

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video Conference via Zoom	P Gareth Williams
Meeting date: 7 November 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 no reporting issues under Standing Order 21.2 or 21.3

(13.30 – 13.35)

(Page 1)

Attached Documents:

LJC(6)-28-22 – Paper 1 – Draft report

Made Negative Resolution Instruments

2.1 SL(6)271 – The Education (Induction Arrangements for School Teachers) (Wales) (Amendment) Regulations 2022

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

(13.35 – 13.45)

Made Negative Resolution Instruments



**Senedd Cymru
Welsh Parliament**

3.1 SL(6)272 – The Child Minding and Day Care (Disqualification) (Wales) Regulations 2022

(Pages 2 – 8)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-28-22 – Paper 2 – Draft report

3.2 SL(6)276 – The Renting Homes (Fitness for Human Habitation) (Wales) (Amendment) Regulations 2022

(Pages 9 – 10)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-28-22 – Paper 3 – Draft report

Affirmative Resolution Instruments

3.3 SL(6)270 – The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022

(Pages 11 – 13)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-28-22 – Paper 4 – Draft report

Composite Draft Affirmative Instruments

3.4 SL(6)275 – Agricultural Holdings (Fee) Regulations 2022

(Pages 14 – 15)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-28-22 – Paper 5 – Draft report

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

(13.45 – 13.50)

4.1 SL(6)267 – The Marketing of Seeds and Plant Propagating Material (Wales) (Amendment) (EU Exit) Regulations 2022

(Pages 16 – 18)

Attached Documents:

LJC(6)–28–22 – Paper 6 – Report

LJC(6)–28–22 – Paper 7 – Welsh Government response

5 Written Statements under Standing Order 30C

(13.50 – 14.00)

5.1 WS–30C(6)014 – The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2022

(Pages 19 – 24)

Attached Documents:

LJC(6)–28–22 – Paper 8 – Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 20 October 2022

LJC(6)–28–22 – Paper 9 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 21 October 2022

LJC(6)–28–22 – Paper 10 – Commentary

5.2 WS–30C(6)015 – The Trade in Animals and Related Products (Amendment and Legislative Functions) Regulations 2022

(Pages 25 – 29)

Attached Documents:

LJC(6)–28–22 – Paper 11 – Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 21 October 2022

LJC(6)–28–22 – Paper 12 – Commentary

5.3 WS-30C(6)016 – The Animals and Animal Health, Feed and Food, Plants and Plant Health (Amendment) Regulations 2022

(Pages 30 – 33)

Attached Documents:

LJC(6)-28-22 – Paper 13 – Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 21 October 2022

LJC(6)-28-22 – Paper 14 – Commentary

5.4 WS-30C(6)017 – The Food and Feed (Miscellaneous Amendments) Regulations 2022

(Pages 34 – 39)

Attached Documents:

LJC(6)-28-22 – Paper 15 – Written Statement by the Deputy Minister for Mental Health and Wellbeing, 24 October 2022

LJC(6)-28-22 – Paper 16 – Commentary

6 Inter-Institutional Relations Agreement

(14.00 – 14.05)

6.1 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Control of Mercury (Amendment) (EU Exit) Regulations 2022

(Pages 40 – 42)

Attached Documents:

LJC(6)-28-22 – Paper 17 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 21 October 2022

6.2 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Phytosanitary Conditions (Amendment) (No. 3) Regulations 2022

(Pages 43 – 44)

Attached Documents:

LJC(6)-28-22 – Paper 18 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 25 October 2022

6.3 Written Statement by the Minister for Finance and Local Government: The Subsidy Control (Subsidies and Schemes of Interest or Particular Interest) Regulations 2022

(Pages 45 – 46)

Attached Documents:

LJC(6)-28-22 – Paper 19 – Written Statement by the Minister for Finance and Local Government, 1 November 2022

7 Papers to note

(14.05 – 14.15)

7.1 Written Statement by the Minister for Finance and Local Government: The Welsh Tax Acts etc. (Power to Modify) Act 2022

(Pages 47 – 52)

Attached Documents:

LJC(6)-28-22 – Paper 20 – Written Statement by the Minister for Finance and Local Government, 24 October 2022

7.2 Correspondence from the Minister for Climate Change to the Llywydd: Social Housing (Regulation) Bill

(Pages 53 – 54)

Attached Documents:

LJC(6)-28-22 – Paper 21 – Letter from the Minister for Climate Change to the Llywydd, 24 October 2022

7.3 Correspondence from the Minister for Climate Change: Welsh Government response to the Committee's report on the Environmental Protection (Single-use Plastic Products) (Wales) Bill

(Pages 55 – 60)

Attached Documents:

LJC(6)-28-22 – Paper 22 – Letter from the Minister for Climate Change, 25 October 2022

**7.4 Written Statement and correspondence from the Minister for Economy:
Border Controls Regulations**

(Pages 61 – 67)

Attached Documents:

LJC(6)-28-22 – Paper 23 – Written Statement by the Minister for Economy, 27 October 2022

LJC(6)-28-22 – Paper 24 – Letter from the Minister for Economy, 27 October 2022

7.5 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: WS-30C(6)011 – The Animals, Food, Plant Health, Plant Propagating Material and Seeds (Miscellaneous Amendments etc.) Regulations 2022

(Pages 68 – 72)

Attached Documents:

LJC(6)-28-22 – Paper 25 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 31 October 2022

LJC(6)-28-22 – Paper 26 – Letter to the Minister for Rural Affairs and North Wales, and Trefnydd, 4 October 2022

7.6 Correspondence regarding the Legislative Consent Memorandum on the Levelling Up and Regeneration Bill

(Pages 73 – 79)

Attached Documents:

LJC(6)-28-22 – Paper 27 – Letter to the Minister for Climate Change, 2 November 2022

LJC(6)-28-22 – Paper 28 – Letter from the Local Government and Housing Committee to the Minister for Climate Change, 1 November 2022

**7.7 Written Statement by the Counsel General and Minister for the Constitution:
The Retained EU Law (Revocation and Reform) Bill**

(Pages 80 – 81)

Attached Documents:

LJC(6)-28-22 – Paper 29 – Written Statement by the Counsel General and Minister for the Constitution, 3 November 2022

**7.8 Correspondence from the Parliamentary Under-Secretary of State for Justice:
Access to Justice: Summary of Engagement**

(Pages 82 – 85)

Attached Documents:

LJC(6)-28-22 – Paper 30 – Letter from the Parliamentary Under-Secretary of State for Justice, 3 November 2022

LJC(6)-28-22 – Paper 31 – Letter to the Deputy Prime Minister, Lord Chancellor and Secretary of State for Justice, 12 July 2022

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

(14.15)

9 Discussion on correspondence related to legislative matters

(14.15 – 14.20)

Statutory Instruments with Clear Reports 7 November 2022

SL(6)271 – The Education (Induction Arrangements for School Teachers) (Wales) (Amendment) Regulations 2022

Procedure: Made Negative

The Education (Induction Arrangements for School Teachers) (Wales) (Amendment) Regulations 2022 (“the 2022 Regulations”) amend the Education (Induction Arrangements for School Teachers) (Wales) Regulations 2015 (“the 2015 Regulations”).

The 2022 Regulations are made by the Welsh Ministers under sections 17 and 47(1) of the Education (Wales) Act 2014 which allows the Welsh Ministers to make provision for, and in connection with, the requirement for registered persons to have satisfactorily completed an induction period.

The 2022 Regulations will amend the 2015 Regulations to make the following changes to the statutory induction arrangements for newly qualified teachers (“NQT”) in Wales:

- A NQT will be able to serve induction in a pupil referral unit.
- A NQT will be required to satisfactorily complete their induction period within five years of the later of the date of award of their qualified teacher status or the date of the 2022 Regulations coming into force, unless the appropriate body (“AB”) extends this time limit. The AB must extend this time limit for a NQT in circumstances where the NQT’s induction period is extended (by a decision of the AB or the Education Workforce Council) and there is insufficient time available for the AB to make a determination upon the completion of that extended induction period by the NQT. The AB can extend the time limit where it is satisfied that there are good reasons for doing so and the NQT consents.
- The AB will have discretion to reduce the length of an NQT’s induction period to a minimum of one school term or 110 school sessions where it is satisfied that the NQT has achieved the professional standards which they must meet in order to satisfactorily complete the induction period, and the NQT is in agreement.

Parent Act: Education (Wales) Act 2014

Date Made: 12 October 2022

Date Laid: 17 October 2022

Coming into force date: 07 November 2022



Agenda Item 3.1

SL(6)272 – The Child Minding and Day Care (Disqualification) (Wales) Regulations 2022

Background and Purpose

The Child Minding and Day Care (Disqualification)(Wales) Regulations 2022 (the “Regulations”) set out the categories of persons who are disqualified from registration in Wales as a child minder or provider of day care under Part 2 of the Children and Families (Wales) Measure 2010.

Persons disqualified under these Regulations must not act as child minders in Wales, provide day care or be concerned in the management of any provision of day care.

The Regulations revoke similar regulations from 2010 and update the list of offences, orders and determinations which disqualifies a person from working in regulated childcare in Wales.

Schedule 3 to the Regulations includes further additional criminal offences over and above those which currently appear in the equivalent regulations applying in England. These include offences associated with voyeurism and the use of violence, threats or any form of coercion to force another person into marriage.

The Regulations remove provisions which disqualify people from being registered to provide regulated childcare based on the fact that they live with someone who is disqualified or someone who works in their household is disqualified. The Regulations also remove some anomalies in existing regulations to ensure that people who have been subject to a Care or Supervision Order themselves in the past are not automatically disqualified from registration.

Procedure

Negative

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

Technical Scrutiny

The following 11 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.

A “guardianship order” constitutes a “relevant order” for the purposes of the Regulations.



A guardianship order is defined in footnote 1 on page 5 by reference to section 30(1) of the Criminal Justice and Court Services Act 2000 (the “2000 Act”).

As explained in the footnote, section 30 of the 2000 Act has been repealed. It is subject to specific savings provisions in SI. 2012/2231, but these do not extend to section 30.

It is therefore unclear whether the term ‘guardianship order’ has been intentionally defined by reference to a repealed provision, or whether it is an error.

A Welsh Government response is requested to clarify.

2. Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 12(3) purports to amend and substitute a date in the Child Minding and Day Care (Wales) Regulations 2010. It states:

*[...] in regulation 2(1), **in paragraph (a)** for “2010” insert “2022”. [emphasis added]*

There are four separate paragraphs (a) in regulation 2, therefore, we do not consider that the drafting of this substitution is sufficiently precise.

Regulation 2 is an interpretation provision and is in the form of an unnumbered list. Paragraph 7.17(1) of [Writing Laws for Wales](#) states that when inserting an entry into an unnumbered list, the most precise way to identify the location of the amendment is usually to specify the existing entry after which the insertion is to be made.

In this regard, we consider the following drafting would more clearly identify the intended location of the substitution:

*[...] in regulation 2(1), **in the definition of “disqualified”**, in paragraph (a) [...]*

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

Schedule 1 to the Regulations list a number of orders and determinations which disqualify a person from registering as a child minder in Wales.

In particular, paragraphs 21(b) and (c) of Schedule 1 (the “Relevant Paragraphs”) relate to circumstances which disqualify a person as a consequence of certain determinations under the Care Standards Act 2000 (“CSA 2000”).

For these purposes, the Relevant Paragraphs both refer to section 20(1) of the CSA 2000. This section makes provision about the “urgent procedure for cancellation in England”. Similar provision is made for Wales in section 20A of the CSA 2000, but this section is not captured by the Relevant Paragraphs.

A Welsh Government response is requested to clarify whether section 20A of the CSA 2000 has been intentionally omitted from the Relevant Paragraphs.



4. Standing Order 21.2 (vii) – that there appears to be inconsistencies between the meaning of its English and Welsh texts

In paragraph 2(e) of Schedule 2 to the Regulations, “gross indecency” has been translated as “anwedduster garw”.

Whilst we note that “anwedduster garw” has previously been used in Welsh statutory instruments; “garw” is not an obvious translation for “gross” in this context.

We note that “gross indecency” is more often translated as “anwedduster difrifol” or “anwedduster dybryd”, which we consider as more appropriate.

In this respect, it would be useful to standardise the translation to ensure the accuracy and consistency of Welsh legislation.

5. Standing Order 21.2 (vii) – that there appears to be inconsistencies between the meaning of its English and Welsh texts

In paragraph 2(j) of Schedule 2, there is a numbering discrepancy between the English and Welsh texts.

The English text refers to section 30 of the Sexual Offences Act 1965. The Welsh text refers to section 29 of the same.

On the basis of the words in brackets in paragraph 2(j), it appears that the English text is accurate.

6. Standing Order 21.2 (vii) – that there appears to be inconsistencies between the meaning of its English and Welsh texts

In paragraph 1(4)(i) of Schedule 3, there is a numbering discrepancy between the English and Welsh texts.

The English text refers to section 63 of the Terrorism Act 2000. The Welsh text refers to section 64 of the same.

On the basis of the words in brackets in paragraph 1(4)(i), it appears that the English text is accurate.

7. Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

The reference to section 23 of the Female Genital Mutilation Act 2003 (the “2003 Act”) in paragraph 1(16)(c) of Schedule 3 to the Regulations should be a reference to section 3 of the 2003 Act.

Section 3 of the 2003 Act relates to the offence of assisting a non-UK person to mutilate overseas a girl’s genitalia, as referenced in the Schedule to the Regulations. The 2003 Act does not contain a section 23.



This error is also in the Welsh text.

8. Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

The reference to section 4 of the Female Genital Mutilation Act 2003 (the “2003 Act”) in paragraph 1(16)(d) of Schedule 3 to the Regulations is incorrect.

Section 4 of the 2003 Act makes provision relating to the extra-territorial nature of offences committed under the 2003 Act.

