

# Agenda – Legislation, Justice and Constitution Committee

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Meeting Venue:	For further information contact:
Video Conference via Zoom	P Gareth Williams
Meeting date: 12 December 2022	Committee Clerk
Meeting time: 13.30	0300 200 6565
	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

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- 1 Introductions, apologies, substitutions and declarations of interest**  
13.30
- 2 Proposed negative instruments that raise no reporting issues under Standing Order 21.3B**  
13.30
- 3 Proposed negative instruments that raise issues to be reported to the Senedd under Standing Order 21.3B**  
13.30
- 4 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**  
13.30–13.35

**Made Negative Resolution Instruments**



**4.1 SL(6)294 – The Non-Domestic Rating Contributions (Wales) (Amendment) Regulations 2022**

(Page 1)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)33-22 – Paper 1 – Draft report

**5 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**

**5.1 SL(6)293 – The Common Organisation of the Markets in Agricultural Products (Amendment) (Wales) Regulations 2022**

(Pages 2 – 3)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)33-22 Paper 2 – Draft report

**5.2 SL(6)295 – The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2022**

(Pages 4 – 9)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)33-22 – Paper 3 – Draft report

LJC(6)33-22 – Paper 4 – Letter from Minister for Finance and Local Government to the Llywydd, 30 November 2022

## **Affirmative Resolution Instruments**

- 5.3 SL(6)292 – The Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022**

(Pages 10 – 20)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)33–33 Paper 5 – Draft report

- 5.4 SL(6)296 – The Non–Domestic Rating (Chargeable Amounts) (Wales) Regulations 2022**

(Pages 21 – 26)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)33–22 – Paper 6 – Draft report

LJC(6)33–22 – Paper 7 – Letter from the Minister for Finance and Local Government, 8 November 2022

LJC(6)33–22 – Paper 8 – Letter to the Minister for Finance and Local Government, 16 November 2022

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

13.45–13.50

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

(Pages 27 – 30)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-33-22 – Paper 9 – Report

LJC(6)-33-22 – Paper 10 – Welsh Government Response, 2 November 2022

LJC(6)-33-22 – Paper 11 – Welsh Government Response, 8 December 2022

## **7 Written Statements under Standing Order 30C**

13.50–13.55

### **7.1 WS-30C(6)021 – The EU Agencies (Revocations) Regulations 2022**

(Pages 31 – 34)

Attached Documents:

LJC(6)-33-22 – Paper 12 – Written Statement

LJC(6)-33-22 – Paper 13 – Commentary

LJC(6)-33-22 – Paper 14 – Letter from the Minister for Education and Welsh Language, 8 December 2022

## **8 Inter-Institutional Relations Agreement**

13.55–14.00

### **8.1 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: Welsh Government consenting to UK Government subordinate legislation**

(Pages 35 – 45)

Attached Documents:

LJC(6)-33-22 – Paper 15 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 2 December 2022

LJC(6)-33-22 – Paper 16 – Letter to the Minister for Rural Affairs and North Wales, and Trefnydd, 4 November 2022

### **8.2 Written Statement from the Minister for Rural Affairs and North Wales, and Trefnydd: The Organic Production (Amendment) (No. 2) Regulations 2022**

(Page 46)

Attached Documents:

LJC(6)-33-22 – Paper 17 – Written Statement

## **9 Papers to note**

14.00–14.05

### **9.1 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd to the Economy, Trade and Rural Affairs Committee: Agriculture (Wales) Bill**

(Pages 47 – 50)

Attached Documents:

LJC(6)-33-22 – Paper 18 – Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd to the Economy, Trade and Rural Affairs Committee, 1 November 2022

### **9.2 Correspondence from the Minister for Education and Welsh Language, to the Children, Young People and Education Committee: Tertiary Education and Research (Wales) Act 2022**

(Pages 51 – 57)

#### [Explanatory Memorandum](#)

Attached Documents:

LJC(6)-33-22 – Paper 19 – Letter from the Minister for Education and Welsh Language, 23 November 2022

LJC(6)-33-22 – Paper 20 – Letter from the Minister for Education and Welsh Language, 5 December 2022

### **9.3 Correspondence from the Business Committee: The Environmental Protection (Single-use Plastic Products) (Wales) Bill**

(Pages 58 – 65)

Attached Documents:

LJC(6)-33-22 – Paper 21 – Letter from Business Committee, 6 December 2022

LJC(6)-33-22 – Paper 22 – Letter to Business Committee, 25 November 2022

LJC(6)-33-22 – Paper 23 – Letter to the Minister for Climate Change, 25 November 2022

**9.4 Written Statement from the Counsel General and Minister for the Constitution on the Interim Report of the Independent Commission on the Constitutional Future of Wales**

(Page 66)

[Interim Report of the Independent Commission on the Constitutional Future of Wales](#)

Attached Documents:

LJC(6)-33-22 – Paper 24 – Written Statement from the Counsel General and Minister for the Constitution, 7 December 2022

**9.5 Correspondence from the Minister for Climate Change: Social Housing (Regulation) Bill**

(Pages 67 – 69)

Attached Documents:

LJC(6)-32-22 – Paper 25 – Letter from the Minister for Climate Change, 6 December 2022

**9.6 Correspondence from the Public Accounts and Public Administration Committee: Committee's Inquiry into Public Appointments**

(Pages 70 – 71)

Attached Documents:

LJC(6)-32-22 – Paper 26 – Letter from the Public Accounts and Public Administration Committee, 7 December 2022

**9.7 Report on the second meeting of the UK–EU Parliamentary Partnership Assembly**

(Pages 72 – 81)

Attached Documents:

LJC(6)-33-22 – Paper 27 – Report

**9.8 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: Agriculture (Wales) Bill**

(Pages 82 – 93)

Attached Documents:

LJC(6)33-22 – Paper 28 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 December 2022

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

14.05

**11 Legislative Consent Memorandum on the Levelling-up and Regeneration Bill**

14.05-14.20

(Pages 94 – 111)

[Legislative Consent Memorandum \(revised\)](#)

Attached Documents:

LJC(6)-33-22 – Paper 29 – Legal Advice Note

**12 Historic Environment (Wales) Bill: Consideration of Draft report**

14.20-14.50

(To Follow)

Attached Documents:

LJC(6)-33-22 – Paper 30 – Draft report

**13 Legislative Consent Memorandum on the Shark Fins Bill**

14.50-15.00

(Pages 112 – 122)

[Legislative Consent Memorandum on the Shark Fins Bill](#)

Attached Documents:

LJC(6)-33-22 – Paper 31 – Legal Advice Note

**14 Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Online Safety Bill: Consideration of Draft Report**

15.00-15.10

(To Follow)

Attached Documents:

LJC(6)-33-22 – Paper 32 – Draft report

**15 SICM(6)2 – The Animals and Animal Health, Feed and Food, Plants and Plant Health (Amendment) Regulations 2022: Consideration of Draft Report**

15.10–15.20

(To Follow)

Attached Documents:

LJC(6)-33-22 – Paper 33 – Draft report

## **SL(6)294 – The Non-Domestic Rating Contributions (Wales) (Amendment) Regulations 2022**

### **Background and Purpose**

These Regulations amend the Non-Domestic Rating Contributions (Wales) Regulations 1992 (“the 1992 Regulations”).

Under Part 2 of Schedule 8 to the Local Government Finance Act 1988 (non-domestic rating: pooling), billing authorities (in Wales, county and county borough councils) are required to pay amounts (called non-domestic rating contributions) to the Welsh Ministers. The 1992 Regulations contain rules for the calculation of those contributions for Welsh billing authorities.

These Regulations amend the 1992 Regulations by substituting a new Schedule 4 (adult population figures).

### **Procedure**

Negative.

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

### **Technical Scrutiny**

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

### **Merits Scrutiny**

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**

**07 December 2022**



# Agenda Item 5.1

## **SL(6)293 – The Common Organisation of the Markets in Agricultural Products (Amendment) (Wales) Regulations 2022**

### **Background and Purpose**

These Regulations make various technical amendments to retained EU and EU derived domestic legislation relating to marketing standards for agricultural products. The amendments fall into two categories:

- Consequential amendments resulting from the introduction of the Agriculture Act 2020; and
- Operability amendments arising from the UK's exit from the European Union.

