument (SI) is subject to the negative procedure and was laid before Parliament on 3 October 2022 with a commencement date of 1 November 2022.

I have written similarly to Paul Davies MS, the Chair of the Economy, 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 flourish at the end.

**Lesley Griffiths AS/MS**  
**Minister for Rural Affairs and North Wales, and Trefnydd**



Llywodraeth Cymru  
Welsh Government

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

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<b>TITLE</b>	<b>The Pest of Plants (Authorisations) (Amendment) Regulations 2022</b>
<b>DATE</b>	<b>05 October 2022</b>
<b>BY</b>	<b>Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd</b>

Members of the Senedd will wish to be aware that 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 MP, Minister of State for Farming, Fisheries and Food, to make a Statutory Instrument (SI) titled The Pests of Plants (Authorisations) (Amendment) 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 Article 41(3) of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants on official controls and other official activities.

The SI amends Commission Delegated Regulation (EU) 2019/829, which establishes requirements in the administration of the derogations under Articles 8 and 48 of the Plant Health Regulation. These amendments alter the exchange of information and information contained on the Letter of Authority (LoA) under Article 3(3), Article 6(4) and Annex I, which are required when both making an application for authorisation under these derogations and for the purposes of monitoring the specified materials.

The amendments make amendments to secondary legislation. They reduce the administrative burden on authorisation holders and GB Plant Health services without compromising biosecurity.

The regulations were laid before Parliament on 3 October 2022 to come into force on 1 November 2022.

## **Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence**

Previous Plant Health Amendments put in place previous corrections required to the regulatory regime for plant health. These broadened the executive competence of the Welsh Ministers by conferring functions on them (in their capacity as the 'Competent Authority' for Wales) without encumbrance. The Minister will wish to note that the Regulations do not transfer any functions to the Secretary of State.

### **The purpose of the amendments**

The current GB scientific authorisation regime issues authorisations, which allow pests or plants, plant products and other material which would normally be prohibited, to be imported into or moved within Great Britain for official testing, scientific or educational purposes, trials, varietal selections or breeding. Only designated quarantine stations or confinement facilities, which have been approved as suitable to contain the specified material, are eligible for an authorisation to introduce and store these materials. Following successful authorisation applications, the competent authority (GB Plant Health services), send applicants an authorisation and a Letter of Authority (LoA) which permits the import, movement and storage of the specified material. There are more than 250 licences held across GB covering over 60 scientific and research institutions. Currently LoAs should be either for a single import or for multiple imports of one type of material, from the same origin under the same conditions. Given the size and complexity of many of our authorisations this is not practical.

To reduce the administrative burden on authorisation holders and GB Plant Health services, this instrument amends LoAs and allows multiple movements of permitted materials from all named origins. The LoA has also been amended to remove redundant and unnecessary information, whilst maintaining biosecurity.

The Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the amendments is available here:

<https://www.legislation.gov.uk/ukxi/2022/1020/contents/made>

### **Why consent has been given**

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and to protect biosecurity by updating import requirements to mitigate the risk of accidentally introducing the pest. The amendments have been considered fully and there is no divergence in policy.

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

Huw.Irranca-Davies@senedd.wales

6 October 2022

Dear Huw,

I am writing to inform the Committee of the intention to consent to the UK Government making and laying The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2022 by 19 October 2022.

I have received a letter from Victoria Prentis MP, Minister for State for Farming, Fisheries and Food asking for consent to these Regulations. The Regulations will be made by the Secretary of State, in exercise of the powers conferred by the European Union (Withdrawal) Act 2018. Some of the provisions in the Regulations intersect with devolved policy and will apply to Wales. The provisions could have been made by Welsh Ministers in exercise of our powers conferred by the European Union (Withdrawal) Act 2018. The Regulations will extend to England, Scotland, Northern Ireland and Wales and a similar request for consent has been sent to Scottish Ministers.

The Statutory Instrument (SI) amends the retained Regulation (EU) 2019/1021 of the European Parliament and of the Council on Persistent Organic Pollutants ("the retained POPs Regulations"). It makes minor technical corrections replacing two European Commission functions in Annex I of the retained POPs Regulations with functions on the appropriate authority in line with corrections previously made elsewhere in the Annex. The amendments also reinstate a derogation omitted in error. The SI also makes a correction to the regulation in the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2020 where provisions have no legal effect in relation to the retained POPs regulation for perfluorooctane sulfonic acid (PFOS).

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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.

The SI is subject to the affirmative procedure and is due to be laid before Parliament on 19 October 2022.

The Welsh Government's general principle is that the law relating to devolved matters should be made and amended in Wales. However, on this occasion, it is considered appropriate for the substance of the amendments to apply to Wales as there is no policy divergence between the Welsh and UK Government in this matter. This ensures a coherent and consistent statute book with the regulations being accessible in a single instrument. I consider that legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes, nor a prudent use of Welsh Government resources given other important priorities.

Regards,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end.

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

Jeremy Miles MS

Minister for Education and Welsh Language

3 October 2022

## **Schools Bill**

Dear Jeremy,

The Business Committee referred the Legislative Consent Motion (LCM) on the Schools Bill to the Children, Young People and Education Committee and the Legislation, Justice and Constitution Committee. We considered the LCM during our meeting on 21 September.