However, paragraph 1(16)(d) of Schedule 3 refers to the offence of “failing to protect a girl from risk of female genital mutilation”, which is section 3A of the 2003 Act.

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

Paragraph 2(6)(c) to Schedule 3 refers to “offences relating to private fostering” within section 15 of the Foster Children (Scotland) Act 1984 (the “1984 Act”).

Section 15 of the 1984 Act is entitled ‘Offences related to foster children’.

Our understanding is that ‘private fostering’ has a distinct meaning, generally referring to fostering arrangements made without the involvement of local authorities.

Section 15 of the Act does not seem to encompass such arrangements, and the inclusion of the word ‘private’ in paragraph 2(6)(c) to the Regulations may cause confusion.

A Welsh Government response is requested to clarify.

10. Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

The statutory reference in paragraph 3(9) of Schedule 3 to the Regulations is incorrect.

The provision cites the Sexual Offences (Northern Ireland) Order 2009. As far as can be ascertained, there is no such order from 2009

The Welsh text refers to the Sexual Offences (Northern Ireland) Order 2008 (SI. 2008/1769), which appears to be the correct reference.

11. Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

The reference to “Jersey Law 1969” in paragraph 4(a) of Schedule 3 to the Regulations is inaccurate and incomplete. It should state the “Children (Jersey) Law 1969”.

Merits Scrutiny

The following 5 points are identified for reporting under Standing Order 21.3 in respect of this instrument.



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

The Regulations revoke, replace and update the “2010 Regulations”¹. One key policy change from the 2010 Regulations is in respect of disqualification from regulated childcare by association.

Under the 2010 Regulations, a person can be disqualified from working in childcare in Wales based on their association with someone who lives or works in their household who is disqualified (i.e. who has committed an offence or been made subject of orders or determinations falling within the scope of the 2010 Regulations).

The 2022 Regulations have been drafted to remove the disqualification by association provision in respect of registered persons providing childcare on non-domestic premises (normally a person providing care away from their home, such as in a day care setting).

The effect of this is that a person is not disqualified from providing regulated childcare at a non-domestic premises, notwithstanding that they live with someone who is disqualified. However, the [consultation document](#) for the Regulations states:

“the provision will still apply to the majority of child minders who work from their home”.

A Regulatory Impact Assessment in respect of this policy change (and others) is contained in the Explanatory Memorandum.

It notes that the level of risk to children’s safety arising from the association of a registered person in non-domestic settings “is considerably lower” than the risk posed in domestic settings. It also notes that such change will align policies across England and Wales

13. 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.

A [consultation](#) was undertaken on a draft of the Regulations between 31 March – 23 June 2022. The Committee notes the following paragraphs from the Explanatory Memorandum:

The consultation was drawn to the attention of a wide audience of key stakeholders including all registered childcare and play work providers, local authorities, the Children’s Commissioner for Wales, and third sector organisations representing the childcare and play work organisations. [...]

There was broad agreement to all the proposals in the consultation. No amendments were considered necessary to the Regulations. [...]

14. 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 Committee notes certain concerns about the accessibility of the Regulations

¹ The Child Minding and Day Care (Disqualification)(Wales) Regulations 2010



Users of the Regulations must check the Schedules to ascertain which orders, determinations or offences disqualify them from being involved in regulated childcare in Wales. Generally, the entry listed in the Schedules clearly identify the disqualifying provision. For example:

*"a refusal of P's application for registration **under section 13** of the Care Standards Act 2000" [emphasis added]*

However, a reference to the relevant sections of each legal instrument has not been included for every entry. One example is paragraph 15 of Schedule 1 to the Regulation. This provides that a person is disqualified if they have been subject to:

"A fit person order, a parental rights order or a training school order under the Children and Young Persons Act (Northern Ireland) 1968".

This Act contained 182 sections. By not expressly inserting the relevant section number under which such orders were made, it is challenging for the reader to identify the relevant provisions of the cited Act. In this particular example, the difficulties are compounded as the relevant provisions have subsequently been repealed and may not be accessible without specialist legislative software.

We also note accessibility concerns in respect of citing legal instruments from the Channel Islands and the Isle of Man.

One particular example is in respect of paragraph 23(f) of Schedule 1 which refers to the Children and Young Persons Act 2001. The Regulations state that this is an "Act of Tynwald". The first time this phrase is used, we consider it would be useful to assist the reader by adding a footnote explaining this means an Act passed by the Isle of Man parliament. Further, as the relevant provisions of this Act have been repealed, they are not easily accessible.

15. 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.

Although the Committee notes that they do not form part of these Regulations themselves, over 40 errors have been found in the footnotes to these Regulations which have been notified separately to Welsh Government officials. Footnotes are a useful tool for readers of legislation only insofar as they are accurate and the Committee therefore encourages the Welsh Government to ensure that this is the case.

16. 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.

Although the Committee notes that the Explanatory Note does not form part of these Regulations themselves, it is unclear whether a paragraph outlining regulation 9 is accurate.

Under regulation 9, a person is not disqualified from registering as a child minder or from providing day care if they receive a waiver by way of written consent, and such written consent has not been withdrawn.



The Explanatory Note states:

Regulation 9 does not apply where the disqualification arises from inclusion on List 99 or the list kept under section 1 of the Protection of Children Act 1999, being barred from regulated activity relating to children under the Safeguarding Vulnerable Groups Act 2006 or where a court has ordered that a person must not work in contact with children following a conviction for certain offences against children.

We interpret 'does not apply' in this context to mean that waivers are not permissible where a person has been subject to one of these outcomes.

However, our understanding of regulation 9 is that waivers are permissible in relation to all of these outcomes, except in relation to certain offences against children under the Criminal Justice and Court Services Act 2000 (as set out in regulation 9(2)).

A Welsh Government response is requested to clarify.

Welsh Government response

A Welsh Government response is required in relation to all reporting points, save for points 12 and 13.

Legal Advisers

Legislation, Justice and Constitution Committee

31 October 2022



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Pack Page 8

Legislation, Justice and Constitution Committee

SL(6)276 – The Renting Homes (Fitness for Human Habitation) (Wales) (Amendment) Regulations 2022

Background and Purpose

The Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022 (“the 2022 Regulations”) prescribe the matters and circumstances to which regard must be had when determining whether a dwelling is fit for human habitation.

These Regulations amend the 2022 Regulations by:

- Extending the period within which the landlord must provide the contract-holder with a copy of the electrical condition report from seven days to 14 days. The time period for providing written confirmation of remedial work to the contract-holder is similarly extended.
- Updating the reference to the Electrical Wiring Regulations BS7671 to reflect the most recent version published in 2022 by the British Standards Institution.

Procedure

Negative

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

Technical Scrutiny

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

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In regulation 2(2)(a) there is a reference to “paragraph (a)”. This is incorrect as the reference should be to “*sub-paragraph (a)*” (*emphasis added*) as it is referring to a subdivision within paragraph (3) of regulation 6 of the 2022 Regulations.

Merits Scrutiny

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

Welsh Government response

A Welsh Government response is required.



Legal Advisers
Legislation, Justice and Constitution Committee
1 November 2022



SL(6)270 – The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022

Background and Purpose

These Regulations make amendments to primary legislation in consequence of the provisions of the Renting Homes (Wales) Act 2016 (“the 2016 Act”).

Generally, these amendments either:

- (a) ensure that existing provision in primary legislation continues to have appropriate effect by referencing the relevant occupation contracts alongside references to existing types of tenancies or by including the terminology used in the 2016 Act; or
- (b) where the provisions of the 2016 Act are intended to replace elements of existing law or the existing law is incompatible with that set out in the 2016 Act, by disapplying that law.

The Explanatory Memorandum to these Regulations states that these amendments are necessary to implement the 2016 Act, provide coherence and clarity, and ensure consistency of the law.

A draft of these Regulations was laid before the Senedd on 21 June 2022 but subsequently withdrawn on 11 July 2022, following the report of this Committee. An amended version of the draft Regulations was laid before the Senedd on 15 July 2022. This amended version was withdrawn on 10 October 2022, following the report of this Committee. A further amended version, which is the subject matter of this report, was laid on 11 October 2022.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

The following 2 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

Regulation 32(3) amends the Energy Act 2011 to exclude a property where the landlord is a community landlord from what is a “domestic private rented property” under section 42 of that Act. The existing provision refers to registered social landlords. As the definition of



community landlord under section 9 of the 2016 Act includes additional bodies such as local authorities, it appears that the amendment expands the provision to exclude standard contracts with bodies other than registered social landlords. Clarification is sought as to whether this is the intention of the amendment.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In its report on an earlier draft of these Regulations, the Committee noted that regulation 34(2) included a reference to “the tenant’s share (within the meaning given by that section)”, but that it appeared that the text should be “the tenant’s total share (within the meaning given by that section)” because “total share” is a defined term in section 7(7) of the Leasehold Reform, Housing and Urban Development Act 1993 (“1993 Act”).

In its response of 18 July 2022, the Welsh Government disagreed and stated that:

“The current drafting reflects the wording in the definition of “domestic tenancy” set out at section 2(1)(a)(ii) of the Housing (Wales) Act 2014.”

The wording in regulation 34(2) is “the tenant’s share (within the meaning given by that section)”, with “that section” referring to section 7(7) of the 1993 Act. Further it is noted that regulation 35(4)(a)(iii), which amends section 88 of the Consumer Rights Act 2015, includes a reference to “tenant’s total share (within the meaning given by that section)”, which again is a reference to section 7(7) of the 1993 Act.

It is noted that the definition of “domestic tenancy” in section 2(1)(a)(ii) of the Housing (Wales) Act 2014 includes a reference to “the tenant’s share (within the meaning given by that section)”, which again refers to section 7(7) of the 1993 Act. However, it would appear that the reference to “tenant’s share” in the Housing (Wales) Act 2014 may also be incorrect as the definition contained in the 1993 Act is “total share”. It therefore appears that the reference to “tenant’s share” in regulation 34(2) is incorrect.

Merits Scrutiny

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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

Regulation 1 provides that various parts of regulation 25 come into force once section 120 of, and various paragraphs of Schedule 8 to, the Housing and Planning Act 2016 come into force. Neither the Explanatory Memorandum nor the Explanatory Notes give any indication as to when these provisions are expected to be brought into force.



This point was previously reported in relation to earlier drafts of these Regulations. In its response of 18 July 2022, the Welsh Government explained that it does not have any information about when the relevant provisions of the Housing and Planning Act 2016 will be brought into force.

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

No consultation has been carried out in relation to these Regulations. The Explanatory Memorandum to the Regulations notes that:

“No formal consultation has taken place as these Regulations make only consequential technical amendments.”

Welsh Government response

Technical Scrutiny point 1

The Welsh Government confirms it was the intention of the amendment to exclude property where the landlord is a community landlord from the definition of what is a “domestic PR property”. This is to reflect the current legal position, as Local Authority tenancies cannot be assured tenancies by virtue of section 1 of and Schedule 1 to the Housing Act 1988. The purpose of the relevant provisions within the Chapter 2 of the Energy Act 2011 is to impose obligations on landlords of property in the private rented sector in relation to energy efficient measures. Accordingly, the amendment made by regulation 32(3) is necessary to reflect the intention of section 42 of the Energy Act 2011.

Technical Scrutiny point 2

The Welsh Government remains of the view that the meaning of “tenant’s share”, in paragraph (a)(ii) of the definition of “domestic tenancy” at section 2(1) of the Housing (Wales) Act 2014, is clear within the context of that provision. Regulation 34(2) simply makes amendments to that definition of “domestic tenancy” which are consequential upon the Renting Homes (Wales) Act 2016.

Legal Advisers

Legislation, Justice and Constitution Committee

26 October 2022



Agenda Item 3.4

SL(6)275 – Agricultural Holdings (Fee) Regulations 2022

Background and Purpose

The Agricultural Holdings (Fee) Regulations 2022 (“the Regulations”) revoke and replace the Agricultural Holdings (Fee) Regulations 1996 (“the 1996 Regulations”) which were also made on an England and Wales basis.

These Regulations increase the prescribed statutory fee that can be charged by a professional authority for the appointment of an independent arbitrator to resolve disputes or to make certain records in relation to agricultural tenancies governed by the Agricultural Holdings Act 1986. These Regulations set the fee to be paid at £195. The corresponding fee prescribed under the 1996 Regulations was £115.

The Regulations also introduce a new statutory duty on the Welsh Ministers to carry out a review of the Regulations every five years in relation to Wales. An equivalent duty is placed on the Secretary of State in relation to England.

Procedure

Draft affirmative.

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

Technical Scrutiny

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

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

These Regulations have been laid before Senedd Cymru and the United Kingdom Parliament. The Regulations have been made in English only. The Welsh Government’s Explanatory Memorandum states as follows:

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

Merits Scrutiny

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

Welsh Government response



A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

28 October 2022



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

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Agenda Item 4.1

SL(6)267 – The Marketing of Seeds and Plant Propagating Material (Wales) (Amendment) (EU Exit) Regulations 2022

Background and Purpose

These Regulations make operability amendments to the Seed Marketing (Wales) Regulations 2012 and the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017.

The Welsh Government explains in its Explanatory Memorandum that these amendments are “required as a result of the UK’s Exit from the European Union” and that they “amend secondary legislation relating to the marketing of seed and fruit planting material to correct operability deficiencies that were not accounted for in earlier amending instruments.”

Procedure

Negative

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

Technical Scrutiny

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

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

In regulation 1, in the English version, the Regulations are titled the “Marketing of Seeds and Plant Propagating Material **(Wales) (Amendment)** (EU Exit) Regulations 2022” (emphasis added). However, in regulation 1 of the Welsh version of the Regulations, the Regulations are titled “Rheoliadau Marchnata Hadau a Deunyddiau Lluosogi Planhigion **(Diwygio) (Cymru)** (Ymadael â’r UE) 2022” (emphasis added).