The amendments either omit cross references to articles of Regulation (EU) No 1308/2013 (EUR 2013/1308) ("the CMO Regulation") which have been disapplied by Part 4 of Schedule 7 to the Agriculture Act 2020, in some cases together with associated wording, or operate to substitute references to articles of the CMO Regulation with an appropriate reference to retained EU legislation or to the Agriculture Act 2020.

### **Procedure**

Negative.

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

### **Technical Scrutiny**

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

### **Merits Scrutiny**

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

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

Similar amendments are made to other retained EU legislation and EU derived domestic legislation in relation to Wales by the Common Organisation of the Markets in Agricultural Products (Amendment) Regulations. This instrument was made by the Secretary of State on 7



November 2022 and laid before Parliament on 8 November 2022, coming into force on 1 December 2022.

Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd, laid a [Written Statement](#) before the Senedd under Standing Order 30C in relation to this instrument on 9 November 2022.

## Welsh Government response

A Welsh Government response is not required.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**7 December 2022**



Senedd Cymru

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

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Welsh Parliament

**Legislation, Justice and Constitution Committee**

Pack Page 3

# Agenda Item 5.2

## **SL(6)295 – The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2022**

### **Background and Purpose**

The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2022 (“the Regulations”) are made by the Welsh Ministers, in exercise of the powers conferred by sections 21(1), 24, and 123(1) and (2) of the Local Government Act 2003.

The Regulations amend the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003 (“the 2003 Regulations”) by inserting regulation 24L, which makes provision about the accounting practices to be followed by a local authority where a component of an infrastructure asset has been replaced. Regulation 24L applies to local authorities that are required to prepare a statement of accounts in accordance with regulation 8 of the Accounts and Audit (Wales) Regulations 2014. A local authority must either assume the carrying amount of the derecognised part is nil or calculate the carrying amount in line with the accounting practices identified under regulation 25 of the 2003 Regulations.

Due to significant historical information deficits, many authorities are unable to provide sufficient evidence of the value of replaced components of infrastructure assets when they are derecognised. This is particularly the case in relation to roads. Some of these issues date back to 1994, when these assets were first brought onto local government balance sheets. Furthermore, the reporting requirements have not been consistent over time.

This issue has contributed to delays in the completion of 2021-22 local authority audits as both local authorities and auditors have sought a resolution. Without resolution, there is a significant risk that many local authority financial statements could be subject to qualified audit opinions in this area, whereby the auditor is unable to give an opinion that the accounts are not misstated. It is anticipated that this may also lead to delays to future audits.

The Welsh Government has indicated that it recognises a long-term solution is needed that addresses the underlying issues but, due to the complexity of the issue, it will take both time and resources to fully address. Therefore, the override is provided by the Regulations on a temporary basis as an isolated measure to mitigate the risks of widespread accounts qualifications and delays to audit completion.

Regulation 24L applies to accounts for financial years in respect of the periods beginning with 1 April 2021 and ending with 31 March 2025. As such, it will apply retrospectively to local authority accounts for the financial year 2021-22 where an audit has not yet been completed.

### **Procedure**



Negative

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

## Technical Scrutiny

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

## Merits Scrutiny

The following 4 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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

We note the breach of the 21-day convention (i.e. the convention that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans AS/MS, Minister for Finance and Local Government, in a letter to the Llywydd dated 30 November 2022.

In particular, we note the following:

*“The reason for not adhering to the 21 day convention in this case is that local authorities are expected to make and secure approval of accounts in good time. This issue was identified earlier this year but could not be resolved by the professional accounting bodies and accordingly statutory provision was required. This has delayed the timetable for accounts audit and approval beyond the original expected date of 30 November. Local authorities are currently facing significant budget pressures and some very difficult decisions over services. They will receive their draft settlement on the 14 December 2022 and will need to focus all available officer and council time on budget and service planning. If further delayed the accounts approval process would take up officer and council time at a critical point. A delay also has a knock-on impact on Audit Wales’s timetables, with work being delayed until January/ February 2023 impacting on capacity in Audit Wales to complete all the community council audits and the start of the 2022-23 local authority audits.”*

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

We note the following reasons set out in paragraph 5.2 of the Explanatory Memorandum why no formal consultation was undertaken on the Regulations:



*“Given the technical nature of these changes no public consultation has been undertaken by Welsh Government. However the Welsh Government has consulted with local authority treasurers, Welsh Local Government Association, CIPFA and Audit Wales to draw on their specialist expertise in drafting the technical amendments and to ensure that the instrument meets its intended purposes. Those that the Welsh Government has spoken to have been supportive of both the principle and form of the accounting treatment set out in this instrument.”*

We note also, as set out in paragraph 5.1 of the Explanatory Memorandum, that the Chartered Institute of Public Finance and Accountancy issued its own urgent consultation on 12 May 2022 concerning the temporary changes to the Code of Practice on Local Authority Accounting in the United Kingdom with a view to resolving these infrastructure assets reporting issues, [Urgent Infrastructure Assets Task and Finish Group | CIPFA](#), which closed on 14 June 2022.

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

We note the following reasons set in paragraph 6.1 of the Explanatory Memorandum why no Regulatory Impact Assessment was undertaken in relation to these regulations:

*“As this instrument makes a technical amendment to the proper practices for local authority accounting for a time limited period only, which maintains the historical treatment of infrastructure assets, and the amendments do not alter the impact to the readers of the accounts in any significant way an RIA is not required.”*

Whilst the urgency of the Regulations is noted, it is unclear based on them and the accompanying Explanatory Memorandum, whether the revised treatment of the assets in question under new regulation 24L will, in fact, alter the resulting accounts. It would be helpful if the Welsh Government could clarify whether such treatment of these assets will result in potentially inflated accounts due to the presumed nil valuation for depreciation purposes where new regulation 24L(3)(a) is relied upon? And, if this is the case, whether a Regulatory Impact Assessment is required under the relevant Code of Practice as the changes introduced by the Regulations go beyond the mere technical?

### **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**

We note that Standing Order 15.4 has been relied upon to justify the laying of an English only Explanatory Memorandum. Whilst it may be the case that the urgency of the issue justifies this, we note the unusual circumstances of the Regulations and the useful detail set out in the clearly drafted English Explanatory Memorandum, which is of considerable help in explaining the need for the Regulations and the complexity of the issue they seek to address. Bearing in mind the Regulations will be in force until 31 March 2025, a Welsh version Explanatory Memorandum would be of similar help to any Welsh speakers who are equally interested in the background, purpose and effect of the Regulations.



## Welsh Government response

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

**Legal Advisers**

**Legislation, Justice and Constitution Committee**

**7 December 2022**



Senedd Cymru

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

—

Welsh Parliament

**Legislation, Justice and Constitution Committee**

Pack Page 7



Ein cyf/Our ref: MA/RE/3468/22

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

30 November 2022

Dear Elin,

**The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2022 (“the Regulations”)**

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this statutory instrument will come into force on 2 December 2022, less than 21 days after it has been laid. A copy of the instrument and the Explanatory Memorandum that accompanies it are attached for your information.

The Regulation amends the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003 (“the 2003 Regulations”) to provide for accounting practices in relation to the treatment of local authorities’ infrastructure assets. The accounting practice has the effect of allowing local authorities to elect to treat any component of any infrastructure which they own as having a value of nil when it is replaced. Local authorities are not required to use this accounting treatment. This accounting treatment may be applied for the preparation of all statements of accounts from 1 April 2021. The instrument will apply to statements of accounts for financial years up to and including the financial year ending 31 March 2025.

The reason for not adhering to the 21 day convention in this case is that local authorities are expected to make and secure approval of accounts in good time. This issue was identified earlier this year but could not be resolved by the professional accounting bodies and accordingly statutory provision was required. This has delayed the timetable for accounts audit and approval beyond the original expected date of 30 November. Local authorities are currently facing significant budget pressures and some very difficult decisions over services. They will receive their draft settlement on the 14 December 2022 and will need to focus all available officer and council time on budget and service planning. If further delayed the accounts approval process would take up officer and council time at a critical point. A delay also has a knock-on impact on Audit Wales’s timetables, with work being delayed until January/ February 2023 impacting on capacity in Audit Wales to complete all the community council audits and the start of the 2022-23 local authority audits.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
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[Correspondence.Rebecca.Evans@gov.wales](mailto:Correspondence.Rebecca.Evans@gov.wales)  
[Gohebiaeth.Rebecca.Evans@llyw.cymru](mailto:Gohebiaeth.Rebecca.Evans@llyw.cymru)

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

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

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

Yours sincerely,

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

**Rebecca Evans AS/MS**

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

# Agenda Item 5.3

## **SL(6)292 – The Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022**

### **Background and Purpose**

These Regulations 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 Regulations do this by modifying retained EU law and amending the Trade in Animals and Related Products (Wales) Regulations 2011 (“TARP Wales”) and the Animal Health (Miscellaneous Fees) (Wales) Regulations 2018 (“the 2018 Regulations”). The Regulations also amend TARP Wales to extend an exemption from the requirement for certain animals to undergo official controls.