I would be grateful if you could provide us with some more information about the School Bill to inform our discussions:

1. In your [letter to the Llywydd dated 19 July 2022](#), you stated that you were in the process of carrying out a legislative competence analysis in relation to the Bill as it progresses. Please could you provide us with any updates on your findings?
2. Clause 52(2) of the Bill contains a power for the UK Government to make regulations containing amendments that are consequential on the provisions of the Bill. This power could be used to make regulations containing consequential provisions that apply in Wales and there is nothing in the Bill which would require the UK Government to consult or obtain the consent of the Welsh Government or the Senedd before exercising this power. Do you have any concerns about clause 52(2), and if so what steps do you intend to take to mitigate your concerns?

We also understand that the next meeting of the UK Education Ministers Council will be hosted by the Welsh Government. Please can you set out when that meeting is scheduled to be held, and whether you intend to raise the Schools Bill - including any concerns that you have about the impact of the Bill on devolved Welsh powers – during that meeting?

Our reporting deadline for the Schools Bill LCM is currently 1 December. I would therefore appreciate your response no later than 10 November to enable us to consider your response at our meeting on 17 November and draft our report on the LCM before the reporting deadline.

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

Yours sincerely,



Jayne Bryant MS

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

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

05 October 2022

Dear Elin,

The Secretary of State for Business, Energy and industrial Strategy, the Rt Hon. Jacob Rees-Mogg MP, introduced the Retained EU Law (Revocation and Reform) Bill (the Bill) in the House of Commons on 22 September.

In a letter to me on the same day, the Secretary of State confirms that the UK Government is seeking the consent of the Senedd to the Bill and asks whether the Welsh Ministers would agree in principle to support a Legislative Consent Motion. However, the Bill as presented contains policy content that was not shared with the Devolved Governments before its introduction and, because of the significant ramifications for the Welsh Government, it has not yet been possible to consider properly the devolution consequences of what is being proposed.

The Bill presents a highly challenging sunseting deadline of 31 December 2023, which will require the governments in the UK to review a substantial number of legal instruments in the coming 15 months, make policy decisions as appropriate and then legislate to ensure retained EU law (REUL) is not sunset. The Bill as drafted could also see the UK Government legislating in devolved areas without our consent, which would be a very significant constitutional issue.

As soon as we have a clear picture of the devolution consequences of the proposed legislation then I anticipate that a Legislative Consent Memorandum will be laid before the Senedd. However, this will be outside the normal two-week Standing Order 29 time period.

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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 First Minister, the Minister for Economy, the Minister for Rural Affairs and North Wales, and Trefnydd, the Minister for Climate Change, the Minister for Health and Social Services, and the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely,

A handwritten signature in blue ink that reads "Mick Antoniw". The signature is written in a cursive style. Below the signature, there is a short horizontal blue line.

**Mick Antoniw AS/MS**

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



Huw Irranca-Davies MS  
Chair  
Legislation, Justice and Constitution Committee  
Welsh Parliament  
Cardiff Bay  
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[seneddjc@senedd.wales](mailto:seneddjc@senedd.wales)

6 October 2022

Dear Huw,

I am writing in response to your letter regarding UK-EU agreements. The responses to the questions in your letter can be found in the attached Annex.

Yours sincerely,

**MARK DRAKEFORD**

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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.

## Annex

### Responsibilities

1. Could you explain how engagement with the governance of UK-EU agreements is coordinated within the Welsh Government?

The Directorate for European Transition, Constitution and Justice (ETCJ) has lead responsibility for this purpose.

2. Could you clarify which Minister leads on coordinating this work across Welsh Government departments?

The Minister for Economy has lead responsibility in the Welsh Government for co-ordination of matters relating to the UK-EU agreements. As First Minister I remain responsible for all issues relating to International Relations.

### TCA Governance: Partnership Council

3. In light of the concerns which you and the Minister for Economy raised last year on the observer status granted to you at meetings of the Council, are you able to provide an update on the status which will be provided to you for the second meeting, when it is held?

This will depend on discussions to be held with UK Ministers after the appointment of the new UK Prime Minister.

4. Could you outline the role you have in decision-taking at the Partnership Council, including between meetings?

The Welsh Government has no formal role in the Partnership Council as this is constituted by the UK Government and the EU.

### Domestic Advisory Groups

5. Do you have any information or concerns to share about Wales's representation on the UK Government's Domestic Advisory Group?

The list of current member bodies is available at [UK-EU Trade and Cooperation Agreement Domestic Advisory Group - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/uk-eu-trade-and-cooperation-agreement-domestic-advisory-group) it includes the Wales Council for Voluntary Action (WCVA) and a number of bodies that have interests covering Wales as part of their wider remit. The process for expressions of interest was re-opened and closed on 16 September and the membership will be kept under review.

6. Will Welsh Government officials be able to attend meetings of the UK Government's Domestic Advisory Group and if not how will it engage with any Welsh stakeholders appointed to the Advisory Group?