It is unclear why “(Wales)” and “(Amendment)”, and “(Cymru)” and “(Diwygio)”, appear in a different order when comparing both versions of the Regulations. Given that these Regulations amend Welsh SIs, as opposed to UK SIs, the order in the English version would appear to be appropriate.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements



In regulation 2(2)(a)(i), in the Welsh version of the Regulations, the closing quotation marks are missing after "...*quarantine pest*")" and prior to "rhodder". Without those closing quotation marks, it may not be clear where the text to be substituted ends, which has a consequence as to the effect of the regulation.

Different approaches are also taken in the English and Welsh versions of the Regulations to the use of quotation marks in regulation 2(2)(a)(i) and (iii). When substituting text, the English version includes the quotation marks preceding the defined term in paragraph A1 of Schedule 2 to the Seed Marketing (Wales) Regulations 2012 (in both the substituted and new text), whilst the Welsh text does not include those preceding quotation marks.

Merits Scrutiny

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

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

A draft of these Regulations was laid before the Senedd for sifting under paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018, in accordance with Standing Order 27.9A. The Committee considered that draft on 26 September 2022 and agreed that the negative procedure was the appropriate procedure for these Regulations.

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

A formal consultation has not been undertaken in respect of these Regulations. In this regard, the following from the Explanatory Memorandum is noted:

"As the Regulations provide a limited amendment, affecting a small number of individuals and does not reflect a change in the Welsh Government's policy, a formal public consultation did not take place."

Welsh Government response

A Welsh Government response is required in relation to reporting points 1 and 2 only.

Committee Consideration

The Committee considered the instrument at its meeting on 24 October 2022 and reports to the Senedd in line with the reporting points above.



Government Response: The Marketing of Seeds and Plant Propagating Material (Wales) (Amendment) (EU Exit) Regulations 2022

Technical Scrutiny Point 1: The Welsh Government agree with the point raised and will seek to remedy this via correction slip at the earliest opportunity.

Technical Scrutiny Point 2: In respect of regulation 2(2)(a) the Welsh Government agree there is a typographical error but consider the missing quotation mark is the opening quotation mark rather than the closing quotation mark. That is: “*pla cwarantín ...*” should read ““*pla cwarantín ...*”.

In respect of the technical scrutiny point raised in respect of regulation 2(2)(a)(i) and (iii), the Welsh Government agree different drafting appears in the English and Welsh versions of the Regulations and will seek to remedy these errors via correction slip at the earliest opportunity.



**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE	The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2022
DATE	20 October 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 MP, Minister for State for Farming, Fisheries and Food to make a Statutory Instrument (SI) titled The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2022 to apply in relation to Great Britain.

The regulations were laid before Parliament on 19 October by the Secretary of State in exercise of powers conferred by the European Union (Withdrawal) Act 2018.

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).

The Welsh Government's general principle is 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 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. Additionally, these regulations make changes which are minor and technical in nature.

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



Llywodraeth Cymru
Welsh Government

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

Huw.irranca-davies@senedd.wales

21 October 2022

Dear Huw,

I refer to my letter to you of 6 October 2022. I am writing to inform the Committee I have given my consent to the Secretary of State to lay The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2022 in relation to Wales. I have laid a Written Statement which can be found at <https://senedd.wales/media/ttgnfl2j/ws-ld15408-e.pdf>.

The Regulations were made by the Secretary of State, in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 and 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 extend to England, Scotland, Northern Ireland and Wales.

The Statutory Instrument (SI) is subject to the affirmative procedure and was laid before Parliament on 19 October 2022.

The Welsh Government's general principle is 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.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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

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

This ensures a coherent and consistent statute book with the regulations being accessible in a single instrument. I consider 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, flowing style.

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

014 - [The Persistent Organic Pollutants \(Amendment\) \(EU Exit\) Regulations 2022](#)

Laid in the UK Parliament: 19 October 2022

Sifting

Subject to sifting in UK Parliament?	No
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(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

Persistent Organic Pollutants (POPs) are toxic chemical substances that break down slowly and can get into the food chain as a result. DDT is an example of a POP.

These Regulations amend the retained Regulation (EU) 2019/1021 of the European Parliament and of the Council on Persistent Organic Pollutants ("the retained POPs Regulation"). When deficiencies in the retained POPs Regulation were corrected in order for it to operate effectively in domestic law after EU Exit, three errors were made. These Regulations correct those three errors by:

1. Removing two functions of the European Commission, and replacing them with functions of the appropriate authority (in Wales, the Welsh Ministers are the appropriate authority).
2. Reinstating a set of exemptions that were omitted in error.
3. Omitting two provisions that are not necessary because they have no legal effect.

These changes will ensure that Great Britain complies with its obligations under the Stockholm Convention, which aims to prohibit, eliminate or restrict the production and use of POPs.

Statement by Welsh Government

Senedd Legal Advisers agree with the statement laid by the Welsh Government dated 20 October 2022 regarding the effect of these Regulations.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.



**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Trade in Animals and Related Products (Amendment and
Legislative Functions) Regulations 2022**

DATE **21 October 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 that I have given consent to the Secretary of State for Environment, Food and Rural Affairs exercising a subordinate legislation-making power in a devolved area in relation to Wales.

The above titled Statutory Instrument (SI) was laid before the UK Parliament by the Secretary of State on 20 October 2022 in exercise of powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

The draft Regulations were made under the European Union (Withdrawal) Act 2018 and address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The retained EU law concerns the importation of animals and related animal products, or the transit of animals and animal products through Great Britain.

The draft Regulations modify European Union Directives, transfer functions of EU bodies within those EU Directives to the appropriate authority and amend the Trade in Animals and Related Products Regulations 2011 and the Trade in Animals and Related Products (Scotland) Regulations 2011 to update the legislative regime and implement the modifications and transfer of functions.

The Welsh Ministers will shortly be making equivalent regulations, which will create a number of regulation-making powers for the Welsh Ministers and amend the Trade in Animals and Related Products (Wales) Regulations 2011.

Impact the instrument may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence:

The draft Regulations do not diminish or undermine the powers of Welsh Ministers in any way. The Secretary of State can only exercise functions in relation to Wales without consent in the case of reserved powers, and the Secretary of State can only exercise functions in relation to Wales in devolved matters with the consent of Welsh Ministers.

Legislation made under the European Union (Withdrawal) Act 2018 is covered by a 'carve out' within the Government of Wales Act 2006 (Amendment) Order 2021, as such the creation of these concurrent-plus functions would not impinge on the Senedd's ability to legislate in this area in future, if it so wished.

I would like to reassure the Senedd 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 have given my consent to these Regulations for reasons of efficiency and expediency in future policy change and adherence to international obligations, cross-government coordination and consistency.

The Regulations were laid in draft before the UK Parliament on 20 October 2022 to come into force the day following a debate which will take place between 11 November and 01 December.

UK MINISTERS ACTING IN DEVOLVED AREAS

015 - [The Trade in Animals and Related Products \(Amendment and Legislative Functions\) Regulations 2022](#)

Laid in the UK Parliament: 20 October 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	Unknown
Date of consideration by the House of Commons Statutory Instruments Committee	Unknown
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Unknown

Background

These Regulations are proposed to be made by the UK Government under section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

These Regulations correct deficiencies in retained EU law that relates to the importation of animals and related products. The Regulations transfer functions of EU bodies to the “appropriate authority” so that the retained EU law operates effectively in domestic law.

These Regulations give functions (including regulation-making powers) to UK Ministers as the appropriate authority. By giving those powers to UK Ministers as the appropriate authority, UK Ministers will (among other things) be able to exercise the powers in devolved areas in Wales, but only with the consent of the Welsh Ministers.

Statement by Welsh Government

These Regulations do not give regulation-making powers to the Welsh Ministers. However, the Welsh Government's written statement of 21 October 2022 says:

"The Welsh Ministers will shortly be making equivalent regulations, which will create a number of regulation-making powers for the Welsh Ministers".

Therefore, when these regulation-making powers will be used in devolved areas in Wales, there will be a choice as to who can exercise them, i.e. it can either be:

1. the Welsh Ministers acting alone, or
2. UK Ministers acting on behalf of Wales, with the consent of the Welsh Ministers.¹

In a letter to the Legislation, Justice and Constitution Committee dated 21 October, Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd sets out the following background regarding the common GB-wide approach in this area:

"Similar functions in the sphere of Animal Health and Welfare have previously been approved on the basis there is a mutual interest for all administrations in the application of coherent disease prevention and the functions in the draft Regulations need to work for the whole of Great Britain. Furthermore, they are exercised in the context of a functioning Common UK Animal Health and Welfare Framework with clearly defined governance processes for cross-government engagement. Any policy changes or use of the powers will be discussed at the Animal Disease Policy Group, which is the governance body of this Common Framework, and where policy decisions are made by consensus.

It is important to note that the Secretary of State's ability to exercise this function depends upon the Welsh Ministers' consent. We envisage this would only happen in exceptional circumstances. This function is therefore appropriate and mirrors what already happens in other legislation and administrative processes in this policy area.

I would like to reassure this committee it is normally the policy of the Welsh Government to legislate for Wales in matters of devolved

¹ The same consent process applies as regards the Scottish Ministers and Scotland.

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, therefore, I am giving my consent to these Regulations for reasons of efficiency and expediency in future policy change and adherence to international obligations, and cross-government coordination and consistency."

Intergovernmental Agreement on the European Union (Withdrawal) Bill

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

Senedd 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.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Animals and Animal Health, Feed and Food, Plants and Plant Health (Amendment) Regulations 2022**

DATE **21 October 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

I am writing to inform the Senedd I have granted consent for the Secretary of State to exercise a delegated legislative power in a devolved area in relation to Wales. The former Minister of State for Farming, Fisheries and Food, Victoria Prentis MP, requested consent to make The Animals and Animal Health, Feed and Food, Plants and Plant Health (Amendment) Regulations 2022.

The above titled statutory instrument (SI) will be made by the Secretary of State in exercise of powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

The Regulations propose amendments to retained direct European Union (EU) law relating to official controls on imports to Great Britain (GB) of animals and animal products, plant products (including food) as well as rules on animal health and welfare, and rules on the marketing of planting and propagating material, following the United Kingdom's withdrawal

from the EU. Such amendments are necessary to ensure that the laws operate effectively in the domestic context and to safeguard human and animal health:

- Part 2 of this instrument concerns corrective amendments to Regulation (EU) No 2016/2031.
- Part 3 consists of several amendments to the Official Controls Regulations (Regulation (EU) No 2017/625).
- Part 4 addresses minor operability amendments to other retained EU Law:
 - Amendment of Regulation (EC) No 999/2001.
 - Amendment of Council Regulation (EC) No 1/2005.
 - Amendment of Annex 2 to Commission Decision 2007/777/EC.
 - Amendment of Annex 1 to Commission Regulation (EC) No 798/2008.
 - Amendment of Annex 1 to Commission Regulation (EC) No 119/2009.
 - Amendment of Commission Implementing Regulation (EU) 2020/625.

It also makes changes to the following legislative acts:

- Part 5 concerns amendments to the Plant Varieties and Seeds Act 1964.
- Part 6 consists of amendments to The Trade in Animals and Related Products (England) Regulations 2011; and Animal Health (Miscellaneous Fees) (England) Regulations 2018.

The SI addresses minor EU exit related deficiencies, further deficiencies not anticipated at the time of withdrawal from the EU and ensures the functioning of a GB-wide imports regime. For these reasons, for efficiency and expediency, and to ensure consistency and coherence of the statute book, I consider it appropriate to consent to the above titled SI. I do so whilst reserving the ability to diverge in future as per our devolved competence.

The regulations were laid in draft in Parliament on 20 October 2022: <http://www.legislation.gov.uk/id/ukdsi/2022/9780348239911>.

UK MINISTERS ACTING IN DEVOLVED AREAS

016 - [The Animals and Animal Health, Feed and Food, Plants and Plant Health \(Amendment\) Regulations 2022](#)

Laid in the UK Parliament: 20 October 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	Unknown
Date of consideration by the House of Commons Statutory Instruments Committee	Unknown
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Unknown

Background

These Regulations are proposed to be made by the UK Government under section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

These Regulations propose amendments to retained EU law relating to official controls on imports to Great Britain of animals and animal products, plant products (including food) as well as rules on animal health and welfare, and rules on the marketing of planting and propagating material, following EU Exit. The amendments are intended to ensure that the laws operate effectively in the domestic context in order to safeguard human and animal health.

For example, the Regulations:

- Make provision relating to penalties for failing to comply with plant health regulations.
- When the appropriate authority is able to act as a competent authority to carry out official controls, there will no longer be a need for the appropriate authority to designate itself as a competent authority (instead, the appropriate authority will, by default, be a competent authority).
- Transfer functions from the European Commission to domestic appropriate authorities. For example, appropriate authorities (the Welsh Ministers, in Wales) are given powers to make regulations to control biosecurity risks (but there is no obligation to do so).
- Extend the transitional periods relating to official controls to detect certain substances and residues in products of animal origin intended for human consumption.

Statement by the Welsh Government

Senedd Legal Advisers agree with the general position set out in the Welsh Government's statement dated 21 October 2022 regarding the effect of these Regulations.

However, the written statement does not give practical examples (like those given above) of the changes being made by these Regulations. These Regulations make important changes to the law on animals, animal health, feed and food, plants and plant health, but they are described only in the most general and high level way in the written statement.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

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

Senedd 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.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	The Food and Feed (Miscellaneous Amendments) Regulations 2022
DATE	24.10.2022
BY	Lynne Neagle MS, Deputy Minister for Mental Health and Wellbeing

The Food and Feed (Miscellaneous Amendments) Regulations 2022 (“The 2022 Regulations”) were laid in draft before the Houses of Parliament on 20 October 2022, according to the affirmative procedure and can be found here:

<https://www.legislation.gov.uk/ukdsi/2022/9780348240047/contents>.