TARP Wales requires consignments of animals or animal products that are being imported into, or transiting through, Wales to comply with the animal and public health requirements of EU Directives, Regulations and Decisions set out in Schedule 1 to those Regulations.

The 2018 Regulations set out fees payable to the Welsh Ministers for approvals and inspections in the field of animal health.

### **Procedure**

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 27 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 8 provides for further interpretation of certain words and expressions for the purpose of both Part 5 of the Regulations and in the EU Directives that are modified by Part 5. In the case of the EU Directives, the modifications made in Part 5 do not appear to signpost the reader of those Directives to these Regulations to enable them to understand the meaning of the words and expressions that are being inserted into the Directives. These



issues could cause problems with the accessibility of the Regulations and the Directives that they modify.

The Welsh Government is asked to explain how readers of the EU Directives are supposed to know to refer to these Regulations when reading the Directives.

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

Regulations 5(1) and 8(2) include reference to “the appropriate authority”. The Regulations do not contain a definition of “the appropriate authority” for the purpose of these Regulations.

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

Regulation 8(2) provides for further interpretation of certain words and expressions used in the Regulations. It provides a meaning for “third country” as “any country or territory outside the British Islands”. A footnote is then included which states that “British Islands” has the meaning given in Schedule 1 to the Interpretation Act 1978. As “British Islands” is used in the operative text of the Regulations, its meaning should also be set out in the operative text, not in a footnote.

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

Regulation 8(2) includes the definition “the TARP (ALF) (Wales) (EU Exit) Regulations 2022” means these Regulations”. In accordance with regulation 8(1), this definition is to be read into the EU Directives that are modified by Part 5 of the Regulations. However, when read as part of those Directives, the words “these Regulations” will have no meaning. We consider that the definition should read “the TARP (ALF) (Wales) (EU Exit) Regulations 2022” means the Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022” and should then include an appropriate footnote providing the citation.

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

Regulations 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19 modify the wording of various Directives and include reference to “the appropriate authority”. The modified Directives do not have a definition of the phrase “appropriate authority” and the Regulations do not provide for such a definition either.

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

Regulation 11(9)(b) modifies the wording of Directive 89/556 to lay down a new procedure for authorised flushing and washing fluids, washing techniques and, where necessary,



enzymatic treatments together with authorised transportation media. The modified wording means that an appropriate authority may now draw up a protocol, in accordance with a procedure set out by that appropriate authority in regulations. The Welsh Government is asked to confirm why the modified wording gives the appropriate authority a discretion to draw up a protocol when the original wording of the Directive required a protocol to be drawn up. Clarification is also sought as to whether the same appropriate authority will make regulations to set out the process for itself to draw up a protocol.

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

In regulation 3(3), in the Welsh text, the amendment is defective as it does not repeat the words “os yw’r” (“if the”) at the beginning of the new sub-paragraph (a) in regulation 15(3) of the Trade in Animals and Related Products (Wales) Regulations 2011. Instead it has simply said “bod y” (“that the”), but it is necessary to repeat “os yw’r” for the amendment to fit into the existing structure of regulation 15(3).

In this regard, the Welsh translation appears to have been based on the text of the original regulation 15(3) found in the 2011 Regulations rather than the amended regulation 15(3) as substituted by SI 2020/44 (W. 5), reg. 23(13), which has resulted in the error.

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

In regulation 4(2)(a)(viii), the English text refers to “Annexes 1 and 3” but the Welsh text has translated the meaning as “Annexes 1 to 3”.

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

In regulation 5(3), the English text refers to “the legislative competence of Senedd Cymru” but the Welsh text has translated “legislative” as “devolved” so that it reads “the devolved competence of Senedd Cymru” (i.e., it repeats the earlier reference to “devolved competence”).

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

Regulation 13(1)(a) removes the reference to “dealer” and “approved dealer’s premises” from Article 2 of Directive 91/68, but retains the terms in other places within the Directive.

The Welsh Government is asked to provide an explanation for the approach taken, given that these defined terms are still in use in the Directive.

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



In regulation 14(19)(c)(i)(bb), in the new text for the second indent, point (iii), there is a reference to "Directive 92/65/~~EEC~~". This Directive has been defined as "Directive 92/65" in regulation 2(2) without the "EEC". Therefore, it does not appear to use the correct defined term.

Similarly, in regulation 15(3)(a)(iv), in the new text for point (f), there is a reference to "Regulation (~~EC~~) 853/2004". This Regulation has been defined as "Regulation 853/2004" in regulation 2(2) without the "EC". Therefore, it also does not appear to use the correct defined term.

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

In regulation 14(9)(a)(i), there's a difference between the English and Welsh language texts. In the English text, there's a reference to "Directive 2009/158" in the new text, but the Welsh text refers to "Directive 1/158". The reference in the English text appears to be correct.

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

Regulation 16(1)(a) removes the reference to "distribution" from Article 1 of Directive 2002/99, but retains that term in other places within the Directive, including the definition of "all stages of the production, processing and distribution" contained in point 1 of Article 2 of that Directive. It is not clear whether the modifications have been made to distinguish between two scenarios – on one hand "production, processing and distribution", as defined, and on the other "production and processing".

The Welsh Government is asked to provide an explanation for the approach taken.

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

Regulation 16(3)(b)(iii) omits the definition of "products of animal origin" from Article 2 of Directive 2002/99, but that term is retained elsewhere in that Directive. Although that term is defined in other legislation, the modifications made to Directive 2002/99 do not appear to signpost the reader of the legislation where a definition of "products of animal origin" can be found to enable them to understand the meaning of those words. These issues could cause problems with the accessibility of the Regulations.

The Welsh Government is asked to explain how readers of Directive 2002/99 would be able to find a definition of "products of animal origin".

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

Regulation 16(6)(a)(i)(bb) removes "suspected of being infected," from Article 4 of Directive 2002/99. This appears to mean that it is no longer possible to authorise production, processing and distribution of products of animal origin which come from a territory or part



of a territory subject to animal health restrictions but which do not come from a holding which is suspected of being infected (i.e. only if not coming from a holding which is infected). Such a change, which narrows the scope of a potential authorisation, appears to be more than a technical amendment.

The Welsh Government is asked to explain why the words “suspected of being infected” have been omitted from Article 4 of Directive 2002/99.

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

The Regulations modify some, but not all, provisions of Directives. For example, there is no modification of Articles 5, 6 and 10 of Directive 2002/99 (Veterinary certificates; Official veterinary controls; and Community inspections and audits). It is presumed that these Articles are not modified as they will not apply in Wales. However, there is no express reference of this being the case. These issues could cause problems with the accessibility of the Directives.

The Welsh Government is asked to explain how readers of the EU Directives will know which provisions contained in those Directives apply in Wales.

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

In regulation 16(6)(c), in the English text, there is a paragraph which is incorrectly numbered (iii) with the opening words “in the second subparagraph”. This should be numbered paragraph (ii) as already found in the Welsh text.

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

In regulation 16(9)(c)(ii), there is a difference between the Welsh and English texts. In the Welsh text, the words within the quotation marks identified for substitution do not include the definite article “the” before “Community legislation”. This will make a difference as to how the text will read following the modification.

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

Regulation 17(8)(e)(ii) removes the requirement to provide “a specimen veterinary certificate established in accordance with the procedure referred to in Article 14(2)” from Article 7(e) of Directive 2004/68. Whilst other procedures referred to in Article 14(2) have been replaced with provisions that may be set out by the appropriate authority by regulations, there is no similar replacement in relation to specimen veterinary certificates. Such a change, which removes requirements in place in relation to imports of live ungulates, appears to be more than a technical amendment.



The Welsh Government is asked to explain why the requirement to provide “a specimen veterinary certificate” has been omitted from Directive 2002/99.