The DAG is intentionally constructed as independent of government. It has agreed its Rules of Procedure [UK TCA DAG Rules of Procedure.pdf \(publishing.service.gov.uk\)](#). These make provision for officials from the UK and Devolved Governments to “*be invited to attend DAG meetings with a view to participating in discussions or to make presentations on specific subjects*”.

The Rules of Procedure also commit the UK Government to informing the DAG of relevant information and to responding to its views thereon.

We will ensure that we stay in active contact with the WCVA and any other stakeholders covering Welsh interests.

The Committee may also wish to note that the Rules of Procedure state that: “*The location of the UK DAG plenary meetings shall be rotated among the four UK home nations.*”

7. Will the devolved governments be able to suggest items for discussion at Domestic Advisory Group meetings?

The setting of agendas is essentially a matter for the DAG Chair, after consultation with the Vice-Chairs, with involvement from its members. The UK Government is also explicitly able to suggest agenda items. Welsh Government agenda items can be suggested through either of these routes.

#### Meetings under the TCA

8. Can you clarify if the Welsh Government receives invites to all meetings or only some?

We would expect to receive invitations from the UK Government to planned meetings under the TCA involving areas of devolved interest.

9. Can you clarify the criteria the Welsh Government uses to decide whether or not officials attend meetings?
10. What consultation takes place within the Welsh Government on whether or not anyone should attend? How is any information gathered from the meetings collated and shared within the Welsh Government and where appropriate with possible stakeholders?
11. Could you explain the Welsh Government’s decision-making processes for attendance at meetings under the Trade and Co-operation Agreement?

The subject matter of questions 9 to 11 is overlapping and I have grouped them together for response.

Our main concern is to be actively involved in the substance of business in relation to such meetings, including the preparation of positions before meetings, and the

follow-up actions thereafter, as well as the meetings themselves. Normally, in cases where the Welsh Government has a significant interest in an issue, there will have been active engagement between the Welsh Government and the UK Government. Ensuring this process works well is a priority for us in the functioning of the UK-EU relationship as a whole. In all cases, the lead policy officials in the Welsh Government will be able to determine whether to attend meetings. The ETCJ Directorate plays a co-ordinating role across the Welsh Government on all these issues and will support individual policy teams in sharing best practice on such matters.

## Compliance

12. In light of previous concerns, the Welsh Government has raised in relation to the UK Government's decisions being in compliance with the TCA, could you confirm whether the Welsh Government actively monitors TCA compliance?

The Welsh Government seeks to ensure compliance with its own obligations deriving from the TCA. Compliance by the UK Government in relation to its own specific obligations under the TCA is its own responsibility.

## Impact of the Withdrawal Agreement on the TCA

13. Does the Welsh Government consider that the introduction of the Northern Ireland Protocol Bill constitutes a breach of the Withdrawal Agreement?

While it will be for the Courts to determine if there is a breach, the view of the Welsh Government is that the Bill has the potential to constitute a breach of the Agreement.

14. What is the Welsh Government's assessment of how a potential breach of the Withdrawal Agreement might impact the TCA's operation in Wales?

The Welsh Government has not made a specific assessment of how a potential breach of the Withdrawal Agreement might impact the operation of the TCA in Wales, given that would largely depend on the actions the EU might choose to take regarding the TCA in response to a breach of the Withdrawal Agreement.

We have, though, made strong representations in intergovernmental meetings about the unsatisfactory position in which we find ourselves, in particular in relation to the association with EU programmes such as Horizon. As things stand, until the issue with the Protocol is concluded these wider matters will not be resolved and, on that basis, we have made clear our position to UK Government Ministers.

15. How, if at all, is the Welsh Government consulted by the UK Government on potential breaches of the Withdrawal Agreement?

The Welsh Government was not consulted prior to the introduction of the Northern Ireland Protocol Bill.

16. Do the Welsh and UK governments have agreed processes in place for potential breaches, or for notification of any retaliatory actions taken by the EU?

The Welsh Government, including our office in Brussels, is working with the UK Government and devolved counterparts to monitor any retaliatory actions taken by the EU.

17. Are existing intergovernmental mechanisms used for, or intended to be used for, this purpose and, if so, which ones?

The UK-EU Relations Interministerial Group is the most appropriate forum for discussion of matters relating to the TCA and the Withdrawal Agreement.

#### Intergovernmental Relations

18. Could you outline your preferred frequency and timings of meetings for the Interministerial Group on UK-EU relations, and whether this has been communicated to the UK Government?

It has been provisionally agreed that meetings of the IMG should be held quarterly, including ahead of meetings of the Partnership Council and/or the Joint Committee for the Withdrawal Agreement, as appropriate. The Terms of Reference for the IMG have not yet been formally agreed, as the Northern Ireland Executive is not in a position to do so. The issue of ensuring a substantive and engaged partnership between the UK Government and the three Devolved Governments in the relationship with the EU is fundamental. I expect to raise this with the incoming Prime Minister should such an opportunity arise.

19. What discussions have taken place between you and the UK Government to address the issue of meetings being called with sufficient notice

Strong representations have been made on this matter. I would expect wider discussions with new UK Ministers, once they are in place, to address this.