The 2022 Regulations amend the following legislation:

Retained direct EU legislation

- Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed.
- Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition.
- Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin.
- Commission Regulation (EC) No 378/2005 of 4 March 2005 on detailed rules for the implementation of Regulation (EC) No 1831/2003 of the European Parliament and of the Council as regards the duties and tasks of the Community Reference Laboratory concerning applications for authorisations of feed additives
- Commission Decision 2007/305/EC of 25 April 2007 on the withdrawal from the market of Ms1xRf1 (ACS-BNØØ4-7xACS-BNØØ1-4) hybrid oilseed rape and its derived products (notified under document number C(2007) 1805).

- Commission Decision 2007/306/EC of 25 April 2007 on the withdrawal from the market of Ms1xRf2 (ACS-BNØØ4-7xACS-BNØØ2-5) hybrid oilseed rape and its derived products (notified under document number C(2007) 1806).
- Commission Decision 2007/307/EC of 25 April 2007 on the withdrawal from the market of Topas 19/2 (ACS-BNØØ7-1) oilseed rape and its derived products (notified under document number C(2007) 1809).
- Regulation (EC) No 429/2008 of 25 April 2008 on detailed rules for the implementation of Regulation (EC) No 1831/2003 of the European Parliament and of the Council as regards the preparation and the presentation of applications and the assessment and the authorisation of feed additives.
- Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings.
- Regulation (EC) No 152/2009 of 27 January 2009 laying down the methods of sampling and analysis for the official control of feed.
- Regulation (EC) No 450/2009 of 29 May 2009 on active and intelligent materials and articles intended to come into contact with food.
- Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC.
- Regulation (EU) No 619/2011 of 24 June 2011 laying down the methods of sampling and analysis for the official control of feed as regards presence of genetically modified material for which an authorisation procedure is pending or the authorisation of which has expired.
- Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001.

The 2022 Regulations also amend certain EU derived domestic law that applies in relation to England only.

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

The 2022 Regulations transfer new functions to Welsh Ministers. The functions in Articles 8(6) and 20(6) of Regulation 1829/2003 (previously functions of the European Commission) were omitted in error by an earlier EU Exit SI. Those functions will be re-instated and recast as functions of the 'appropriate authority'. The appropriate authority in relation to Wales is the Welsh Ministers.

The 2022 Regulations also make corrections to provisions of retained direct EU legislation in devolved areas in relation to which functions, so far as exercisable in relation to Wales, were transferred to Welsh Ministers under previous EU Exit SIs.

The 2022 Regulations do not impact the Senedd's legislative competence.

The 2022 Regulations make amendments to retained direct EU legislation in the areas of food and feed hygiene and safety for the purpose of rectifying legal deficiencies and ensuring the continued operability of that legislation post Implementation Period.

The purpose of the amendments

The purpose of the 2022 Regulations is to:

- Address a range of remaining deficiencies in retained EU legislation in the field of food and feed safety and hygiene to ensure the continued operability of that legislation post Implementation Period.
- Correct deficiencies that remain as a consequence of errors in previous deficiency amendments made pursuant to section 8 of the European Union (Withdrawal) Act.
- Amend retained Regulation (EC) 1829/2003 on genetically modified organisms for food and feed uses, to reinstate and recast Articles 8(6) and 20(6) to provide the provision to set limited periods of time for the exhausting of current stocks of products to be used up to assist with the withdrawal from the market of GMOs for which authorisation has expired.
- Amend Decisions 2007/305/EC, 2007/306/EC and 2007/307/EC to extend the tolerance period of three withdrawn GMOs for a further three years until 31 December 2025 to allow for trace elements of the withdrawn GMOs to be present in products up to a tolerance of 0.1% and make minor consequential amendment to retained Regulation 619/2011 to reflect the changes to the tolerance periods for these withdrawn GMOs.
- Amend retained Regulation (EU) 2015/2283 on novel foods, to provide for a time-limited transitional period for edible insects, specific to Great Britain (GB). This will permit qualifying edible insects to remain on the market in GB until 31 December 2023 to allow for applications for novel food authorisation to be submitted, and subsequently pending determination of those by the appropriate authority

- Amend retained Regulation (EC) No. 450/2009 on active and intelligent materials and articles intended to come into contact with food, to remove the requirement to use the Do Not Eat pictograph on such products given that the EU, or similar entity, holds the intellectual property rights of the pictograph. The requirement to apply the wording of 'DO NOT EAT' on active and intelligent food contact materials will continue to remain mandatory

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here:

<https://www.legislation.gov.uk/ukdsi/2022/9780348240047/memorandum/contents>.

Why consent was 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 and expediency and to ensure consistency and coherence of the statute book. The amendments have been considered fully and there is no divergence in policy between the Welsh Government and UK Government. These amendments are to ensure that the identified legal deficiencies are corrected and the provisions operate as they were intended, whilst ensuring the continued transitional measures of genetically modified organisms products and ensuring regulatory alignment with NI in this respect.

UK MINISTERS ACTING IN DEVOLVED AREAS

017 - [The Food and Feed \(Miscellaneous Amendments\) Regulations 2022](#)

Laid in the UK Parliament: 24 October 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	Unknown
Date of consideration by the House of Commons Statutory Instruments Committee	Unknown
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Unknown

Background

These Regulations are proposed to be made by the UK Government under section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018

Summary

These Regulations transfer new functions from the European Commission to the Welsh Ministers. The transfer of these functions was omitted in error by an earlier EU Exit SI. The functions will be re-instated and recast as functions of the 'appropriate authority'. The appropriate authority in relation to Wales is the Welsh Ministers.

These Regulations also make corrections to provisions of retained direct EU legislation in devolved areas in relation to which functions, so far as exercisable in relation to Wales, were transferred to Welsh Ministers under previous EU Exit SIs.

These Regulations also make amendments to retained direct EU legislation in the areas of food and feed hygiene and safety for the purpose of rectifying legal deficiencies and ensuring the continued operability of that legislation post Implementation Period

Statement by the Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 24 October 2022 regarding the effect of these Regulations.

The written statement also sets out a helpful summary, with practical examples, of the changes being made by the Regulations.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

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

Senedd 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.



Llywodraeth Cymru
Welsh Government

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

huw.Irranca-Davies@senedd.wales

21 October 2022

Dear Huw,

I refer to my letter to you of 10 October 2022. I am writing to inform the Committee I have given my consent to the Secretary of State for Environment, Food and Rural Affairs to lay the Control of Mercury (Amendment) (EU Exit) Regulations 2022 in relation to Wales. I have laid a Written Statement which can be found at <https://senedd.wales/media/feebwpil/ws-ld15407-e.pdf>

The Regulations were made by the Secretary of State, in exercise of the powers conferred by the European Union (Withdrawal) Act 2018. They 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 extend to England, Scotland and Wales.

The Statutory Instrument (SI) is subject to the negative procedure and was laid before Parliament on 19 October 2022.

The Welsh Government's general principle is 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 as there is no policy divergence between the Welsh and UK Government in this matter.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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

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

This ensures a coherent and consistent statute book with the regulations being accessible in a single instrument. I consider 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 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

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

Llywodraeth Cymru
Welsh Government

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

SeneddLJC@senedd.wales

25 October 2022

Dear Huw

I wish to inform the Committee of the intention to consent to the UK Government making and laying The Phytosanitary Conditions (Amendment) (No. 3) Regulations 2022 ("the Regulations") by 3 November 2022

I received a letter from the previous Minister for State for Farming, Fisheries and Food, requesting consent to the Regulations. The Regulations intersect with devolved policy and will apply to Wales. The Regulations will extend to England, Scotland and Wales and a similar request for consent has been sent to the Scottish Government.

The Regulations will be made by the Secretary of State for Environment, Food and Rural Affairs, in exercise of the powers conferred by Articles 5(3), 30(1), 37(5), 41(3), 72(3) and 105(6) of the Plant Health Regulation. Article 2a(2) of the Plant Health Regulations provides that such Regulations can be made by the Secretary of State with the consent of the Welsh Ministers and the Scottish Ministers.

The Regulations update import controls across a range of pests and diseases in response to new or revised risk assessments. This is a routine update, reflecting technical conclusions agreed through the UK Plant Health Risk Group (the PHRG), of which the Welsh Government is a core member. The Statutory Instrument (SI) is subject to the negative procedure and is due to be laid before the UK Parliament on 3 November. The commencement dates for the measures are split between urgent measures (Thekopsora minima being classified as a regulated non-quarantine pest) which are scheduled to come into force on 25th November 2022 and all the other measures which are classed as non-urgent which will come into force on 3rd May 2023.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

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

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 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 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.

As mentioned, Welsh Government is a member of the PHRG which is part of the governance structure for the Plant Health Common Framework. The proposed legislative amendments have been discussed and approved by the PHRG.

These Regulations do not have implications for the Programme for Government. The purposes of the Regulations include biosecurity. Preventing the entry of plant pests and diseases supports the majority of well-being goals and will have a direct, positive impact in contributing to the national well-being goals of "a healthier Wales" and a 'resilient Wales' together with associated impacts on the goals of "a prosperous Wales" and "a globally responsible Wales".

In accordance with the Inter-Institutional Relations Agreement, I will lay a Written Statement before the Senedd within three working days of the laying of the Regulations before the UK Parliament.

I have written in similar terms to the Chair of the Climate Change, Environment and Infrastructure Committee, Llyr Gruffydd MS.

Yours sincerely

A handwritten signature in cursive script that reads "Lesley Griffiths". The signature is written in a light grey or blue ink on a white background.

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

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE	Written Statement to Members of the Senedd on The Subsidy Control (Subsidies and Schemes of Interest or Particular Interest) Regulations 2022
DATE	1 November 2022
BY	Rebecca Evans MS, Minister for Finance and Local Government

This Written Statement updates Members on the development of regulations relating to the Subsidy Control Act 2022.

On 17 October 2022 the Department of Business, Energy and Industrial Strategy (BEIS) shared an update on the four Statutory Instruments accompanying the Subsidy Control Act 2022 yet to be laid before Parliament, including [‘The Subsidy Control \(Subsidies and Schemes of Interest or Particular Interest\) Regulations 2022’](#).

This final draft has not changed from the most recent draft regulations shared with Welsh Government on 22 July 2022 following the consultation process. During the consultation period I wrote to the then Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy, Paul Scully MP, outlining the Welsh Government’s concerns around the lack of legal certainty arising from the process, the low value of the economic thresholds switching on the requirements and concerns around many of the characteristics of the process. None of the comments or recommendations I made have been accepted or reflected in the final regulations.

These regulations will significantly impact on the ability of public authorities in Wales to award effective and timely subsidies. The lack of clear, legally certain definitions risks the new regime becoming hindered by bureaucracy and legal challenge. The standardisation of the Subsidies of Interest and of Particular Interest thresholds (£5 million and £10 million respectively) risk an oversimplified twin-track approach that is inadequate to reflect the complexities of the UK’s economy. The £5m and £10m thresholds also compare

unfavourably with the previous EU regime, and the additional scrutiny on subsidies in sensitive sectors such as the production of metals, vehicles or energy, that are not present in the current regime, will impact significantly on Wales' economic development.

I have considered the need to lay a statutory instrument consent memorandum and have determined that this draft regulation does not engage either Standing Orders 30A or 30B. Nevertheless, I consider that the regulations, as drafted, will have a significant negative impact upon the devolved competence of economic development and areas of importance to the Welsh Economy. I therefore felt it appropriate to bring this matter to the attention of the Senedd.

**STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE: The Welsh Tax Acts etc. (Power to Modify) Act 2022

DATE: 24 October 2022

BY: Rebecca Evans MS, Minister for Finance and Local Government

The Welsh Tax Acts etc. (Power to Modify) Bill was passed by the Senedd on 12 July 2022 and received Royal Assent on 8 September.

Tax devolution is important. It provides a significant lever through which we are better able to deliver strategic priorities for Welsh citizens and businesses.

The last four years' experience of tax devolution has enabled the Welsh Government to develop considerable tax capability. We have established a distinct Welsh approach to shaping tax policy, and to the delivery of that policy by the Welsh Revenue Authority. Our approach keeps the needs of Welsh citizens, communities, and businesses at the forefront.

Purpose

This Act will provide an additional fiscal lever by permitting the Welsh Ministers to make amendments in response to changes made by the UK government to predecessor UK taxes - that is, to stamp duty land tax and landfill tax - which will affect the Welsh block grant adjustment, and therefore the revenues available for essential public services.

Amendments to the Welsh Tax Acts will also be permitted in order to respond to other external circumstances, such as to ensure the devolved Welsh taxes are not imposed where to do so would be incompatible with any international obligations.

It will also enable the Welsh Ministers to make legislative changes to protect against avoidance activity, which can then be stopped with immediate effect. This includes situations where increased clarity in the legislation will put beyond doubt the intended application of the legislative provisions, and potentially benefit taxpayers by stopping the promotion of avoidance opportunities that do not actually exist. Such action has been taken by the UK government to protect tax regimes and taxpayers in the past and the Welsh Ministers will now be able to take similar action.

Lastly, this Act will allow the Welsh Ministers to make changes where a court or tribunal decision identifies an issue that the Welsh Ministers consider could benefit from legislative change, or greater clarification of the law. This includes decisions relating to the Welsh Tax Acts, UK predecessor taxes, other taxes, or other laws that may affect the devolved taxes.

Retrospective effect

This Act allows the Welsh Ministers to make regulations which may have retrospective effect. The use of the power retrospectively will be considered on a case-by-case basis as justification for each use may differ, depending upon the purpose.