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

Regulations 18(5)(e) and 19(13)(a) modify Article 4(6) of Directive 2009/156 and Article 16(1) of Directive 2009/158 respectively, to grant regulation making powers to the appropriate authority. The first point under Article 4(6) refers to “the distribution of the disease on its territory” and the first point under Article 16(1) refers to “the distribution of the disease in its territory”. These references appear to be no longer relevant in relation to Wales.

The Welsh Government is asked to explain why the reference to “territory” remains in Article 4(6)(a) of Directive 2009/156 and Article 16(1)(a) of Directive 2009/158.

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

Regulation 19 modifies Directive 2009/158. That Directive contains references to “competent veterinary authority” throughout, including in Article 2(11), which is amended by regulation 19(3)(b). It is not clear whether that definition is still relevant following the UK’s exit from the European Union, and there is no definition of “competent veterinary authority” in the Directive and no signpost to where such a definition can be found. These issues could cause problems with the accessibility of Directive 2009/158.

The Welsh Government is asked to explain whether the definition of “competent veterinary authority” remains relevant and if so how readers of Directive 2009/158 would be able to find a definition for the term.

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

In regulation 19(19)(b), there is a difference between the English and Welsh texts. The English text correctly identifies the text to be modified by the substitution as including a reference to “Article 33(2)” but the Welsh text incorrectly refers to “Article 33(33)”.

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

In regulation 19(21)(a)(iii), there is a difference between the English and Welsh texts. The English text incorrectly identifies the text to be modified by the substitution as saying “languages or the Member State”. The Welsh text correctly says “languages of the Member State”.

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



There is a difference between the English and Welsh texts at the beginning of Part 6. The English text has a Part heading saying “Amendment of the Animal Health (Miscellaneous Fees) (Wales) Regulations 2018”. There is no heading for Part 6 of the Welsh text and it is completely missing from the translation.

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

The Schedule lists the provisions of the Directives that contain functions conferred on the Welsh Ministers as appropriate authority, together with any other provisions that are either relevant or connected to the exercise of a listed function. It is not clear why the provisions of the Schedule have been drafted in the way they have. To assist with the accessibility of the legislation, an explanation of the approach taken in relation to the following provisions would be helpful:

- Reference to the third subparagraph of Article 9(2) of Directive 88/407 in paragraph 2(b).
- Reference to Article 8(a) and not Article 8(b) of Directive 92/65 in paragraph 6(e).
- Reference to the second subparagraph of Article 4(3) of Directive 2002/99 in paragraphs 8(c) and (d).
- Reference only to the second to fourth subparagraphs of Article 8(1) of Directive 2002/99, but not the fifth to tenth subparagraphs.
- Reference to individual subparagraphs in some cases, but not all, for example Articles 19(a) and 19(b) of Directive 92/65 in paragraphs 6(s) and 6(t); Articles 6(1), 6(2) and 6(3) of Directive 2004/68 in paragraph 9(e); the first and second subparagraphs of Article 4(6) of Directive 2009/156 in paragraph 10(c) and (d); and Articles 19(a), 19(b), 19(c) and 19(d) of Directive 2009/156 in paragraphs 10(q) to (t).
- No reference to Article 5(5)(a) of Directive 2009/156, in contrast to the reference to Article 5(5)(c) of that Directive.

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

In the Schedule, there are a few differences between the English and Welsh texts. In both paragraph 1(e) and (f), “Section” has been incorrectly translated as “Rhan” which means “Part” in Welsh SIs. Elsewhere, “Adran” has been correctly used as the translation for “Section” throughout the Regulations.

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

In the Schedule, in paragraph 3(g)(i), the drafting of the provision appears to be defective as points (h), (m) and (n) are all found in point 1. Therefore the reference to point “1” should be



inserted in the opening words of sub-paragraph (g), so that it applies to paragraphs (i), (ii) and (iii).

## Merits Scrutiny

The following 7 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

**28. Standing Order 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment.**

Regulation 3(6) amends regulation 38 of the Trade in Animals and Related Products (Wales) Regulations 2011 (“the 2011 Regulations”). Regulation 38 of the 2011 Regulations currently provides that local authorities and port health authorities must charge a reasonable fee in relation to any official control activity in accordance with the charging provisions contained in Chapter 6, Title 2 of the EU Official Controls Regulation, and that such fee is payable by the operator responsible for the consignment or its representative. The amendment that regulation 3(6) of these Regulations makes to regulation 38 of the 2011 Regulations extends to the Welsh Ministers the duty to charge the fees referred to in regulation 38.

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

These Regulations give the Welsh Ministers powers that are equivalent to powers given to UK Ministers in the Trade in Animals and Related Products (Amendment and Legislative Functions) Regulations 2022 (“the UK Regulations”).

The powers given to UK Ministers in the UK Regulations include powers to act in devolved areas in Wales. Therefore, there are concurrent powers in this area of law, i.e. there are powers that can be exercised in Wales by either:

- a) the Welsh Ministers under these Regulations, or
- b) UK Ministers under the UK Regulations (but only with the consent of the Welsh Ministers).

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 said that the Welsh Ministers would consent to UK Ministers using their powers under the UK Regulations in devolved areas only in “exceptional circumstances”.

Also, as regards the use of the powers by the Welsh Ministers under these Regulations, we note the important context provided by the Common Framework on Animal Health and Welfare and its requirements for cross-government engagement.



**30. 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 6 states that regulations made by the Welsh Ministers under any of the functions mentioned in the Schedule are to be made using the negative scrutiny procedure. Regulation 6(3) states that such regulations can amend, repeal or revoke any enactment, which means that the regulation making powers are Henry VIII powers. The Welsh Government is asked to confirm why the negative procedure is appropriate for these regulation making powers. The Welsh Government is also asked to confirm whether regulation 6 changes the current procedure that is applied to these regulation making powers.

**31. 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 provide the Welsh Ministers with regulation making powers under several Directives to replace procedures which were previously included under those Directives. It is unclear what the intentions and the timescales are for the use of these additional powers. Specifically, what are the reasons for adding additional regulation making powers into the Directives?

**32. 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.**

In addition to the specific points made above, these Regulations do not provide a reader with a straightforward route to understanding what the law is in this area. A number of pieces of legislation are being amended in a piecemeal fashion by these Regulations. It is very difficult to ascertain the legislative position generally, and to find the information needed to understand the requirements in this area.

In particular, the approach found in regulations 2 and 8 in relation to interpretation provisions appear to mark a novel departure from the approach usually found in Welsh statutory instruments.

All of the regulations in Part 5 relating to Directives include provisions that modify the existing interpretation provisions already found in those Directives (by modifying the existing definitions or introducing new definitions). From a practical point of view, it means that readers of those EU Directives on legislation.gov.uk, Westlaw and LexisNexis should be alerted to the existence of those modifications. However, the other definitions for those EU Directives found in regulations 2 and 8 will not be included in the textual comments for the EU Directives on those online resources which means that readers will not necessarily be aware of their existence. Therefore, it could be argued that it undermines the accessibility of Welsh Law (see section 1 of the Legislation (Wales) Act 2019). The Welsh Government is asked to explain why it took the approach of including definitions in regulations 2 and 8 rather than including them in the regulations that modify the interpretation provisions in each Directive.



Similarly, in regulation 8(2), the terms “national reference laboratory” and “official laboratory” are defined but are not used in these Regulations or in the modifications to the EU Directives found in Part 5. This approach could potentially confuse or mislead readers of these Regulations. The defined terms are used in the existing text of some of the Directives listed in Part 5, even if they are not used in the modifications found in these Regulations. The Welsh Government is therefore asked to explain why it did not modify the interpretation provisions found in those Directives for the purposes of accessibility

**33. 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.**

Limited consultation has taken place in relation to these Regulations. The Explanatory Memorandum explains that:

*No consultation requirement arises from the use of the [European Union] Withdrawal Act [2018], and there are no policy changes therefore we do not expect this instrument to have an impact on stakeholders. Conditions for importation of animal or animal products or approval of establishments for example are not being affected by these modifications. This instrument does not introduce any new duties or obligations to users or enforcement agencies. These modifications will allow the existing rules to continue to apply in Wales following our departure from the EU.*

*There is a consultation requirement for changes by virtue of regulation 3(8) which amends Schedule 3, paragraph (8) of TARP Wales. Consultation was led by the UK Government on a GB-wide basis in 2021 and the responses were very favourable.*

The preamble to the Regulations state that:

*...the Welsh Ministers have consulted such bodies and persons as appear to the Welsh Ministers to be representative of the interests likely to be substantially affected by these Regulations and such other bodies or persons as the Welsh Ministers consider appropriate.*

This appears to be inconsistent with the final paragraph of the quote from the Explanatory Memorandum above, which states that the consultation was led by the UK Government. Clarification is therefore requested from the Welsh Government as to how the consultation took place.