Rt Hon Mark Drakeford MS

First Minister

20 July 2022

Dear Mark

## UK-EU agreements

Thank you again for the **correspondence** we exchanged earlier this year in relation to the UK-EU Trade and Co-operation Agreement (TCA).

Since the TCA has now been in effect for a year, we would like to share our observations on its implementation and governance. We would be grateful for a response to the questions as set out below, by 5 September 2022.

## Responsibilities

We note that at some TCA meetings, the Welsh Government is represented by the Minister for Economy, Vaughan Gething. Although the Minister's portfolio responsibilities include trade and coordination of TCA matters, your responsibilities as First Minister include Wales in Europe, international relations and intergovernmental relations. Similarly, the Minister for Social Justice's responsibilities include EU citizens' rights under the Withdrawal Agreement.

We also note that the former MEP, Derek Vaughan, has also been appointed as the Welsh Government's **new European representative** to support its work in Europe, including engaging with politicians and officials at EU institutions and promoting the Welsh Government's policy agenda in the EU.

1. Could you explain how engagement with the governance of UK-EU agreements is coordinated within the Welsh Government?
2. Could you clarify which Minister leads on coordinating this work across Welsh Government departments?

## TCA Governance: Partnership Council

We note that the Partnership Council is yet to hold its second meeting.

3. In light of the concerns which you and the Minister for Economy raised last year on the observer status granted to you at meetings of the Council, are you able to provide an update on the status which will be provided to you for the second meeting, when it is held?

We note that the Partnership Council can take **decisions in writing** between meetings but it is not clear to us what role, if any, the devolved governments have in making these decisions.

4. Could you outline the role you have in decision-taking at the Partnership Council, including between meetings?

## Domestic Advisory Groups

In your **letter of 10 March**, you told us that you did not know which Welsh organisations had submitted Expressions of Interest for membership of the UK Government's Domestic Advisory Group as a number of the submissions did not give permission for their information to be shared outside the UK Government. Based on the limited information available to us, we are concerned as to the extent to which Wales is represented in the UK Government's Domestic Advisory Group.

5. Do you have any information or concerns to share about Wales's representation on the UK Government's Domestic Advisory Group?
6. Will Welsh Government officials be able to attend meetings of the UK Government's Domestic Advisory Group and if not how will it engage with any Welsh stakeholders appointed to the Advisory Group?
7. Will the devolved governments be able to suggest items for discussion at Domestic Advisory Group meetings?

## Meetings under the TCA

Welsh Ministers or their officials have attended most TCA meetings, regardless of whether the subject is in a devolved or reserved area.

We note from the minutes of meetings published by the European Commission that no representatives from the Welsh Government were in attendance in some meetings which cover its responsibilities, such as on **procurement**. In particular, while officials from the Scottish Government, Northern Ireland Executive and Isle of Man Government were in attendance at meetings on **road transport** and **VAT, recovery of tax and duties**, officials from the Welsh Government were not. We believe that you should ensure attendance by the Welsh Government at all meetings that impact Wales, whether at ministerial or official level.

8. Can you clarify if the Welsh Government receives invites to all meetings or only some?
9. Can you clarify the criteria the Welsh Government uses to decide whether or not officials attend meetings?
10. What consultation takes place within the Welsh Government on whether or not anyone should attend? How is any information gathered from the meetings collated and shared within WG and where appropriate with possible stakeholders?
11. Could you explain the Welsh Government's decision-making processes for attendance at meetings under the Trade and Co-operation Agreement?

In your letter of 10 March, you said that you are happy to explore how you can provide more information about the Welsh Government's involvement in TCA structures on "a proportionate and pragmatic basis". I am grateful for your suggestion that your officials meet with our Committee Clerk to provide an update on discussions they are having with their counterparts in other administrations in the UK on ways to improve transparency; our clerking team will liaise with your officials. This information will be particularly helpful in supporting the work of Members of the Senedd attending the UK-EU Parliamentary Partnership Assembly.

## **Compliance**

In January, **we raised concerns** with the Minister for Rural Affairs and North Wales and Trefnydd on her assessment that the Official Controls (Extension of Transitional Periods) (Amendment) (No. 2) Regulations 2021 "raised questions" in relation to the WTO and the TCA. This was because the UK Government had taken a "last minute decision" to continue the exemption for pre-notification of goods from the island of Ireland. The Minister explained **in her response** that the UK Government's decision did not form part of intergovernmental discussions on the regulations and was added at a later date. Nevertheless, she explained she was satisfied that the regulations were "temporary in nature" and "necessary and proportionate".

12. In light of previous concerns the Welsh Government has raised in relation to the UK Government's decisions being in compliance with the TCA, could you confirm whether the Welsh Government actively monitors TCA compliance?

## **Impact of the Withdrawal Agreement on the TCA**

The Minister for Economy explained in his **letter of 27 June** on the Northern Ireland Protocol Bill that he had "major concerns" that the Bill has the potential to breach international obligations. He also noted the "complete absence of meaningful engagement" by the UK Government ahead of its introduction. Although the Welsh Government was not consulted on this occasion, we would like to gain an understanding of how it is otherwise consulted on potential breaches of the Withdrawal Agreement.