This will include situations where the impact of the regulations is to confer a benefit to Welsh taxpayers. For example, the Welsh Government may want Welsh taxpayers to benefit from a reduction in their tax liability from the same date that a change was introduced in England. The Welsh Ministers may choose to achieve that by adopting, or adapting, the same or a different policy.

Statement of policy on retrospective legislation

The Welsh Ministers have a statutory obligation to publish a statement on their policy with respect to the exercise of the power to make regulations with retrospective effect. That statement is annexed to this Written Statement. The Welsh Ministers are required to publish the statement of policy within 3 months of the Act receiving Royal Assent. This Written Statement meets both those statutory obligations.

Review, alternative mechanisms and cessation of the power

The Welsh Ministers must review the operation of the Act and publish their conclusions within four years of the Act coming into force. That review will include an assessment by the Welsh Ministers of alternative legislative mechanisms for making changes to the Welsh Tax Acts and regulations made under any of those Acts. My officials will start exploring alternative mechanisms in the near future. That work will include engagement with tax and legal experts and I hope that they will again be willing to give their time generously in helping to develop the Welsh devolved tax framework.

The Welsh Ministers ability to make regulations using the power in this Act is limited to five years from the day the Act comes into force. That period can be extended to no later than 30 April 2031 subject to Senedd approval.

Annex

Statement of policy with respect to the exercise of the power to make retrospective legislation within the Welsh Tax Acts etc. (Power to Modify) Act 2022

1. Background

General

1.1 The Welsh Tax Acts etc. (Power to Modify) Act 2022 (“the Act”) operates to enable changes to be made to the Welsh Tax Acts¹, by regulations where the Welsh Ministers consider that such changes are necessary or appropriate and where they are required to have effect immediately or shortly thereafter. Those changes will be permitted in order to respond to a number of external circumstances. In summary:

- i. to ensure the devolved Welsh taxes are not imposed where to do so would be incompatible with any international obligations;
- ii. to protect against tax avoidance in relation to devolved Welsh taxes;
- iii. to respond to changes made by the UK government to ‘predecessor’² UK taxes (that is, one where we have an equivalent devolved tax) which affect, or may affect the amount paid into the Welsh Consolidated Fund³, and
- iv. to respond to decisions of the courts/tribunals which affect or may affect the operation of the Welsh Tax Acts, or any regulations made under them.

1.2 The primary intended effect of the Act is to provide Welsh Ministers with a proportionate mechanism to protect Welsh tax revenues raised through devolved taxes, and to avoid adverse implications for businesses, the property market, and the environment.

1.3 The regulation making powers will not be used to achieve routine policy changes to the devolved taxes. For such changes the Welsh Government will use powers that already exist in the Welsh Tax Acts or, where necessary, primary legislation.

2. The Statement - Retrospective Legislation

2.1 Changes to tax legislation will normally take effect no earlier than the date the regulations are made. However, a change which takes effect from a date earlier than the date of

¹ “The Welsh Tax Acts” are defined as The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (‘the LTTA’), the Landfill Disposals Tax (Wales) Act 2017 (‘the LDT’) and the Tax Collection and Management (Wales) Act 2016 (the “TCMA”).

² ‘Predecessor taxes’ currently refers to Stamp Duty Land Tax and Landfill Tax – the UK equivalents for the taxes that are now devolved in Wales.

³ Under section 118(1) Government of Wales Act 2006.

making will also be possible for regulations made using the power provided by the Act⁴, although this is intended to be used in exceptional circumstances only. Consideration as to whether to make regulations which give retrospective effect will be decided on a case-by-case basis, depending upon the particular circumstances. In all such circumstances, however, the regulations will be subject to Senedd approval, be they subject to the draft or made affirmative procedure⁵.

2.2 Examples of situations where the Welsh Ministers may consider making regulations with retrospective effect include:

- where a change is made by the UK government that has immediate effect and provides a tax, and therefore commercial, advantage to entities liable to the predecessor tax,
- where a change is made by the UK government that has immediate effect and increases amounts of tax by a predecessor tax which will have a material effect on the block grant adjustment,
- where avoidance needs to be halted,
- where a court decision means the legislation may not be interpreted as intended by the Senedd when it was enacted, and
- where regulations have been made using the power in the Act (either by draft or made affirmative procedure) and the Welsh Ministers wish to amend the effect of the regulations, so that the changes have effect from the same date that the original regulations had effect. This will only be possible, however, where the changes do not increase or create a liability to tax or reduce an entitlement to LDT tax credit.

2.3 Regulations cannot make any changes retrospectively where it would impose a new or extend an existing penalty. Furthermore, where the regulations create or increase a liability to a devolved tax, they may only be made with retrospective effect from the date the Welsh Ministers have made an oral or Written Statement to the Senedd. The same restrictions also apply where the regulations reduce or withdraw an entitlement to a tax credit for LDT purposes. These restrictions do not apply where the effect of the regulations is to remove or reduce a liability to a devolved tax, or to increase or introduce a new, tax credit into the LDT regime.

⁴ see section 2 of the Act

⁵ Draft affirmative regulations cannot be considered and voted upon by the Senedd until either the committee responsible for the functions (where relevant) and any other committee which has given notice, has reported on the draft instrument, or until 20 days has elapsed since the draft instrument was laid before the Senedd.

Made affirmative regulations can come into force with immediate effect once made by the Welsh Ministers, however the motion to approve such regulations must be considered and agreed by the Senedd within a maximum period of 60 days in order for those regulations to remain in effect. If there is no vote within this timeframe, or the regulations are not approved by the Senedd, the instrument will cease to have effect from the day following the 60th day or at the end of the day on which the vote takes place. A minimum period of 28 days must also elapse, from the point of making, before the Senedd can consider and vote on the motion to approve such regulations. In calculating these periods no account is taken of any time during which the Senedd is dissolved or in recess for 4 or more days.

2.4 The Welsh Ministers will ensure that the regulations made will be proportionate and compatible with the European Convention on Human Rights⁶.

3. Timing and Communication of Changes

3.1 Whilst the Welsh Ministers will usually seek to make tax announcements as part of the Draft Budget Statement where possible, it is necessary to recognise that the intended use of the power provided by the Act is to respond to external events. As a result, it is likely that the use of this power will fall outside the time period that would permit an announcement to be made as part of the Welsh Government's Draft Budget. Changes are therefore most likely to occur outside the first Draft Budget Statement. Where possible, the Welsh Government and the Welsh Revenue Authority will use their communication channels and known stakeholders to raise awareness of the changes immediately following any oral or Written Statement (in particular the Written Statement and the details or annexes contained therein).

4. Procedure

4.1 When bringing forward retrospective legislation it is the Welsh Ministers' intention to abide by the following procedure:

- the outline of the proposed changes will be precise and provided by means of an oral or Written Statement,
- the oral or Written Statement will state the procedure that will be used and that the regulations will be made as soon as possible in line with relevant procedure and Welsh Government policies,
- the Welsh Ministers will write to the Chairs of the Finance Committee and the Legislation, Justice and Constitution Committee outlining the proposed changes and inviting the Committees to consider the purpose and effect of the retrospective legislation. Copies of the letters will also be sent to the Llywydd, and
- The regulations will be laid before the Senedd (and where appropriate) made as soon as possible.

4.2 Where it is possible to do so in the time allowed by individual circumstances, the Welsh Government will seek views on the effect of the regulations, either through a formal consultation where time permits, or informally with trusted external interested parties. However, given the nature of the regulations, particularly in cases where amendments are required urgently this may not always be possible, for example where the risk of forestalling arises.

⁶ "The Convention Rights" which have been incorporated into UK law via the Human Rights Act 1998.

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

Elin Jones MS
Llywydd
Senedd Cymru
Cardiff Bay, Cardiff, CF99 1SN
Email - Llywydd@senedd.wales

24 October 2022

Dear Elin

As you are aware, I have recently laid a Legislative Consent Memorandum (LCM) and a supplementary LCM in relation to the UK Government's Social Housing (Regulation) Bill (the Bill).

The Bill is continuing its progress through the House of Lords, and on 12 October my officials were notified of the tabling (on 11 October) of further government amendments to the Bill, which were then considered at Report stage on 18 October. All the government amendments and an additional non-governmental amendment were accepted, and my officials have been analysing their effect.

As outlined in the Legislative Consent Memoranda I have so far laid in relation to this Bill, although this Bill proposes changes to the regulation of social housing landlords in England, the majority of the provisions extend and apply to Wales and relate to the devolved matter of Housing. As such, those provisions make relevant provision for the purposes of Standing Order 29 for which Senedd consent is required. Although analysis is not yet complete, I expect some or all of the amendments accepted at Report stage will also require consent, and accordingly a further supplementary LCM will be laid.

Due to the late notification of the amendments being tabled, it will not be possible to lay this within the normal two-week Standing Order 29 deadline, however it will be laid as soon as possible.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths MS, and the Chair of the Legislation, Justice and Constitution Committee, Huw Irranca-Davies MS.

Yours sincerely

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

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

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

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

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

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

25th October 2022

The Environmental Protection (Single-use Plastic Products) (Wales) Bill

Dear Huw,

Thank you for the Legislation, Justice and Constitution Committee report which was published on 10 October 2022 in relation to the Environmental Protection (Single-use Plastic Products) (Wales) Bill (“the Bill”).

Please see my response below to the set of recommendations within the report which I could not fully address during the Stage 1 General Principles Debate on 11 October 2022.

I have also written today to the Chair of the Finance Committee and the Chair of the Climate Change, Environment and Infrastructure Committee to set out my response to their recommendations.

Recommendation 1

During the Stage 1 debate, the Minister should explain why a Bill was not introduced early in the first year of the Senedd.

Response

Plans to ban and restrict single-use plastic products have been in policy development for several years. I am aware the Senedd has also previously called for legislative action in this area. However, EU Exit and the COVID-19 pandemic have undoubtedly presented some significant pressures and challenges in delivering these policies. The enactment of the United Kingdom Internal Market Act 2020 (UKIMA) caused an initial delay as we considered whether the market access principles in UKIMA had any impact on the Bill. As you are aware, the Counsel General and the Llywydd have both said the Bill’s provisions are within competence and we are confident the Bill’s provisions are fully enforceable and effective.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

Recommendation 2

During the Stage 1 debate, the Minister should explain what the consequences would have been for the Welsh environment if the Bill had been subject to the Senedd's normal Stage 1 scrutiny process and full legislative scrutiny.

Response

The single-use plastic products targeted in the Bill are often difficult to recycle, are often littered and commonly found in our seas and rivers which can cause harm to our wildlife. This Bill is a key step in stemming the flow of plastic pollution and the use of the expedited process will mean it can contribute towards our action to tackle the climate and nature emergencies as quickly as possible.

Recommendation 3

During the Stage 1 debate, given her view that the legislation is needed urgently, the Minister should explain why she did not request the use of the Senedd's Emergency Bill procedure.

Response

The emergency Bill procedure was considered but was not regarded as appropriate in this instance as it completely bypasses Stage 1 scrutiny, which is necessary under specific circumstances. This was not the case for the Bill.

It was important we provided Committees with the opportunity to consider the Bill before amendments stages, even if it was a shortened one. To aid the pre-legislative scrutiny process we published the draft Bill before introduction. I also notified Committees of a small number of technical amendments to the Bill that we will be putting forward at Stage 2. I am pleased to note that your Committee was able to scrutinise the Bill and produce a comprehensive report despite the time constraints.

Recommendation 4

During the Stage 1 debate, given her view that the United Kingdom Internal Market Act 2020 "does not bite on the Bill", the Minister should explain why it was advanced as an argument to expedite scrutiny of the Bill.

Response

When I wrote to the Business Committee on this matter in July, there were two good reasons as to why the Bill should be expedited. Firstly, there was the environmental protection imperative, and secondly, the Court of Appeal's request for a legislative context in which to consider the arguments being advanced by the Counsel General in the (then ongoing) application for judicial review of UKIMA.

The Bill is part of our efforts to address the climate and nature emergencies, the scale of which means the health of our environment must be prioritised. Urgent change is needed to avoid leaving a legacy of plastic waste for future generations to deal with. We considered it necessary to introduce the Bill on an expedited timetable to ensure significant progress is made and we do not fall behind other countries in the UK and across the globe.

While the Supreme Court rejected our application for permission to appeal the Court of Appeal's decision that our claim for judicial review of UKIMA was premature, it left the door open for the substantive arguments to be considered in a future case. Our position - that the Bill is within competence and is fully enforceable and effective - is not incompatible with our view the Bill is capable of providing the context which would assist the Court in testing the arguments about UKIMA in a future case. Those two positions are not mutually exclusive. Expediting the Bill preserves all the options in terms of how that issue may be brought before the Court.

Recommendation 5

During the Stage 1 debate, the Minister should state clearly when she intends to commence all provisions of the Bill so that it is fully operational.

Response

I accept this recommendation. We intend for all commencement dates to be within this Senedd term i.e. by April 2026. To help support manufacturers, retailers and distributors of single-use plastic products, we will introduce later commencement dates for single-use plastic carrier bags, lids made from polystyrene and oxo-degradable plastics. This is intended to help businesses to adjust to the legislative change and to source alternatives.

The Bill engages the World Trade Organisation's (WTO) treaty on Technical Barriers to Trade Agreement. The WTO requires a six-month standstill period following the passing of the Bill and its being submitted for Royal Assent. This delay is needed to allow foreign operators to adapt their products to the new requirements. It is also customary to commence a Bill's provisions eight weeks after Royal Assent. As a result, the earliest any provisions can be commenced is autumn 2023.

Recommendation 6

During the Stage 1 debate, the Minister should confirm how the World Trade Organisation treaty on technical barriers to trade will impact on the commencement and implementation of the Bill's provisions.