**34. 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.**

Over 70 typographical errors and errors in the footnotes to these Regulations have been found, which have been notified separately to Welsh Government officials. The Committee notes that footnotes do not form part of the Regulations themselves, but they 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.



## Welsh Government response

A Welsh Government response is required to the technical reporting points and the merits points except for point 28 and 34.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**7 December 2022**



Senedd Cymru

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

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Welsh Parliament **Pack Page 20**

**Legislation, Justice and Constitution Committee**

## **SL(6)296 – The Non-Domestic Rating (Chargeable Amounts) (Wales) Regulations 2022**

### **Background and Purpose**

These Regulations prescribe rules to be used to calculate the chargeable amount for hereditaments with increased non-domestic rates (NDR) liability of over £300, as a result of the increase in rateable value of their hereditament, following the compilation of the new NDR rating list on 1 April 2023.

The Regulations reduce the liability of eligible ratepayers, by phasing in the increase over a two-year period: eligible ratepayers will be entitled to a phased reduction in the increase in NDR liability over a two-year period (67% reduction in 2023-24, and 34% in 2024-25).

The Regulatory Impact Assessment for these Regulations states:

*Businesses have faced considerable economic changes and challenges since the previous revaluation and, in particular, due to the impact of the coronavirus pandemic and recent cost-of-living pressures. As a consequence, many ratepayers for medium and large properties may have difficulty paying their full increase in liability in the first year following revaluation. Some of these ratepayers may also see the largest increases in liability. This option would ensure all parts of the tax-base are supported in a straightforward and consistent manner.*

### **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**

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

### **Merits Scrutiny**

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

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

We note the phased introduction of the increase in NDR liability from 1 April 2023 onwards, and the cost of this to the Welsh Government as set out in the Regulatory Impact Assessment:



*This option would support an estimated 39,600 properties, at a cost to the Welsh Government of £75.2m in 2023-24 and £37.6m in 2024-25, totalling £112.8m over a two-year period.*

## **Welsh Government response**

A Welsh Government response is not required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**8 December 2022**



Senedd Cymru

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

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Welsh Parliament **Pack Page 22**

**Legislation, Justice and Constitution Committee**



Ein cyf/Our ref: SL-1325

Huw Irranca-Davies MS  
Chair – Legislation, Justice and Constitution Committee  
Senedd Cymru  
Cardiff Bay  
CF99 1SN  
[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

8 November 2022

Dear Huw,

### **THE NON-DOMESTIC RATING (CHARGEABLE AMOUNTS) REGULATIONS 2022**

I am writing to notify you of the potential need for the above Regulations which it may be necessary to present to the Committee with limited time available for scrutiny.

As part of non-domestic rates revaluations, consideration is given to the impact on ratepayers of changes in their local tax liabilities. The Welsh Ministers have powers to introduce transitional relief, under sections 58, 143(1) and 146(6) of the Local Government Finance Act 1988. Under these powers, any regulations must follow the draft affirmative procedure and must be in force prior to 1 January of the year of a revaluation. The next revaluation is scheduled to take place on 1 April 2023 and, as such, any regulations under these powers must commence by 31 December 2022 at the latest.

Unfortunately, I am not in possession of the relevant details to inform a balanced decision on this matter, due to the timing of the UK Government's Autumn Statement scheduled for 17 November. Following the Autumn Statement, I will make a policy decision as soon as possible, considering the financial position of the Welsh Government. Given the potential costs of any scheme, the pressures on the budgets and the current uncertainty as to the resources available to the Welsh Government for 2023-24, it would be irresponsible for me to do so before all of the relevant information is available.

Should I decide that relief is necessary, draft Regulations will be developed at pace, with the intention of their being debated on 13 December.

The 13 December Plenary slot is necessary to meet the 1 January 2023 deadline. Unfortunately, the draft Regulations may not be available to be laid until 6 December. I acknowledge that this provides a much compressed timetable for the consideration of the draft Regulations and I am therefore giving you as much notice as possible of the potential time-scales and seeking the Committee's assistance in expediting the scrutiny of the draft Regulations, if needed.

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

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

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

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

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

I trust the Committee will appreciate the circumstances that necessitate this condensed timetable for scrutiny and will be able to provide its views within a shortened timeframe.

I am copying this letter to the Llywydd, Elin Jones MS, and the Chair of the Local Government and Housing Committee, John Griffiths MS, for their information.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive style with a large initial 'R'.

**Rebecca Evans AS/MS**

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

Rebecca Evans MS  
Minister for Finance and Local Government

16 November 2022

Dear Rebecca

## The Non-Domestic Rates (Chargeable Amounts) Regulations 2022

Thank you for your letter of 8 November informing us that, should it be necessary to lay the Non-Domestic Rates (Chargeable Amounts) Regulations 2022, it is likely that the timetable for their scrutiny will need to be expedited.

We acknowledge your explanation that this is as a result of the UK Government's Autumn Statement being scheduled for 17 November and the need for the Welsh Government to have all available information before making a policy decision on these Regulations.

We are aware that any Regulations must follow the draft affirmative procedure and must be in force prior to 1 January of the year of a revaluation.

You have told us that draft Regulations may not be available to be laid until 6 December, with the intention of their being debated on 13 December. We welcome your acknowledgement that this provides a much compressed timetable for our consideration of the draft Regulations and we thank you for seeking, well in advance, our assistance in expediting scrutiny, should that be needed.

We, and our supporting Senedd Commission officials, will do our best to undertake scrutiny of the draft Regulations within the required timeframes.

You may be aware that we have also received a request from the Minister for Climate Change to expedite our consideration of regulations to facilitate the implementation of the *Renting Homes (Wales) Act 2016*.

I would ask that you keep us, and our officials, updated with relevant developments.

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies

Chair



## **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.

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

**Technical Scrutiny Point 1:** In the Government Response to the Committee Report of 24 October 2022 the Welsh Government stated it would seek to remedy this error via correction slip at the earliest opportunity. The S.I. Registrar has now confirmed that a correction slip is not appropriate to remedy the title change. A correcting S.I will, therefore, be made instead of a correction slip.

**Technical Scrutiny Point 2:** A correction slip was to be used to remedy this error however given a correcting S.I is being made to address technical scrutiny point 1 the correcting S.I will also address technical scrutiny point 2.

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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE** The EU Agencies (Revocations) Regulations 2022

**DATE** 05 December 2022

**Lesley Griffiths AS/MS**

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

**BY**

**Jeremy Miles AS/MS**

**Gweinidog y Gymraeg ac Addysg  
Minister for Education and Welsh Language**

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

Agreement was sought by Alex Burghart MP to make a Statutory Instrument (SI) titled the EU Agencies (Revocations) Regulations 2022 to apply in relation to England and Wales, Scotland and Northern Ireland.

The above titled SI will be made by the Secretary of State in exercise of powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018.

The SI revokes Regulation (EC) No 1339/2008 and Regulation (EU) No 2019/128, which have continued to operate as part of domestic law since the end of the implementation period despite the fact that the United Kingdom has left the two EU agencies to which they relate. Regulation (EC) No 1339/2008 is revoked since the United Kingdom no longer participates in the European Training Foundation. Regulation (EU) No 2019/128 is revoked since the United Kingdom no longer participates in the European Centre for the Development of Vocational Training, known as "Cedefop".

The regulations were laid before Parliament on 1 December 2022 to come into force on 22 December 2022.

## UK MINISTERS ACTING IN DEVOLVED AREAS

### 021 - [The EU Agencies \(Revocations\) Regulations 2022](#)

*Laid in the UK Parliament: 1 December 2022*

#### Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Made negative
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	Made negative
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 the European Union (Withdrawal) Act 2018.