13. Does the Welsh Government consider that the introduction of the Northern Ireland Protocol Bill constitutes a breach of the Withdrawal Agreement?
14. What is the Welsh Government's assessment of how a potential breach of the Withdrawal Agreement might impact the TCA's operation in Wales?
15. How, if at all, is the Welsh Government consulted by the UK Government on potential breaches of the Withdrawal Agreement?
16. Do the Welsh and UK governments have agreed processes in place for potential breaches, or for notification of any retaliatory actions taken by the EU?
17. Are existing intergovernmental mechanisms used for, or intended to be used for, this purpose and, if so, which ones?

### **Intergovernmental relations**

We welcome your commitment under the Inter-institutional Relations Agreement to proactively provide information on intergovernmental meetings, including those of the Inter-ministerial Group on UK-EU relations. We also note the Counsel General's **suggestion** that the Group should meet regularly, including before meetings of the Partnership Council and the Withdrawal Agreement's Joint Committee.

The Committee notes with concern the frequency of intergovernmental meetings being called at short notice by the UK Government on UK-EU matters. We note the latest such instance, in relation to the Inter-ministerial Group on UK-EU relations, described in correspondence from the Minister for Economy on 14 July.

18. Could you outline your preferred frequency and timings of meetings for the Inter-ministerial Group on UK-EU relations, and whether this has been communicated to the UK Government?
19. What discussions have taken place between you the UK Government to address the issue of meetings being called with sufficient notice?

Yours sincerely,



Huw Irranca-Davies  
Chair

# Agenda Item 10

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

Document is Restricted

# Agenda Item 11

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

Document is Restricted

**Pwyllgor Newid Hinsawdd,  
yr Amgylchedd a Seilwaith**

**Climate Change, Environment,  
and Infrastructure Committee**

Rebecca Evans MS  
Minister for Finance and Local Government

3 October 2022

Dear Rebecca,

Please find enclosed a copy of the Climate Change, Environment and Infrastructure Committee report on the *Legislative Consent Memoranda for the UK Infrastructure Bank Bill*.

We would be grateful for a response in 30 working days, by 14 November 2022, or no later than 5 working days before the debate on the Legislative Consent Memoranda is scheduled, whichever is sooner.

I am copying this letter to the Minister for Climate Change; the Chair of the Legislation, Justice and Constitution Committee; the Chair of the Finance Committee, and, the Chair of the Economy, Trade, and Rural Affairs Committee.

Yours sincerely,



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

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

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# Legislative Consent Memoranda for the UK Infrastructure Bank Bill

October 2022

## Overall conclusion

The Committee has serious concerns about the Bill, as drafted. We are not in a position to form a view on legislative consent until the outcome of ongoing intergovernmental discussions on amendments to ensure the Bill fully reflects devolved competence are known. We will review our position in light of any amendments to the Bill, which we expect to be included in future memoranda.

## 1. Introduction

1. On 25 May 2022, the Minister for Finance and Local Government ('the Minister') laid the Legislative Consent Memorandum for the UK Infrastructure Bank Bill ('the LCM') before the Senedd.
2. On 7 June 2022, the Business Committee referred the LCM to the Finance Committee, the Economy, Trade and Rural Affairs ('ETRA') Committee, the Climate Change, Environment and Infrastructure Committee ('the Committee') and the Legislation, Justice and Constitution ('LJC') Committee for consideration with a reporting deadline of 29 September 2022. In referring the LCM, the Business Committee encouraged the Finance Committee, ETRA Committee and this Committee to discuss between them which would take the lead on scrutiny.
3. On 8 July 2022, the Minister laid the Supplementary Legislative Consent Memorandum (LCM No.2) for the UK Infrastructure Bank Bill ('the Supplementary LCM') before the Senedd.



4. On 12 July 2022, the Business Committee referred to the Supplementary LCM to the same committees referred to in paragraph 2 for consideration with a reporting deadline of 19 November 2022.

## Our approach

5. At its meeting on 30 June 2022, the Committee agreed to write to the Minister seeking clarification on the Bill's provisions insofar as they relate to the Committee's remit. The Committee also wrote to John Flint, Chief Executive Officer of the UK Infrastructure Bank. The exchanges in correspondence can be found on [Senedd Cymru's website](#).

6. This report sets out the Committee's views on the Bill and the Memoranda insofar as they relate to its remit. Reports by the Finance Committee and the LJC Committee can be found on [Senedd Cymru's website](#).

## 2. Policy background

7. In 2018, the UK National Infrastructure Commission recommended establishing a UK national infrastructure bank to replace the functions of the European Investment Bank after Brexit. The [UK Government's consultation](#) (November 2019) also found support for such a body.

8. The UK Government's [National Infrastructure Strategy](#) (November 2020) included a commitment to establish a "major new national infrastructure bank" that would operate with a "high degree of operational independence" but within a mandate set by government.