Response

I accept this recommendation. Article 2.12 of the World Trade Organisation Technical Barriers to Trade agreement requires members to allow a reasonable interval between the publication of measures and their entry into force. This is to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products or methods of production to the requirements of the importing Member. In order to satisfy this requirement, it is intended that following the Senedd's approval of the Bill there will be a six-month standstill period prior to the Bill obtaining Royal Assent and the subsequent commencement of the Bill's provisions.

Recommendation 7

During the Stage 1 debate, the Minister should confirm whether the case study on oxo-degradable plastic is accurate and if not, why not.

Response

I refer to my response provided during the Stage 1 debate and to Recommendation 8 below for more details on this point.

Recommendation 8

No later than 10 working days after the Stage 1 debate, the Minister should write to us and the Climate Change, Environment and Infrastructure Committee, providing her detailed assessment of our case study on oxo-degradable plastic including any implications for enforcement of the law arising from the Bill.

Response

I do not agree the Legislation and Justice Committee's case study accurately represents the position. The case study deals with business-to-business supply whereas the Bill prohibits the supply of prohibited single-use plastic products to a *consumer* in Wales. A "consumer" is defined by section 5(9) of the Bill as "an individual acting for purposes that are wholly or mainly outside that individual's trade, business or profession".

On the broader question of enforceability, our position is the provisions of the Bill are within competence and are fully effective and enforceable, including the cross-border elements of the provisions which make it an offence to supply a prohibited single-use oxo-degradable plastic product to consumers in Wales.

Recommendation 9

During the Stage 1 debate, the Minister should explain how local authorities will be able to take enforcement action in relation to all prohibited items in the Bill, even if they are supplied from other parts of the UK, including, in particular, single-use carrier bags and oxo-degradable plastics.

Response

I refer to my answer given during the Stage 1 debate and to my response to Recommendation 10 below.

Recommendation 10

No later than 10 working days after the Stage 1 debate, the Minister should write to us and the Climate Change, Environment and Infrastructure Committee providing detailed information explaining how local authorities will be able to take enforcement action in relation to all prohibited items in the Bill, even if they are supplied from other parts of the UK, including, in particular, single-use carrier bags and oxo-degradable plastics.

Response

I consider, and the Llywydd agrees, that all the provisions in this Bill are within the Senedd's competence. That determination includes the provisions which prohibit the supply to consumers in Wales, from other parts of the UK, of single-use carrier bags and oxo-degradable plastics. Accordingly, we consider the provisions are fully effective and enforceable. We expect local authorities, with the benefit of the practical guidance we will provide, to enforce them, as they would any other Senedd legislation.

Local authorities already inspect premises relevant to the provisions of the Bill under existing statutory duties. My officials are developing comprehensive guidance to help businesses, consumers and local authorities understand the changes brought in by this legislation. In the first instance, the focus will be on education and engagement with retailers and business representatives, before enforcement action is taken.

Recommendation 11

During the Stage 1 debate, the Minister should, if UKIMA "does not bite on the Bill" and the Bill is within the Senedd's legislative competence, (and following the Counsel General's comments in Plenary on 5 October) explain the grounds on which the Welsh Government could make a legal challenge in relation to UKIMA and via which legal avenue.

Response

Our position is the Bill is within the Senedd's competence, that it is fully enforceable, and it is not affected by UKIMA. We take that view because this Bill makes provision in relation to devolved matters. UKIMA cannot and does not, in our view, cut across the Senedd's competence to legislate about those matters. It cannot impliedly repeal the Government of Wales Act 2006 (GoWA), which is a constitutional statute. It cannot reserve matters by the back door.

All the options for challenging UKIMA remain open to the Counsel General. The Counsel General has a power under section 112 of GoWA to refer this Bill to the Supreme Court. He has made no decision on that yet and he cannot do so until the Bill is passed by the

Senedd, and its final content is known. As the Counsel General has said, he will consider all the relevant factors in making his decision at that time.

The UK Government's Attorney General also has a power to refer the Bill to the Supreme Court and we will of course respond accordingly if he does.

Recommendation 12

The Minister should re-visit the definitions in section 1 of the Bill, with a view to tabling amendments that contain more complete definitions, which reduce the scope for loopholes to be exploited and provide greater certainty for those enforcing the Bill.

Response

I resist this recommendation. Legislative drafting often involves a trade-off between ease of understanding and absolute certainty. At the Climate Change, Environment and Infrastructure Committee evidence hearing I explained that while the drafting of key terms in Section 1 of the Bill differed to the drafting of those terms under the European Union's Single Use Plastic Directive, we consider these definitions to be the same in so far as their practical effect is concerned.

The drafting is not identical as we have sought to clarify the text or to remove wording we considered to be unnecessary, in accordance with our drafting practice. Our position, therefore, is the drafting of the key terms is clear. To aid further clarity, we will be publishing comprehensive guidance to help businesses, consumers and local authorities to understand the various legal definitions in the Bill. This will be developed collaboratively and undertaken in advance of the legislation coming into effect.

We will also work with stakeholders when developing communications relating to the Bill. This will include provision of information to help clarify the products being included.

Recommendation 13

The Minister should table amendments to the Bill to provide that there is a duty in the Bill to provide guidance; that the duty includes consultation with stakeholders and that the guidance should be subject to scrutiny by the Senedd.

Response

I accept this recommendation in principle. I will table an amendment to the Bill at Stage 2 to confer a duty on the Welsh Ministers to publish guidance about the single-use plastic products that are prohibited under the Bill and exemptions listed in column 2 of the Table in the Schedule.

Recommendation 14

The Minister should table an amendment to the Bill to provide a duty to consult stakeholders including manufacturers and producers before making regulations under section 3.

Response

I accept this recommendation. An amendment will be tabled to provide a duty to consult stakeholders including manufacturers and producers before making regulations under section 3.

Recommendation 15

During the Stage 1 debate, the Minister should explain the reasons for providing that a person outside Wales commits an offence where they supply a prohibited single-use plastic product to a consumer who is in Wales.

Response

I accept this recommendation. The Bill seeks to tackle the negative impacts from plastic pollution on our environment, wildlife, health and well-being. A person from outside of Wales who supplies products listed in the Bill to consumers in Wales will be liable for a criminal offence. We believe this will provide a deterrent to those wishing to undermine our legislation and will help prevent the inward supply of these prohibited goods in Wales.

We recognise there are practical issues in enforcing the offence in respect of distance selling (particularly when the item is being supplied from outside of the England and Wales legal jurisdiction). However, we intend to work with businesses to ensure we restrict the supply of these products into Wales as far as possible.

Recommendation 16

During the Stage 1 debate, the Minister should explain how section 5 of the Bill will be enforced as regards single-use carrier bags and oxo-degradable plastics.

Response

We consider, and the Llywydd agrees, that all the provisions in this Bill are within the Senedd's competence. That determination includes the provisions which prohibit the supply to consumers in Wales, from other parts of the UK, of single-use carrier bags and oxo-degradable plastics. Accordingly, we consider that the provisions are fully effective and enforceable. We expect local authorities – with the benefit of the practical guidance we will provide – to enforce them, as they would any other Senedd legislation. There will be further engagement and consultation with local authorities as we co-produce the guidance for single-use carrier bags and oxo-degradable plastics.

Recommendation 17

The Minister should ensure that detailed responses in relation to the substance of each recommendation are included in her response to this report, which should be provided no later than 10 working days after the Stage 1 debate.

Response

I accept this recommendation. Please accept this letter as fulfilling this recommendation.

Yours sincerely



Julie James AS/MS

Y Gweinidog Newid Hinsawdd
Minister for Climate Change

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **Border Controls Regulations**

DATE **27 October 2022**

BY **Vaughan Gething MS, Minister for Economy**

I'm writing to inform the Senedd that I intend to delay checks on sanitary and phytosanitary goods due to begin on 1st January 2023 through secondary legislation, which will extend the transitional staging period until 31 January 2024.

Border controls on plants, animals and products of animal origin were due to come into force on 1 January 2023 but the UK Government announced a radical review of the GB border regime in April. We look forward to analysing conclusions in its *Target Operating Model* in order to assess the infrastructure requirements, resource implications and delivery timetable. Meanwhile it is necessary to legislate to delay the introduction of checks as it would otherwise be unlawful to import these goods into Welsh ports except through designated Border Control Posts which we do not yet have.

Importers will be anticipating this extension as the UK announcement committed to no new checks until the end of 2023 whilst current legislation postponing these checks expires on 31 December 2022. I am fully expecting these checks to be postponed elsewhere in GB too.

In addition, I am taking this opportunity to introduce pre-notification for products travelling to Wales from the Republic of Ireland. The UK Government's decision to waive the pre-notification requirement for imports of certain products travelling on these routes has left the Welsh Government and local authority partners with a significant data gap. It puts us at a significant disadvantage compared to the other administrations in Great Britain making decisions in relation to imports from EU countries and undertaking impact assessments on emerging policies.

The ability to examine incoming information, to seek to detect, and to intervene where necessary, thus ensuring a degree of biosecurity assurance is of the utmost importance whilst full border controls are not in place. Introducing pre-notification to address the data deficiency gap will also allow Welsh Government and our partners to ensure future border infrastructure and staff resources are appropriate to meet expected demand and provide value-for-money for importers, taxpayers and consumers.

Importers will be familiar with pre-notification as they will have prepared for its introduction in January 2022 and again in July 2022 although it was postponed at rather short notice. Those who import from the EU continent into England or from elsewhere in the world will also be familiar with the process. Pre-notification requires limited data input through the Import of Products, Animals, Food and Feed System (IPAFFS) and there is no requirement for any additional paperwork or health certification. Whilst the burdens on importers are minimal this data would be extremely valuable to officials and relevant enforcement authorities, such as local authorities.

I am writing to stakeholders to ask for comments on these proposals.

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy



Llywodraeth Cymru
Welsh Government

Huw Irranca Davies MS
Chair of the Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

27 October 2022

Dear Huw

Border Controls

Further to today's written statement, the Minister for Rural Affairs, North Wales and Trefnydd and I have issued a targeted consultation on our intention to make Wales legislation to extend the transitional phasing period. This will delay the introduction of border controls which will otherwise commence on January 1st. This statutory instrument would also remove the exemption from pre-notification for products travelling to Wales from the Republic of Ireland.

I wrote to Rt Hon Jacob Rees-Mogg MP, Minister for Brexit Opportunities and Government Efficiency about border controls on 13 June 2022, drawing attention to the issues caused by, and my desire to remove, the exemption from pre-notification requirement of products of animal origin entering Wales from the Republic of Ireland. I wrote to Rt Hon Nadhim Zahawi MP, Chancellor of the Duchy of Lancaster about pre-notification on 5 October 2022, confirming my intention to switch on this requirement from January 2023. I have not received replies.

I attach copies of the letters for the attention of the Committee.

Yours sincerely,

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Vaughan.Gething@llyw.cymru
Correspondence.Vaughan.Gething@gov.wales

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



Ein cyf/Our ref VG/0712/22

Rt Hon Jacob Rees-Mogg MP
Minister for Brexit Opportunities
and Government Efficiency
Cabinet office
70 Whitehall
London
SW1A 2AS
ministerial.correspondence@cabinetoffice.gov.uk

13 June 2022

Dear Jacob,

Thank you for your letter of 24 May.

I am pleased to hear that our officials are working closely on the design of the borders target operating model. Given that Great Britain's biosecurity is only as strong as its weakest link, I regard it as essential that our governments collaborate to determine a coherent and stable regime. I agree the regime needs to be efficient and proportionate, recognising the costs to business and ultimately the consumer. Equally, however, it must protect human, plant and animal health, recognising the appalling cost, both economic and personal, of a major disease outbreak.

It is therefore imperative that ministers responsible for biosecurity across all the countries of Great Britain work together to agree the principles and the details of the future borders regime, informed by joined-up advice from all our technical experts, such as the chief veterinary and plant officers, together with the agencies charged with protecting our health and delivering the regime on the ground.

I would not want to see a repeat of previous borders work where the devolved administrations are presented with a regime once Westminster has determined its preferred outcome. We need proper political engagement to shape the strategic principles and consider the practical issues. I therefore ask you to commit to regular GB(O) meetings where decisions on the future GB regime can be taken collectively.

I would also like to be clear: we do not yet have pre-notification for imports from Ireland, following the UK Government's unilateral decision to exempt Irish Sea trade from the pre-notification requirements introduced at other GB ports from January this year. Therefore, unlike south and east coast ports, Welsh ports do not currently have sight of real time data on trade flows. This lack of reliable data on the nature and volumes of imports across the Irish Sea is a major impediment to our preparedness and our ability to introduce more efficient

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Vaughan.Gething@llyw.cymru
Correspondence.Vaughan.Gething@gov.wales

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border operations. Although your officials have begun to work with mine to compare the available data, at first glance, this still looks unhelpful. I appreciate the sensitivity of discussions around the Northern Ireland Protocol, I hope that the UK Government will agree to introduce pre-notification for imports from the island of Ireland by 1 January 2023 at the latest.

Finally, I have written to the Chief Secretary of the Treasury to seek confirmation that his commitment to fund the costs of building Border Control Posts in Wales still stands.

I am copying this letter to my colleague, Lesley Griffiths MS, Minister for Rural Affairs, North Wales and Trefnydd, to Mairi Gougeon MSP, Cabinet Secretary for Rural Affairs and Islands in the Scottish Government and to Rt. Hon George Eustice MP, Secretary of State for Environment, Food and Rural Affairs, Rt. Hon Michael Ellis QC MP, Minister for the Cabinet Office and the Rt. Hon Simon Hart MP, Secretary of State for Wales.

Yours sincerely

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive, flowing style.