#### Summary

These Regulations revoke EU legislative provisions that have continued to operate as part of domestic law since the end of the implementation period despite the fact that the United Kingdom has left the two EU agencies to which they relate:

- **Regulation (EC) No 1339/2008** is revoked since the United Kingdom no longer participates in the European Training Foundation. The European Training Foundation (ETF) is a decentralised agency of the European Union based in Turin, Italy. ETF supports countries surrounding the European Union to reform their education, training and labour market systems to harness the potential of their human capital in the context of the EU's external relations policy. ETF

currently works with 29 partner countries neighbouring the EU including the countries preparing for accession to the EU. The UK funded ETF as a Member State through its contribution to the EU budget.

- **Regulation (EU) No 2019/128** is revoked since the United Kingdom no longer participates in the European Centre for the Development of Vocational Training, known as “Cedefop”. Cedefop is an EU agency that provides a reference centre for vocational education and training, supporting development of European vocational education and training (VET) policies and contributing to their implementation. Cedefop provides a source of information on VET policies, comparative analyses and expertise gathered through research and networking. It contributes to analysis conducted when developing domestic VET policies and benchmarking against policies in other countries.

### **Statement by the Welsh Government**

Senedd Legal Advisers agree with the statement laid by the Welsh Government dated 5 December 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.

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.



Ein cyf/MA-LG-3512-22

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

2 December 2022

Dear Huw

Thank you for your letter of 4 November, regarding the Welsh Government consenting to UK Government subordinate legislation.

Before I turn to the specific matters raised, it may be useful if I outline our general arrangements.

Our starting position is that legislative powers in devolved areas should be exercised by the Welsh Ministers in relation to Wales rather than the UK Government.

Collaborative working will, of course, sometimes be beneficial and when it is, we do so in accordance with the outcomes of the Inter-Governmental Relations Review, agreed by the four UK Governments earlier this year. The review included principles for Inter-Governmental working practices built on mutual respect and trust, as well as respecting both the reserved powers of the UK Government and UK Parliament and the devolved competences of the Scottish Government, Welsh Government, Northern Ireland Executive and their legislatures. The system provided for by the Review provided a positive basis for productive relations, facilitating dialogue where views are aligned and resolution mechanisms where they are not.

In relation to EU Exit, and since the end of the transition period, UK Government instruments making technical operability amendments to retained EU law were within the remit of our Principles for Correcting Deficiencies in EU-derived Domestic Legislation. Those principles reflected Cabinet's agreement that UK legislation could be corrected by UK Statutory Instruments (UKSIs) if the deficiencies were purely technical in nature and there would be no significant devolved policy interests at risk if the deficiencies were to be corrected by UK Government.

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

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

In relation to Instruments that go beyond correction, the Welsh Government's agreed approach has been to take decisions which may impact on divergence / alignment of laws based on case-by-case advice, acknowledging there will sometimes be legitimate justifications for consenting to the exercise of powers in devolved areas by the UK Government.

In considering individual contexts, I consider the options for Wales-only legislation in light of the starting position highlighted above, and before consenting, seek to ensure there are robust governance arrangements in place. This includes consideration of arrangements at official level, through to oversight by Ministerial forums. If governance arrangements are not as comprehensive as I would like, but consent is nonetheless appropriate for reasons of expediency, it is Welsh Government policy to limit consent as narrowly as possible with a suitable review mechanism included.

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

I have noted the Committee's comments and agree it would be good practice to refer to the powers under which an Instrument is made.

### **The Pests of Plants (Authorisations) (Amendment) Regulations 2022**

1. *Please can you state when you first knew about the need for these Regulations and accordingly, whether they could have been introduced in a single bilingual instrument made by the Welsh Ministers earlier than 1 November 2022, when they came into force.*

I received a letter advising me of the upcoming Statutory Instrument (SI) programme on 14 June 2022. At this point, no details were known of the actual amendments, it was just an expression of intent.

It is unlikely a consistent approach between GB nations could have been achieved by the deadline of 1 November if the SI had been introduced by Welsh Ministers. SIs drafted by Defra are reviewed by my policy and Legal Services officials before any recommendation as to consent is given.

2. *Please can you explain why separate Welsh regulations would not be: a) the most appropriate way to effect the changes or b) a prudent use of resources?*

The Plant Health regulations are a fundamental tool to tackling plant pests and diseases, sometimes on an emergency basis, and it is important to maintain a shared GB approach. I considered the option for Wales-only legislation, but concluded it was more expedient to consent to UK Government legislating in this instance. I believed Legal Services and Senedd resources could be used on other pressing legislative issues where policy divergence occurred. The Plant Health: Provisional Common Framework<sup>1</sup> was an important factor in the decision.

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<sup>1</sup> [Plant health: provisional common framework for GB \(www.gov.uk\)](https://www.gov.uk/government/consultations/plant-health-provisional-common-framework)

3. *Please can you explain the purpose of the reference to the Programme for Government? Do implications for the Programme for Government impact on whether the Welsh Government makes its own regulations in devolved areas when correcting the statute book as a consequence of EU exit?*

The Programme for Government reference was included to inform committee members the changes made by the regulations do not impact on the Welsh Government's policy ambitions. The Programme for Government does not impact whether Welsh Government makes its own Regulations in devolved areas when correcting the statute book because of EU exit.

### **The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2022 (the Persistent Organic Pollutants Regulations)**

### **The Control of Mercury (Amendment) (EU Exit) Regulations 2022 (the Control of Mercury Regulations)**

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

4. *Please can you confirm that in future you will at the very least include the date of correspondence with UK Ministers in your letter to us and that, where possible, you will include a copy of that correspondence?*

I confirm in future I will include the date of correspondence with UK Ministers in my letters to the Legislation, Justice, and Constitution Committee (LJCC) and any other relevant committee. I will aim, where possible, to provide a copy of the correspondence to the appropriate Committees.

5. *When you receive correspondence from UK Ministers seeking your consent, is this generally received before or after the Regulations have been drafted by the UK Government?*

Correspondence formally seeking my consent is generally received before the Regulations have been drafted. When the regulations are in final draft form, I am provided with advice from my officials on the appropriateness of agreeing the same. My officials are notified and engaged before this point to ensure the drafting is correct from a Welsh perspective and I am provided, when appropriate, with update briefings from them. In respect of the regulations covered under this section, UK Ministers wrote to Welsh Government in June seeking consent for the Statutory Instruments which needed to be laid in October.

6. *Are there intergovernmental agreements in place between your department and relevant UK Government departments in relation to consent?*

Please refer to my outline of the general position on Inter-Governmental working and process for considering consent, provided at the outset of this letter.

*Please can you explain why separate Welsh regulations would not be: a) the most appropriate way to effect the changes or b) a prudent use of resources?*

In relation to the three sets of Regulations, I considered the option for Wales -only legislation, but concluded it was more expedient to consent to UK Government legislating in this instance. The presence of common frameworks was an important factor in that decision. The relevant frameworks are:

For the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2022 (the Persistent Organic Pollutants Regulations) and the Control of Mercury (Amendment) (EU Exit) Regulations 2022 (the Control of Mercury Regulations) this is the 'Approaches to Decision Making' and 'Principles of Working Together' sections of the Chemicals and Pesticides: Provisional Common Framework on Chemicals and Pesticides (<https://www.gov.uk/government/publications/chemicals-and-pesticides-provisional-framework>).

For the Animals and Animal Health, Feed and Food, Plants and Plant Health (Amendment) Regulations 2022 (the Animals, Feed and Plants Regulations) provisional frameworks relating to animal health and welfare; plant health; and food and feed are all relevant.

For the Pests of Plants (Authorisations) (Amendment) Regulations 2022 this is the "UK Plant Health Concordat between the UK Government, Scottish Government, Welsh Government, and Northern Ireland Executive" section of the Plant Health: Provisional Common Framework (<https://www.gov.uk/government/publications/plant-health-provisional-common-framework>).

## **The Biocidal Products (Health and Safety) (Amendment) Regulations 2022**

7. *Given that Chloe Smith MP left that Ministerial post on 6 September 2022, please can you explain why there was a delay in notifying the Committee of this request, meaning it has been provided with less time to consider these regulations given they were laid on 18 October 2022, eight days after you wrote?*

I received a letter from Chloe Smith MP, Minister for Disabled People, Health and Work, on 19 August, requesting consent to the Biocide Regulations. At that time, the SI was still in draft format and a final version was circulated on 7 September during summer recess. During this time, I considered officials' advice and reached a decision to consent to the Regulations, however, due to the changes in Ministers in UK Government at the time, there was no Minister assigned to the Health and Safety Executive (HSE) portfolio to write to. Once a Minister had been officially confirmed on 7 October, I signed the consent letter to Claire Coutinho MP, Parliamentary Under-Secretary of State for Disabled People, Health and Work, on the same day.