9. The creation of a UK infrastructure Bank ('the Bank') was announced by the Chancellor at the Spending Review 2020. The Spending Review 2020 stated:

*"Increased infrastructure investment is supported by a new National Infrastructure Strategy, which sets out the government's plans to transform the UK's economic infrastructure. It is based around three central objectives: economic recovery, levelling up and unleashing the potential of the Union, and meeting the UK's net zero emissions target by 2050. These objectives will be supported by the creation of a new infrastructure bank to catalyse private investment in projects across the UK; as well as through a comprehensive set of reforms to the way infrastructure is delivered."*

10. In March 2021, the UK Government published its [Policy Design](#) for the Bank, which sets out the Bank's relationship with the devolved administrations, among other things. It states:

*"The Bank will operate across the whole of the UK, working closely with public and private sectors to support infrastructure investment in every nation. Building strategic relationships with the devolved administrations, local authorities across the UK and relevant institutions such as the Scottish National Investment Bank and Development Bank of Wales, will be a priority".*

**11.** The Policy Design also states the UK Government would be "engaging with representatives from the devolved administrations in the next phase of the Bank's design".

**12.** The Bank was launched on a non-statutory basis on 17 June 2021. To coincide with the launch, the UK Government published the UK Infrastructure Bank Framework Document ('the Framework Document'), which sets out the accountabilities and relationships between the Bank, the Shareholder (HM Treasury) and the Shareholder Representative (UK Government Investments).

**13.** In March 2022, ahead of the Bank's first strategic plan, the Chancellor wrote to the Bank to outline the UK Government's policy priorities for the institution and to provide additional clarity on its mandate. The letter sets out the Chancellor's expectations for the Bank:

- to work constructively with government and institutions in each nation of the UK to maximise the impact of its investments;
- to develop a nuanced understanding of the characteristics of the market in all four nations so that it can target its investments appropriately;
- to prioritise the building of strong relationships with the Scottish National Investment Bank and the Development Bank of Wales and working closely with the Northern Ireland Executive in ways that are compatible with the UK's devolution arrangements;
- to focus its investment and engagement towards building its presence in the market in all four nations; and
- to monitor the impact that the Bank is having in each nation.

**14.** The Bank published its Strategic Plan 2022 in June 2021.

## 3. The UK Infrastructure Bank Bill

### Purpose of the Bill

**15.** The UK Infrastructure Bank Bill ('the Bill') was introduced in the House of Lords on 11 May 2022.

**16.** The Explanatory Notes ('EN') to the Bill state:

*"The purpose of this Bill is to place the UK Infrastructure Bank ('the Bank') on a statutory footing. The Bank is an operationally independent institution wholly owned by government. The Bank's purposes are to help tackle climate change and to support regional and local economic growth, through investment in infrastructure (emphasis added)."*

### Progress through the UK Parliament

**17.** The Bill completed Report Stage in the House of Lords on 4 July 2022, where a series of amendments were agreed. Further details of amendments relevant to our consideration can be found in Section 5 of this report.

**18.** The Bill had its first reading in the House of Commons on 11 July 2022. The date for second reading has yet to be announced.

## 4. The LCM and SLCM

### Provisions for which consent is required

**19.** According to the LCM, Senedd consent is required for the entire Bill (clauses 1 to 11) as the Senedd has competence to legislate in the same or similar terms in relation to Wales. The LCM states:

*"The main subject matter of the Bill, providing financial assistance and advisory support to projects relating to infrastructure (to include water, electricity, gas, telecommunications, sewerage, railways (including rolling stock), roads or other forms of transport and climate change), is a devolved area of the law."*

**20.** Paragraphs 24 to 42 of the LCM outline the provisions of the Bill for which the Welsh Government considers Senedd consent is required.

- 21.** Paragraphs 43 to 46 of the LCM set out the UK Government’s view on consent.
- 22.** According to the UK Government, Senedd consent is only required for clauses 2,3,4,5,8 and 11 of the Bill.

### **Amendments for which consent is required**

- 23.** Paragraphs 14 to 29 of the Supplementary LCM provide details of amendments to the Bill agreed at Report Stage in the House of Lords for which the Welsh Government considers Senedd consent is required.
- 24.** According to the Supplementary LCM, “The UK Government’s view on the need for consent remains the same as outlined in the first LCM tabled on 25 May 2022”.

### **The Welsh Government’s current policy position**

**25.** The LCM states “the Bill as currently drafted threatens devolved competencies. i.e., powers are reserved for UK Ministers and HM Treasury in a manner that undermines the responsibilities and obligations Welsh legislators were elected to protect”.

**26.** It goes on to state:

*“The Bill as introduced provides no role for the Senedd, the Welsh Ministers, or Welsh Government officials in the governance of the Bank, while reserving certain activities for Parliament, the Chancellor and HM Treasury, such as the power for HM Treasury to amend the Bank’s strategic direction including in areas of devolved competence without consulting the Senedd or Welsh Government.”*

**27.** The LCM explains that “Welsh Government officials have sought amendments relating to the remit of the bank in areas of devolved competence to ensure devolution is respected, but to date the UK Government has not yet made any such changes”. The Minister has written to the UK Government “to advocate that the Senedd, the Welsh Ministers and Welsh Government officials all exercise equivalent powers to those of our UK counterparts”. She has called for the UK Government “to amend the Bill to enable the Senedd and the Welsh Ministers to take their appropriate role within Governance structures to ensure proper democratic accountability”.