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy



Ein cyf/Our ref VG/00761/22

Rt Hon Nadhim Zahawi MP
Chancellor of the Duchy of Lancaster
Cabinet Office
70 Whitehall
London
SW1A 2AS
ministerial.correspondence@cabinetoffice.gov.uk

5 October 2022

Dear Nadhim,

Congratulations on your appointment. I look forward to working with you and meeting you at forthcoming cross government discussions on the Target Operating Model for our borders.

I wrote to Rt Hon Jacob Rees-Mogg MP, Minister for Brexit Opportunities and Government Efficiency, on 13 June 2022 about border controls and I drew attention to the issues caused by, and my desire to remove, the exemption from pre-notification requirement of products of animal origin entering GB from the island of Ireland. I did not receive a reply.

The UK Government's unilateral decision to exempt imports of products of animal origin from the island of Ireland from the pre-notification requirement has left the Welsh Government and local authorities across GB with a significant data gap which has not been possible to satisfactorily address through other sources. Much of this trade travels beyond Wales' border, so the lack of pre-notification means that a significant proportion of goods entering GB currently does so 'under the radar' so to speak. It is vital that Welsh Ministers, responsible for biosecurity, food safety and sanitary and phytosanitary controls in Wales, understand the quantity, nature and risk profile of products entering Welsh ports. It is also key for our local authority partners who are responsible for port health functions in Wales. This data deficiency has hampered the planning and development of our border controls and associated operations and impedes any meaningful analysis of the impact of emerging Target Operating Model proposals on commodity risk profiling, future infrastructure and staffing needs, making it more difficult to achieve value for money for the taxpayer and consumer. It puts us at a significant disadvantage compared to those making similar arrangements in relation to imports from other EU countries.

This letter is to confirm that as this is a devolved matter I intend to switch on this requirement for imports of non-'Qualifying Northern Ireland Goods' into Wales from January 2023.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Vaughan.Gething@llyw.cymru
Correspondence.Vaughan.Gething@gov.wales

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I intend to add high risk food and feed not of animal origin into scope of the pre-notification requirement during transitional staging period in Wales too. This will greatly assist us, and the Food Standards Agency, in understanding flows of these goods into Wales and the associated risks as no such data presently exists.

This change is supported by our Chief Veterinary Officer. I note that the issue has been discussed on more than one occasion by the Chief Veterinary Officers from all UK nations in the various forums of the Common UK Animal Health and Welfare Framework. We believe the need to do this is more pressing given that we are no longer part of the early warning system that EU member states participate in. My officials have also discussed this with Defra officials and your own in the Cabinet Office on several occasions.

I would prefer that all this is done on a GB or England and Wales basis but if this is not possible then I plan to legislate to make this change for imports into Wales. Whichever of these legal routes we go down, the process needs to start as soon as possible in order to give importers as much notice as possible.

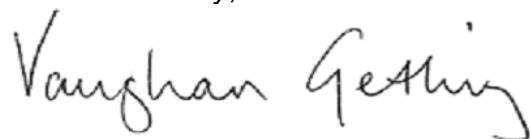
I appreciate there are ongoing negotiations on the Northern Ireland Protocol, however, it is within our collective gift to set the import conditions for goods which are not eligible for unfettered access to the GB market under the Protocol.

Whilst this particular change is about the current imports regime, I am also attached to the importance of pre-notification in the future regime too. It is essential that the competent authorities know sufficiently in advance what is being imported so they can understand and assess the potential biosecurity and food safety implications and have the necessary resources to hand should an identity or physical check be required. This advance notice, which is done digitally and in line with modernised border controls, is even more important for the smaller and more remote ports. It may be that this information can eventually be obtained via a single portal with the need for separate SPS and customs declarations becoming redundant but until that capability exists, we shall need to rely on pre-notification via IPAFFS.

As previously discussed with Defra, my officials will seek *competent authority* level access to IPAFFS for Welsh Government officials and our local authorities who are responsible for port health matters so we can effectively make use of this pre-notification data.

I am copying this letter to my colleagues Lesley Griffiths MS, Minister for Rural Affairs, North Wales and Trefnydd, to Mairi Gougeon MSP, Cabinet Secretary for Rural Affairs and Islands in the Scottish Government, to Rt Hon Ranil Jaywardena MP, Secretary of State for Environment, Food and Rural Affairs, Rt Hon Edward Argar MP, Minister for the Cabinet Office and Rt Hon Robert Buckland MP, Secretary of State for Wales.

Yours sincerely,



Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-LG-1797-22

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

huw.Irranca-Davies@senedd.wales

31st October 2022

Dear Huw,

Thank you for your letter of 4 October 2022, where you raised drafting issues with my Written Statement laid 15 July 2022 and considered my letter of 12 July 2022.

I am writing to provide you with more detail on the matters you highlighted.

My responses can be found in Annex A.

Yours sincerely,

Lesley Griffiths AS/MS

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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

Annex A

These responses below are not in the same order as the points raised in LJCC's letter, as the answer to point 2 below flows from the preceding point.

- 1. We also found the written statement to be unclear as to the extent these regulations enact new policy, and how they will achieve administrative efficiency. You will be aware that the Intergovernmental Agreement on the European Union (Withdrawal) Bill states that the powers contained within the now Act will not be used to enact "new policy" in devolved areas, and the primary purpose of using such powers will be "administrative efficiency". We would be grateful to receive a fuller explanation as to the extent these regulations enact new policy, and how they will achieve administrative efficiency, by 2 November 2022.***

The regulations do not enact new policy. They, instead, make minor technical amendments to retained EU law relating to official controls, to ensure that it operates effectively following the withdrawal of the United Kingdom from the European Union.

There is one particular change which consists of removing the model Export Health Certificates (EHCs - documents required to accompany most imported animal products) from the annexes of the relevant legislation and replace them with "a form published by the Appropriate Authority from time to time". This approach is in line with what is already in place with all other similar retained EU legislation covering imports of animal products which require EHCs and has already been amended.

This is not a policy change as the content of the EHCs (i.e. import health requirements our trading partners need to comply with) remains the same. The intention is, in the context of the UK being now an independent trading nation, any changes to the model EHCs are a function of the appropriate authority, having been transferred from the European Commission to the Welsh Ministers in the case of Wales. Since diseases are dynamic and unpredictable, changes to EHCs are now a function of the appropriate authority and are required frequently, to reflect variations in the disease status in trading countries. It is essential, for reasons of quickly responding to disease outbreaks and resuming trade following such incidents, these changes can be made administratively without the need for legislation being brought forward.

- 2. We noted that, while your letter of 12 July summarised the purpose of the Regulations and explained why you had consented to the UK Government making them in a devolved area, the written statement did not, as is required by Standing Orders 30C.3(i) and (iii).***

I gave consent because, as with similar concurrent functions in the sphere of Animal Health and Welfare, there is a mutual interest for all UK Governments in the application of coherent disease prevention and control measures. It makes sense to exercise these functions jointly because they need to work for the whole of the UK, or Great Britain (where there is freedom of movement). Furthermore, they are exercised in the context of a functioning Common UK Animal Health and Welfare Framework.

It is important to note Welsh Ministers retain the power to not consent to the Secretary of State and to publish their own EHCs for animals and animal products entering Wales. However, officials envisage this would only happen in exceptional circumstances as it would create unnecessary administrative burdens and confusion to traders. This concurrent function is therefore appropriate and mirrors what already happens in similar legislation and administrative processes to publish other EHCs for importation of animals and animal products into Great Britain as a whole.

3. ***The written statement also erroneously refers to the amendment of Schedule 7B to the Government of Wales Act 2006 so as to remove the requirement to obtain Minister of the Crown consent “if the Welsh Ministers modify or remove a Secretary of State function”. However, the amendment of Schedule 7B did not capture the modification of such functions, only their removal. The explanation provided also appears to conflate the Welsh Ministers and the Senedd; Schedule 7B is relevant only to Acts of the Senedd, and not the executive functions of the Welsh Ministers.***

This was an oversight and I agree with the comments in your letter dated 4 October 2022.

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

4 October 2022

Dear Lesley

The Animals, Food, Plant Health, Plant Propagating Material and Seeds (Miscellaneous Amendments etc.) Regulations 2022

At our meeting of 26 September we considered the Written Statement under Standing Order 30C you laid on 15 July in respect of the above Regulations. We also considered your letter of 12 July in respect of the Regulations.

We wish to draw to your attention some drafting issues, which we think you should be aware of when preparing future statements; we would also like to see further information about the Regulations.

We noted that, while your letter of 12 July summarised the purpose of the Regulations and explained why you had consented to the UK Government making them in a devolved area, the written statement did not, as is required by Standing Orders 30C.3(i) and (iii).

The written statement also erroneously refers to the amendment of Schedule 7B to the *Government of Wales Act 2006* so as to remove the requirement to obtain Minister of the Crown consent "if the Welsh Ministers modify or remove a Secretary of State function". However, the amendment of Schedule 7B did not capture the modification of such functions, only their removal. The explanation provided also appears to conflate the Welsh Ministers and the Senedd; Schedule 7B is relevant only to Acts of the Senedd, and not the executive functions of the Welsh Ministers.

We also found the written statement to be unclear as to the extent these regulations enact new policy, and how they will achieve administrative efficiency. You will be aware that the

Intergovernmental Agreement on the European Union (Withdrawal) Bill states that the powers contained within the now Act will not be used to enact “new policy” in devolved areas, and the primary purpose of using such powers will be “administrative efficiency”.

We would be grateful to receive a fuller explanation as to the extent these regulations enact new policy, and how they will achieve administrative efficiency, by 2 November 2022.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair



Julie James MS
Minister for Climate Change

2 November 2022

Dear Julie

Legislative Consent Memorandum: Levelling Up and Regeneration Bill

I am writing regarding the above Memorandum, which we considered at our meeting on 24 October 2022.

We note the Memorandum refers at paragraph 3 to the letter you wrote to the Llywydd and explains that:

"...due to the very limited engagement by the UK Government prior to the Bills' introduction and the complexity of the Bill, it has taken time to fully consider the devolution consequences of what is being proposed and consequently it has not been possible to lay this LCM within the normal two-week SO29 deadline."

We are disappointed with the lack of engagement by the UK Government to explain its proposals and acknowledge the difficult position for the Welsh Government as a result.

Nevertheless, we are concerned that some four months after the Bill's introduction into the UK Parliament, the content of the Memorandum laid before the Senedd is severely lacking in necessary detail that we do not believe it would enable the Senedd to reach an informed view on the matter of whether or not to give consent.

We highlight 20 questions in the Annex to this letter which seek clarification on a range of matters. In our view, the responses to most of these questions need to be addressed in a revised Memorandum.

I would be grateful to receive a response to this letter as soon as possible, together with confirmation that a revised Memorandum has been laid or will be laid before the Senedd as a matter of urgency.

The current deadline for reporting is 8 December 2022 but our ability to meet that deadline is constrained by the situation we and other Committees are now facing. In laying a revised Memorandum we believe therefore that the deadline should be re-visited. .

I am therefore copying this letter to the Llywydd as Chair of the Business Committee, as well as the Chairs of the Climate Change, Environment and Infrastructure Committee, the Local Government and Housing Committee and the Economy, Trade and Rural Affairs Committee.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair



Annex 1 – Questions to the Minister for Climate Change

1. Can the Minister explain fully the divergence of opinion between the Welsh Government and the UK Government as to whether Part 1 of the Bill requires the consent of the Senedd? What discussions has the Minister had with the UK Government in this regard?
2. Is the Minister able to provide more information regarding the Welsh Government's policy regarding the content of clauses 1-6 and the substantive reasons for its recommendation that the Senedd does not consent to these provisions?
3. Can the Minister confirm why the LCM makes reference to clause 96 (street votes) requiring consent in the view of the UK Government, when this view is not reflected in the Explanatory Notes to the Bill?
4. Is the Minister in a position to seek clarity as to why the UK Government included clause 78 as requiring consent in the Explanatory Notes, when clause 78 is entitled "Power to require use of approved planning data software in England". Is clause 78 intended to apply in Wales or has the UK Government erroneously noted that it applies in Wales?
5. Has the Minister raised the inconsistency between the Explanatory Notes, immediately before paragraph 470, and the Bill at clause 77 regarding the title of clause 77, where the Explanatory Notes refers to England but the clause itself does not? Is the Minister confident that this clause applies in Wales?
6. Can the Minister provide further detail as to the new powers that are provided to the Secretary of State by Chapter 1 of Part 3, clause 96 and clause 112 and confirm what effect these powers would have in Wales, including any effect on the legislative competence of the Senedd and the executive competence of the Welsh Ministers?
7. Can the Minister explain the reasoning behind her statement at paragraph 58 of the LCM that "Two areas, on planning data and environmental outcome reports, have potential benefits for Wales, but their current drafting means this benefit cannot be realised." What are the potential benefits that are referred to? Why does their current drafting mean that such benefits cannot be realised?
8. Can the Minister provide further information in relation to the statement at paragraph 59 of the LCM that "the current drafting of powers on digital data does not accord with our desire to legislate for Wales." In what way does the current drafting have this effect? Is the reference to "digital data" a reference to planning data?
9. The LCM does not clearly conclude whether it is appropriate for each of the clauses in Chapter 1 of Part 3, clause 96 or clause 112 to be included in the Bill, nor does it provide a clear recommendation

as to whether or not consent should be given to these provisions. Can the Minister confirm the position in this regard?

10. Can the Minister confirm the specific clauses that are referred to in paragraphs 58 and 59 of the LCM?

11. Can the Minister confirm which clauses are referred to as “the clauses in relation to planning” in paragraph 64 of the LCM? Does this include clause 112?

12. Can the Minister seek confirmation from the UK Government as to how the planning provisions will work in practice, to include providing an analysis of the clauses in relation to planning and explaining how Welsh authorities will be impacted by the provisions of the Bill in real terms? Can the Minister confirm who, in Wales, is considered a ‘relevant planning authority’ for the purposes of this Chapter?