In relation to question 2, these regulations make technical operability amendments to retained EU law, correcting deficiencies that are technical in nature and so are within the remit of our Principles for Correcting Deficiencies in EU-derived Domestic Legislation. Those principles reflected Cabinet's agreement that such amendments could be corrected by UK Statutory Instruments (UKSIs) on the basis there would be no significant devolved policy interests at risk if the deficiencies were to be corrected by UK Government. Any divergence from a GB approach would result in the Health and Safety Executive (HSE), which acts as the Competent Authority for Biocides in England and Wales, having mixed competencies.

In relation to question 3, I refer to my answer to question 3 above.

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

8. *Please can you confirm when the Secretary of State requested that you consent to these Regulations?*

The then Minister of State for Farming, Fisheries and Food, Victoria Prentis MP, wrote requesting my consent to these Regulations on 18 July 2022.

9. *Your letter states “I am giving consent” to the Secretary of State to lay the draft Regulations. Your letter to us was issued the day after the Regulations were laid. What date did you inform the Secretary of State that you were giving consent?*

I wrote to inform the Secretary of State of my consent to these Regulations on 17 October 2022.

10. *Why are Regulations covering Great Britain necessary, when you say you will be making equivalent regulations for Wales?*

The UK Government’s regulations apply wholly to England and Scotland, but apply in relation in Wales in two respects. The regulations contain a power for the Secretary of State to legislate in relation to Wales, but only if the Welsh Ministers give their consent i.e., the concurrent plus power. The regulations provide that the Secretary of State is the appropriate authority in relation to Wales, but only in so far as a matter relates to functions outside of the legislative competence of the Senedd.

11. *Why is the creation of concurrent plus functions appropriate when you will be making your own regulations?*

The concurrent plus function was considered appropriate for policy reasons. I consider it is appropriate to have flexibility and an option for Welsh Ministers to consent to the Secretary of State legislating for Wales in certain exceptional circumstances. The Secretary of State can only legislate for Wales on devolved matters with consent from the Welsh Ministers; therefore, there is no loss of powers arising from this instrument.

12. *What are the exceptional circumstances in which you would provide consent for UK Ministers to act under the draft Regulations?*

The nature of animal and public health trade policy is that legislative changes can be required urgently, to restrict or reopen trade, given how dynamic animal diseases are and given obligations to our trading partners. Exceptional circumstances for the use of these concurrent plus functions could include responding to international obligations of the UK, such as those in trade agreements or when dealing with emerging diseases in third countries. In such instances, import health conditions may need to be quickly amended, in order to swiftly impose or remove import health conditions in response to changing disease risks. In such cases it could be appropriate to consent to the use of these powers where there is cross-government agreement in policy.

We operate within the Animal Health and Welfare provisional Common Framework which was designed to facilitate shared ways of working and common approaches, where appropriate, whilst fully respecting devolution. The framework allows for divergence with an emphasis on non-harmful divergence, as there will be instances where it is appropriate for individual Governments to take different approaches.

The policy decision-making body in the framework is the Animal Disease Policy Group (ADPG). ADPG reaches, where possible, official-level agreement on UK and GB control strategies and, where appropriate, informs officials' recommendations to their respective Ministers. Membership includes the four Chief Veterinary Officers and heads of policy in each government, alongside delivery partners such as government agencies and other government policy leads, and advisory and expert bodies (e.g., public health). These new governance arrangements reflect the many new functions that GB Ministers have acquired following Brexit.

13. *Given that there will be Great Britain-wide regulations and Wales-wide regulations in place, how does this square with the Welsh Government's commitment to accessible legislation?*

The Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022 were laid before the Senedd on 22 November 2022 to amend the Trade in Animals and Related Products (Wales) Regulations 2011 and make the necessary modifications to the relevant EU Directives, for the purposes of those 2011 Regulations. These Regulations made by the Welsh Ministers will, subject to the approval of the Senedd, contain a number of Welsh Ministers legislative functions and it is my intention that Welsh Ministers will exercise those functions to legislate in relation to Wales. These Regulations will, subject to the Senedd's approval, be made bilingually in so far as practicable. However, as a good deal of the text in the draft Regulations modifies a number of EU Directives, those modifications will be made in English only, as the Directives themselves are not available in Welsh.

The powers contained in the Secretary of State's regulations will, by comparison to those contained in the Welsh Ministers' draft Regulations, be relied upon only exceptionally. It is regrettable that in so far as the regulations made by the Secretary of State apply in relation to Wales, they will not be available bilingually. However, in view of the fact that the modifications to the Directives are not made bilingually in our own Regulations, coupled with my stated intention that these powers will be available only as a useful secondary tool, I consider the approach appropriate.

14. *You have previously justified consenting to regulations on grounds of ensuring a coherent and consistent statute book with the regulations being accessible in a single instrument but, for these Regulations, you would appear to be taking a different view. Please can you explain why this is the case?*

In relation to EU Exit in particular, we have, in accordance with our Principles for Correcting Deficiencies in EU-derived Domestic Legislation, consented to corrections being made within UK Statutory Instruments (UKSIs) if the deficiencies were purely technical in nature and there would be no significant devolved policy interests at risk if the deficiencies were to be corrected by UK Government.

However, in regulation to these Regulations, the Welsh Ministers have consented to them only in so far as they provide for the Secretary of State to have a concurrent plus style power. The Secretary of State's regulations modify the relevant Directives for the purposes of the Secretary of State's functions. The Welsh Ministers will, subject to the approval of the Senedd, legislate in the Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022, to create Welsh Ministers legislative functions. This has resulted in both sets of regulations separately modifying the relevant Directives. However, the modifications are effectively incorporated into their respective Regulations, and so this is appropriate.

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**

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

4 November 2022

Dear Lesley

### Welsh Government consenting to UK Government subordinate legislation

In our [annual report](#) for 2021/22, which we published last month, we indicated that we would be seeking greater clarity from the Welsh Government in relation to the giving of consent to make subordinate legislation in devolved areas (see paragraphs 118-119 and 128).

At our meetings on 10, 17 and 24 October 2022 we considered a series of notifications to the Committee and Senedd regarding the Welsh Government's intention to consent, or confirmation of it having given consent, to the UK Government's making subordinate legislation in devolved areas.

We have a number of observations we wish to make in relation to these notifications.

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

Your letter of [3 October 2022](#) noted that these Regulations would be laid in the UK Parliament on 8 November 2022 and we welcome the advance notice provided allowing us to respond before this date.

For reasons of transparency and the public record, we believe the letter should have included details of the UK Act under which the Regulations are to be made. We also note that you are consenting to the Regulations "for reasons of efficiency and expediency, and to ensure consistency and coherence of the statute book." Our predecessor Committee noted that consenting "[on grounds of clarity and accessibility lacks credibility](#)" in the context of devolution and a broader sense that the Welsh statute book is being made less accessible. While we recognise that there are circumstances in which it may



be appropriate for correcting Regulations (that apply to England and Wales) to be made by the UK Government, we broadly share the sentiments expressed by our predecessor Committee and draw them to your attention.

## The Pests of Plants (Authorisations) (Amendment) Regulations 2022

Your letter of 6 October 2022 noted that you had given consent to these negative resolution regulations that were laid in the UK Parliament on 3 October 2022.

As well as consenting to the Regulations on grounds of ensuring “a coherent and consistent statute book with the regulations being accessible in a single instrument”, you state:

*“... there is an urgent need to introduce this legislation, to protect biosecurity in Wales. I consider legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes, especially given the urgent nature of the Regulations, nor a prudent use of Welsh Government resources given other important priorities.*

*These Regulations do not have implications for the Programme for Government...”.*

We would be grateful to receive responses to the following questions.

1. Please can you state when you first knew about the need for these Regulations and accordingly, whether they could have been introduced in a single bilingual instrument made by the Welsh Ministers earlier than 1 November 2022, when they came into force.
2. Please can you explain why separate Welsh regulations would not be: a) the most appropriate way to effect the changes or b) a prudent use of resources?
3. Please can you explain the purpose of the reference to the Programme for Government? Do implications for the Programme for Government impact on whether the Welsh Government makes its own regulations in devolved areas when correcting the statute book as a consequence of EU exit?