**28.** In conclusion, the LCM reiterates that a number of the clauses for which Senedd consent is needed “are of constitutional concern to the Welsh Government, thus, despite the merits of some of the clauses, the Welsh Ministers’ final position on whether to recommend consent is

subject to the outcome of ongoing discussions with the UK Government regarding bringing forwards amendments to the Bill”.

**29.** The SLCM explains the UK Government has yet to make any amendments to the Bill to address the Welsh Government’s concerns.

## 5. Clauses of interest to the Committee

**30.** The following paragraphs provide an explanation of the clauses of particular interest to the Committee, given its remit, and amendments made to those clauses during Report Stage in the House of Commons.

### Clause 2 – objectives and activities

**31.** Clause 2(3) provides the Bank’s objective are: to help tackle climate change, including by supporting efforts to meet the target for 2050 set out in section 1 of the Climate Change Act 2008, and to support regional and local economic growth.

**32.** Clause 2(4) provides the Bank’s activities are: providing financial assistance to projects wholly or mainly relating to infrastructure; providing loans to relevant public authorities for such projects; acting as a centre of expertise and providing advisory and other support services in relation to such projects; and any other activities that are incidental or conducive to, or otherwise connected with, the aforementioned activities.

**33.** Clause 2(5) of the Bill, as introduced to the House of Lords, provided the meaning of ‘infrastructure’ includes technologies and facilities relating to: water, electricity, gas, telecommunications, sewerage or other services (including the provision of heat), railways (including rolling stock), roads or other forms of transport; and climate change (including the removal of greenhouse gases from the atmosphere).

**34.** As set out in the Supplementary LCM, during the House of Lords Report Stage, amendments were made to expand the meaning of ‘infrastructure’ so as:

- to include ‘structures underpinning the circular economy, and nature-based solutions’; and
- to make it clear that energy efficiency, in relation to electricity, gas and the provision of heat, is within the definition of infrastructure.

**35.** Clause 2(7) provides that the Treasury may, by regulations, amend the Bank’s objectives and activities. These regulations would be subject to approval by the UK Parliament.

### **Clause 3 – Strategic priorities and plans**

**36.** Clause 3 places a requirement on the Treasury to prepare a statement of strategic priorities for the Bank within six months of the Act coming into force. The Treasury may revise or replace the statement. A copy of the statement (or revised statement) must be laid before the UK Parliament.

**37.** The Bank must publish and act in accordance with strategic plans which reflect the Treasury’s statement, and update those plans whenever the Treasury revises or replaces its statement.

## **6. Committee consideration**

### **Alignment with Welsh strategic priorities**

**38.** During its consideration of the memoranda, the Committee considered whether and how the Bank’s strategic priorities and objectives align with those of the Welsh Government.

**39.** John Flint, Chief Executive Officer of the UK Infrastructure Bank explained the Bank held regular meetings with the Welsh Government, Welsh local authorities and wider stakeholders, including the Development Bank of Wales, which “helped to align” its Strategic Plan with Welsh priorities and policy drivers. He added:

*“When making investment decisions we consider the extent to which each investment opportunity delivers on our Strategic Plan and towards wider UK policy on climate change and economic infrastructure, including that of Wales”.*

**40.** John Flint said the Bank’s Strategic Plan “will be refreshed regularly and so will remain up to date with Welsh policy”. In addition, he said the Bank will continue to engage frequently with Welsh Government, local authorities, and other market players on the delivery of the Plan.

**41.** Although the Minister said the Bank “has the potential to support the Welsh Government’s infrastructure priorities”, she emphasised the need for equivalence between administrations in terms of the Bank’s governance. This would enable the Welsh Government (and the other Devolved Governments) to influence the setting of the Bank’s Strategic Priorities and Plans.

## The Bank's statutory objectives

### A nature objective?

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**42.** The Bank's statutory objectives are to help tackle climate change and to support economic growth. Alongside Spring Budget 2021, the UK Government committed to review the case for "broadening the UK Infrastructure Bank's environmental objectives" to include areas such as improving the UK's natural capital. In reporting its findings, the UK Government concluded:

*"...we believe that support for nature-based solutions can be delivered through the Bank's existing policy framework, without the addition of a specific third objective on nature. This will enable the Bank to focus on building its capability to meet its two stretching objectives on tackling climate change and supporting regional and local economic growth".*

**43.** However, it went on to "encourage the Bank to consider the role it could play in nature-based solutions and how that might develop over time".

**44.** The Committee sought the Minister's view on the Bank's objectives, including whether they should be extended, for example, to include tackling the decline in biodiversity. According to the Minister, the objectives "are sufficiently broad to encompass a comprehensive range of interventions with respect to climate change, including biodiversity, nature-based solutions or the circular economy". However, she added, "I would not be averse to seeing these objectives on the face of the Bill".

**45.** The Minister reiterated the need for equivalence between administrations in terms of the Bank's governance, so as to enable them to have a say in honing of the Bank's objectives where necessary.