13. Can the Minister confirm which provisions in Part 5 of the Bill relate to reserved matters and which relate to devolved matters, as referred to in paragraph 49 of the LCM?

14. With reference to paragraph 58 of the Bill, can the Minister confirm the detail of the potential benefits that she envisages to an improved system of environmental planning reports and whether discussions have taken place with the UK Government with a view to realising these benefits in the Bill? Can the Minister also confirm what is meant by “planning outcome reports” in paragraph 58?

15. Can the Minister explain how the current provisions mean that the Welsh Ministers have lost their ability to make Welsh regulations in relation to environmental outcome reports?

16. Can the Minister state whether or not support is given to the provisions in Part 5 being included in the Bill, as is required by Standing Order 29.3(iii), and whether or not consent should be given?

17. Can the Minister provide an update as to any discussions that have taken place with the UK Government regarding clauses 96 and 187?

18. Has the Minister discussed clauses 80 and 121 of the Bill with the UK Government and sought to amend the provisions to require that, at the very least, the UK Government has to obtain the consent of the Welsh Ministers before making planning data regulations or environmental outcome report regulations containing provision which is within Welsh devolved competence? What has been the outcome of these discussions?

19. Does the Minister have any views on the inclusion of the Henry VIII powers at clauses 129 and 191 of the Bill? Has the Minister discussed clause 129 and/or clause 191 with the UK Government to seek their amendment or removal? What has been the outcome to date of such discussions?

20. Can the Minister provide any view on the financial implications of this Bill for Wales?

Julie James MS
Minister for Climate Change
Welsh Government

1 November 2022

Dear Julie

Legislative Consent Memorandum (LCM) on the Levelling-up and Regeneration Bill

At our meeting on 27 October we considered the LCM on the Levelling-up and Regeneration Bill. In order to enable us to make an informed decision on whether or not to recommend consent, we would be grateful for more information in two areas in particular.

Firstly, we note that clause 187 (vagrancy and begging) is a placeholder provision therefore it is not yet clear whether or not it is a relevant provision for the purposes of Standing Order 29. The LCM notes that clarity is being sought in relation to clause 187 as the application table in the Annex to the Explanatory Notes states it does not apply to Wales, however, as currently drafted the Secretary of State's powers to make regulations are not limited to England only. As I'm sure you can appreciate, we will not be in a position to make a decision on legislative consent until clause 187 is replaced by a substantive provision and clarity can be given on its application. We would therefore be grateful if you could provide an update as to any discussions that have taken place with the UK Government regarding clause 187.

Secondly, we note that the LCM states:

The UK Government identify the overall Bill will have financial implications for the public sector, including local government, central government and the Planning Inspectorate. The UK Government identifies these costs will all be balanced by efficiency savings.

However the LCM makes no reference to the Welsh Government's views on the financial implications of this Bill. We would therefore be grateful if you could outline your views on the financial implications of the Bill for Wales.

We would be grateful for a response by 10 November so that it can be considered when we next discuss the LCM at our meeting on 16 November.

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

Yours sincerely



John Griffiths MS

Chair, Local Government and Housing Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Retained EU Law (Revocation and Reform) Bill**

DATE **03 November 2022**

BY **Mick Antoniw MS, Counsel General and Minister for the
Constitution**

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

The Bill, as introduced, includes significant content that was not shared with the Devolved Governments prior to introduction. I wrote to the Llywydd on 5 October stating that, given the Bill contained previously unseen content and because of serious concerns about the effect of provisions in the Bill, it would not be possible to lay a Legislative Consent Memorandum within the timescales normally assigned to the process.

I wrote to the Secretary of State, setting out my concerns regarding the Bill.

The Bill as drafted includes concurrent powers that could be exercised by UK Government Ministers in devolved areas without the consent of the Welsh Ministers. This is constitutionally unacceptable, and I have strongly expressed this view. Our expectation is, in the first instance, that powers to amend devolved legislation should rest solely with the Welsh Ministers or, if held concurrently with Ministers of the Crown, that there should be a requirement on the face of the Bill for them to gain the consent of Welsh Ministers for their exercise in devolved areas.

Another major concern is the deadline to review and actively save retained EU law by the sunset date of 31 December 2023. This would see all the governments of the UK engaged in a major piece of work to review thousands of legal instruments to ascertain how they should be handled under the Bill, or otherwise risk the law being removed from the statute book on this date. The Bill includes an extension mechanism for the sunset date of specified pieces of retained EU law until 2026, however the exercise of this power is currently limited to Ministers of the Crown.

The Bill is a significant distraction at a time when the focus of government should be on matters of greater importance such as the cost-of-living crisis. It is our opinion that the body of retained EU law, as it currently stands, is in general fit for purpose. The imposition of the arbitrary deadline means that there is a very real risk in revisiting these legal instruments in haste, that interdependencies and other issues may not be identified, and that the consequence could be an inoperable statute book.

As a result of this and other concerns with the Bill, which by its very nature could significantly impact on devolution, we are recommending that the Senedd withholds its consent for the Bill.

A Legislative Consent Memorandum for this Bill has been laid today:
<https://senedd.wales/media/wu0fwcny/lcm-ld15434-e.pdf>

Huw Irranca-Davies MS

Legislation, Justice and Constitution Committee
Cardiff Bay
Cardiff
CF99 1SN

MoJ ref: ADR100316

3 November 2022

Dear Huw,

ACCESS TO JUSTICE: SUMMARY OF ENGAGEMENT RESPONSE

Thank you for your letter of 12 July to the then Deputy Prime Minister, Lord Chancellor and Secretary of State for Justice, the Rt Hon Dominic Raab MP, in your capacity as Chair of the Senedd Legislation, Justice, and Constitution Committee, regarding the paper '*Access to Justice: Summary of Engagement*'.

In responding I will take each of the subjects raised in the paper in turn. I shall of course be happy to discuss each of them at the rescheduled evidence session.

Attracting and Retaining Talent

The *Access to Justice Summary* argues that challenges in recruiting and retaining staff are, at least in part, due to the impact of the pandemic on working practices and the increase in choices that this offers to junior and mid-range legal professionals, who are opting for better-paid roles in London rather than ones in Wales. The issue of the impact of market forces is not new, nor unique to the legal profession. However, the UK has a strong legal sector jobs market and there is a large, highly skilled workforce which Welsh firms can draw upon. Welsh legal services benefit enormously from being part of the internationally renowned England and Wales legal system. The Government is committed to promoting the UK-wide legal sector and legal services in all three jurisdictions – boosting jobs and the economy in Wales as well as in England, Scotland, and Northern Ireland.

Impact of the Legal Aid, Sentencing, and Punishment of Offenders Act 2012

Access to justice is a fundamental right. Last year we spent £774m on civil legal aid across England and Wales to support the most vulnerable, ensuring they can access justice effectively. We are spending around £8m on expanding legal aid provision through the Nationality and Borders Act and are injecting more than £10m a year into housing legal aid through our reforms to the Housing Possession Court Duty Scheme.

Regarding the capacity of providers, the Legal Aid Agency monitors capacity in the legal aid market and the provision of services, taking action when gaps appear. Wherever someone is in England or Wales, legal advice remains available through the civil legal advice telephone service, subject to eligibility criteria.

Whilst legal aid is central to access to justice, the Government recognises the vital role that charities in the advice sector play in helping people with their legal problems, which is why since 2020 we have delivered additional investment of over £10m for not-for-profit organisations who provide specialist legal advice, such as the Law Centres Network. This includes in excess of £600k of funding for legal support providers in Wales, allowing them to help those who need assistance with social welfare related legal matters, which has been provided through the Litigants in Person Support Strategy, the Legal Support for

Litigants in Person grant, the Covid-19 Specialist Advice Services Scheme grant and the Sector Sustainability Grant.

The MoJ continues to engage with representative bodies and providers within the sector to increase understanding of the challenges providers currently face and is considering the long-term sustainability of civil legal aid. We recognise that we need to take a whole system approach to these important issues and will say more on this soon.

Courts and Tribunals

It is argued in the *Access to Justice Summary* that significant travel times in parts of Wales and inadequate public transport infrastructure mean that the location of courts in Wales acts as a barrier for people wishing to access justice. The pandemic has demonstrated the need for remote participation in hearings and, going forward, we want the effective use of audio and video technologies to remain an integral part of the justice system alongside traditional in-person hearings. Video and audio technology has the potential to increase the capacity of the courts, make the process less intimidating for vulnerable people, and improve transparency and accessibility.

In June, by means of the Police, Crime, Sentencing and Courts Act 2022, we extended remote observation of all court and tribunal hearings across England and Wales. This measure complements the provision of traditional public galleries to ensure our justice system is even more accessible and transparent. It will particularly benefit court reporting by the media, but this is not indiscriminate broadcasting: those wishing to observe a hearing remotely must request access and be identifiable to the court. A judge will consider the application and decide what is in the best interests of justice on a case-by-case basis. Any observer who tries to record or broadcast a hearing they are watching could face a fine of up to £1,000 or, if found in contempt of court, be sent to prison for up to two years. As well as the news media, remote observation will benefit those who are less able or willing to sit in a physical courtroom.

The *Access to Justice Summary* emphasises the challenges associated with the provision of information in Welsh. We strive to ensure that court staff provide an excellent service in ensuring that people have access to services in Welsh, and HMCTS works closely in accordance with its Welsh Language Unit to translate court documents specifically prepared for proceedings. This also applies to digital applications, which are shared with the Welsh Language Unit by the Courts and Tribunals Services Centre. With regards to issuing matrimonial proceedings in Welsh, the No Fault Divorce Welsh service has been live for several weeks and to date we have had one petition.

Technology

The MoJ sees the growth of lawtech and innovation in the delivery of legal services as vital to a flourishing legal sector. Lawtech has enormous potential to improve the provision of legal services in the UK through greater efficiency, enabling new ways of delivering legal services and being more responsive to users' needs. The Government is supporting the growth and adoption of lawtech through the LawtechUK programme delivered by Tech Nation, launched in 2019 with an initial £2 million investment. We recently announced an additional £4 million of funding to continue this support into 2025 and intend to launch a competitive process shortly to identify a suitable provider. The Government recognises that smaller law firms may face additional barriers to innovating and adopting technology, so the objectives for the second phase of funding include increasing innovation and the adoption of lawtech across UK legal services.

The government has invested £1.3bn across all jurisdictions of the courts and tribunals as part of the HMCTS Reform Programme to transform the justice system, introducing 21st century technology and online services to improve efficiency and modernise the courts. These digital reforms and simplified services are removing simple cases from court as well as cutting down unnecessary paperwork. The completion of the HMCTS reform programme will modernise and raise performance and improve access

to justice in the civil courts. Over 90% of civil claims will be digitised by March 2023. So far, over 330,000 claims have been issued through the Online Civil Money Claims service, with user satisfaction at 95%.

We are aware of course that some service users feel digitally disenfranchised and excluded. The MoJ is taking steps to address this, including by building digital court services around user needs to ensure full accessibility, providing freely accessible support for users who need help to access HMCTS services online, and providing digital support to complete online applications by *We are Digital*, a digital inclusion training provider.

Accessibility of Welsh Law

The MoJ wants everyone across the United Kingdom to have access to justice. We note the issues raised in the paper regarding the online property Q&A tool and are looking into this.

More widely, we recognise the need for a collaborative approach between the MoJ and the Welsh Government to ensure that Welsh law is accessible, and we are keen to work with our colleagues in the Welsh Government to ensure legal rights are clearly signposted for both reserved and devolved powers.

Commission on Justice in Wales

The MoJ has been clear that, notwithstanding the UK Government's difference of position from that of the Welsh Government regarding the devolution of justice, we are keen to work with the Welsh Government to take forward some of the recommendations which have the potential to improve justice outcomes in Wales, provided they do not require a change to the devolution settlement.

The MoJ and Welsh Government have been working closely to identify and address those recommendations which we both see as a priority. With regard specifically to the points made in the paper, the MoJ has always seen as a weakness the fact that the Commission's report was not costed, so the financial implications of its recommendations will need to be assessed properly before any decisions are taken about potentially taking them forward.

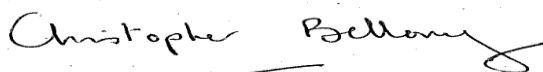
Hybrid Working

Throughout the pandemic, the majority of HMCTS staff continued to attend the workplace to ensure that frontline services were maintained. Some roles were able to continue remotely, either partly in offices or completely from home.

HMCTS has developed guidance and principles to introduce hybrid working across the workforce. These are based on business need but they also balance individual circumstances so that those who would benefit from more flexible arrangements can do so. Every role in HMCTS has a requirement to attend the workplace at least some of the time, whether that be to deliver particular objectives, meet with a team or stakeholder, or for collaborative working purposes. Indeed, for some roles, remote working isn't possible at all. HMCTS has learnt a lot over the last few years and will continue to explore where there is potential to enable remote working whilst continuing to deliver an effective service.

I look forward to meeting you and your colleagues on the Legislation, Justice, and Constitution Committee.

Kind Regards,



LORD BELLAMY KC

Rt Hon. Dominic Raab MP
Deputy Prime Minister, Lord Chancellor and
Secretary of State for Justice

12 July 2022

Dear Dominic

Access to justice: Summary of engagement

In December last year, as part of our remit in relation to justice matters, the Senedd's Citizen Engagement Team undertook some focus groups and a series of one-to-one interviews with legal practitioners and litigants in person in order to gain a better understanding of their experiences of access to justice in Wales.

On 30 June, we published a summary of the outcome of that work. We would welcome any observations you have on the views contained in this summary by 9 September 2022, in advance of Lord Bellamy's appearance before the Committee on 19 September.

I am copying this letter to the Parliamentary Under Secretary of State for Justice, Lord Bellamy QC.

Yours sincerely,



Huw Irranca-Davies
Chair