### Balancing objectives

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**46.** The Framework Document recognises the potential for tension between the Bank's objectives to help tackle climate change and to support economic growth, particularly in the near term. It states, "Where an investment is primarily to support economic growth, the [Bank] will ensure that it does not do significant harm against its climate objective". In commenting on this, the Minister said, "it is clear to me that the Bank's exercise of due diligence in regard of this stipulation must be central to determining whether a project is supported or otherwise".

**47.** The Committee asked John Flint to explain how the Bank determines whether an investment would "do significant harm". He told us:

*"All investments financed by the Bank undergo environmental, social, resilience & governance (ESRG) screening. Our identification of ESRG concerns and "significant harm" is risk-based and seeks to ensure that adequate mitigations are in place. This includes, amongst other things, assessing how projects manage their direct and indirect environmental and social impact, the climate resilience of their projects, risks and the robustness of their ESRG governance structures. UKIB requires ongoing regular reporting on key metrics and annual and environmental reports from our clients to ensure ongoing alignment with our mandate."*

**48.** John Flint added the Bank is "currently further enhancing our ESRG, including improving our approach to "do no significant harm", so ensuring it is fit for purpose in this fast-progressing area". He said details of the Bank's evolving ESRG approach will be set out in its annual reports.

**49.** Even though a specific investment decision may not meet the threshold of 'significant harm', the Committee was concerned that a series of decisions could be considered cumulatively to cause significant harm. The Committee, therefore, asked John Flint to explain whether and how the Bank will consider the cumulative impact of its investment decisions. John Flint said the Bank "recognises the importance of monitoring cumulative impact". He added:

*"We consider every new investment in relation to assets already financed, including impact and additionality. In accordance with our net zero mandate, the cumulative contribution of the Bank to climate mitigation will be measured over time. The location specific environmental characteristics of investment projects are considered in our assessment of cumulative impact, including in relation to our "do no significant harm" principle."*

## **Meaning of infrastructure**

**50.** The Committee sought the Minister's views on the meaning of 'infrastructure'. She told us, the meaning "appears to be reasonably broad". Again, she reiterated the need for equivalence between administrations in terms of the Bank's governance, so as to enable the UK Government and the Devolved Administrations "to revisit collaboratively and with full respect to devolved competencies the objectives and definitions if they were found, for example, to be too restrictive".

**51.** The Framework Document sets out types of projects the Bank should not support, including projects involving extraction, production, transportation and refining of crude oil, natural gas or thermal coal with 'very limited exemptions'. It provides a non-exhaustive list of

exemptions. The Committee asked John Flint to provide details of the criteria the Bank uses when determining whether a project should be subject to an exemption. He explained:

*"Exemptions will be considered in the context of the energy transition where the benefit of moving a technology, business or sector to a lower carbon emissions intensity is crucial to net zero and we can evidence the relative avoided emissions from the investment. Fossil fuel generation of any kind will only be considered by exception with adequate and proportionate carbon capture storage where emissions will be reduced over the lifetime of the asset. Judgements on exemptions will always be made in collaborative and transparent fashion."*

**52.** John Flint also explained the Bank is required to seek written approval from shareholders "before entering into any transaction that is or could be deemed novel, contentious, or repercussive". He said, "Where possible and practical to do so, we will look to consult with the Welsh Government on any potentially contentious issues arising from our activities in Wales".

## Our view

A role for the Welsh Government and the Senedd

If Wales is to reach its 2050 net zero target it will require significant infrastructure investment from both the public and the private sectors. We believe the Bank could potentially play an important role in scaling up and accelerating investment to support Wales' transition to net zero. While we support, in principle, the creation of the Bank, we have serious concerns about the Bill, as drafted.

The Bank, which will operate on a UK-wide basis, will exercise functions in Wales in areas of devolved competence. The Bill fails to take account of this. There is no role for the Welsh Government or the Senedd in the Bank's governance arrangements: the Bank's strategic priorities are set by the UK Government (clause 3); the power to amend the Bank's activities and the meaning of 'infrastructure' rest with the UK Government and UK Parliament (clause 2); the power to give direction to the Bank about how to deliver its objectives rests with the UK Government (clause 4); and oversight of the Bank's effectiveness will be a matter for the UK Parliament (clause 9). This is unacceptable.

We support the Welsh Government's calls for the UK Government to amend the Bill to provide the Welsh Government and the Senedd with roles in the Bank's governance equivalent to those

of their UK counterparts. As yet, the Welsh Government has not been prepared to share details of the amendments it is seeking with Senedd committees.

#### Investing in nature

Given the escalating nature emergency and the need to rapidly accelerate action to address it, we are disappointed the UK Government ruled out the inclusion of a statutory nature objective following its review of the Bank's environmental objectives. We believe this is a missed opportunity.

Notwithstanding the above, we were encouraged to hear from the Minister that the Bank's objectives are sufficiently broad to enable investment in nature-based solutions and biodiversity. We welcome the amendment agreed in the House of Lords to expand the meaning of 'infrastructure', which provides legal certainty that nature-based solutions are within the scope of the Bank. We hope this amendment will be retained as the Bill passes through the House of Commons.