**The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2022 (the Persistent Organic Pollutants Regulations); the Control of Mercury (Amendment) (EU Exit) Regulations 2022 (the Control of Mercury Regulations) and The Animals and Animal Health, Feed and Food, Plants and Plant Health (Amendment) Regulations 2022 (the Animals, Feed and Plants Regulations)**

We note that, in your letters of 6 October 2022 on the Persistent Organic Pollutants Regulations, your letter of 10 October 2022 on the Control of Mercury Regulations, and your letter of 18 October 2022 on the Animals, Feed and Plants Regulations, you state that you received a letter from the Rt Hon Victoria Prentis MP, the then Minister of State for Farming, Fisheries and Food asking for consent to these Regulations.

We would find it helpful in future if you could provide the dates of the inter-ministerial correspondence you refer to when notifying us of your intention to consent. Given our responsibility for scrutinising intergovernmental relations, we are keen to understand how discussions on consent are initiated.

4. Please can you confirm that in future you will at the very least include the date of correspondence with UK Ministers in your letter to us and that, where possible, you will include a copy of that correspondence?

5. When you receive correspondence from UK Ministers seeking your consent, is this generally received before or after the Regulations have been drafted by the UK Government?

6. Are there intergovernmental agreements in place between your department and relevant UK Government departments in relation to consent?

Question 2 is also relevant to information included in your letters about the Persistent Organic Pollutants Regulations and the Control of Mercury Regulations.

#### **The Biocidal Products (Health and Safety) (Amendment) Regulations 2022**

In your letter of 10 October 2022 you told us that the Welsh Government received a letter from Chloe Smith MP, formerly Minister of State for Disabled People, Health and Work asking for consent to these Regulations.

The First Minister has advised us that “where time allows” the Welsh Government would provide an opportunity for the Senedd to express a view before it consents to subordinate legislation.

7. Given that Chloe Smith MP left that Ministerial post on 6 September 2022, please can you explain why there was a delay in notifying the Committee of this request, meaning it has been provided with less time to consider these regulations given they were laid on 18 October 2022, eight days after you wrote?

Questions 2 and 3 are also relevant to information contained in your letter about the Regulations.

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

We have some questions regarding your letter of 21 October 2022.

8. Please can you confirm when the Secretary of State requested that you consent to these Regulations?

9. Your letter states “I am giving consent” to the Secretary of State to lay the draft Regulations. Your letter to us was issued the day after the Regulations were laid. What date did you inform the Secretary of State that you were giving consent?

10. Why are Regulations covering Great Britain necessary, when you say you will be making equivalent regulations for Wales?

11. Why is the creation of concurrent plus functions appropriate when you will be making your own regulations?

12. What are the exceptional circumstances in which you would provide consent for UK Ministers to act under the draft Regulations?

13. Given that there will be Great Britain-wide regulations and Wales-wide regulations in place, how does this square with the Welsh Government's commitment to accessible legislation?

14. You have previously justified consenting to regulations on grounds of ensuring a coherent and consistent statute book with the regulations being accessible in a single instrument but, for these Regulations, you would appear to be taking a different view. Please can you explain why this is the case?

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies  
Chair



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

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<b>TITLE</b>	<b>The Organic Production (Amendment) Regulations 2022 (No. 2)</b>
<b>DATE</b>	<b>07 December 2022</b>
<b>BY</b>	<b>Lesley Griffiths, Minister for Rural Affairs and North Wales, and Trefnydd</b>

The Minister for Rural Affairs and North Wales, and Trefnydd has given her consent to the Secretary of State for the Environment, Food and Rural Affairs for The Organic Production (Amendment) Regulations (No. 2) 2022 to be made in the UK Parliament. The Regulations make provision in a devolved area on behalf of the Welsh Ministers in relation to Wales. They were laid before Parliament on 6 December 2022 to come into force on 31 December.

The Regulations are required to extend derogations for the use of non-organic products in organic production for pullets, protein feed for pigs and poultry until 31 December 2025. It also delays the restriction on the use of non-organic gellan gum in production of processed organic food until 1 January 2026.

Under retained EU Regulation (EC) No 889/2008 a derogation was permitted for the use of non-organic pullets and protein feed to be granted until 31 December 2022 and for non-organic gellan gum until 1 January 2023. There are still insufficient supplies of these products. This has necessitated the extension of these derogations.

While these Regulations make provision in a devolved area of competence, these regulations are minor and technical in nature. As such, it is expedient to introduce a Great Britain-wide Statutory Instrument on this occasion.

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

Paul Davies MS  
Chair of the Economy, Trade and Rural Affairs Committee

[Paul.davies@senedd.wales](mailto:Paul.davies@senedd.wales)

1 November 2022

Dear Paul,

In order to assist the Committee in the ongoing process of Stage 1 scrutiny of the Agriculture (Wales) Bill, I would like to take this opportunity to highlight a small number of corrections which are required to be made to the Explanatory Memorandum following further review by officials.

I have included these in the attached document for the Committee's information.

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**

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

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

## Annex 1 - Table of changes to the Explanatory Memorandum

Definitions	Page / Paragraph
<p>3.298 <i>The definition of “agriculture” is <del>not</del>-exhaustive (in the sense that it includes a fixed list of activities), but what is included within each subheading of that definition is expanded on within the list below;</i></p> <p><i>a) The management and cultivation of gardens, including ornamental horticulture and market gardens (as forms of horticulture).</i></p> <p><i>b) Farming arable crops for the production of food or agricultural goods, includes the use of crops grown for bioenergy.</i></p> <p><i>c) The keeping and breeding of livestock for the production of food, drink, oils, fibres or leathers or to graze land.</i></p> <p><i>d) The practice of keeping dairy animals for the production of dairy products.</i></p> <p><i>e) Controlled environment agriculture which is the growing of plants in a closed ecosystem in which environmental variables are controlled. This ranges from the use of polytunnels to vertical farming methods.</i></p> <p><i>The definition of “agriculture” can be amended by regulations made by the Welsh Ministers. So, for example, the activities in section 48(1)(a) to (i) could be removed or amended, or a new activity added into section 48(1).</i></p>	Paragraph 3.298
Food Strategy	Page / Paragraph
The Programme for Government and the Co-operation Agreement commit to developing a <b>Community Food Strategy (CSA CFS)</b> to encourage the production and supply of locally sourced food. The <b>CSA CFS</b> may include relevant to targets/objectives to the production of food in an environmentally sustainable manner.	Paragraph 7.561
Forestry	Page / Paragraph
<p><i>Refusal of licences or consent is currently avoided by informal agreement between NRW and licence applicant, but such agreement is not legally enforceable.</i></p> <p><i>Is actually part of the paragraph 3.211, not a heading.</i></p>	Paragraph 3.211
“compensation is made available when a <b>felling licence is amended, suspended or revoked</b> due to environmental harm...”	Paragraph 3.239
Snares & Glue traps	Page / Paragraph

Following indications from Department for Environment, Food and Rural Affairs (Defra) that consideration was being given to legislate to regulate glue traps in England, and during a review of options in Wales, an opportunity to amend the Wildlife and Countryside Act 1981 was identified within the Agriculture (Wales) Bill. Officials engaged with stakeholders between November 2021 and January 2022. Responses were sought from the pest control industry; animal welfare organisations; and local authorities in order to understand the scale of use; the impact of, and for support for, a ban; and any other evidence for or against banning glue traps	Paragraph 4.42
Responses covering <del>seven</del> <b>six</b> of the 22 local authorities in Wales were received to the targeted stakeholder consultation. Of these, <del>five</del> <b>two</b> responded to state they <del>rarely</del> <b>never</b> use glue traps <b>and two only in extremely limited circumstances</b> . One local authority quantified this as being far less than 1 per cent of all pest control incidents and another had not used them in the preceding 12 months.	Paragraph 4.45
Snares: It has not been possible to quantify the impact of banning snares on businesses and individuals who use them. We expect a <del>glue trap</del> <b>ban on snares</b> will have minimal financial impact in the long term.	Page 105
There is substantial public opinion that there is a need to ban the use of snares in Wales.	Paragraph 7.795
'Representations covering <del>seven</del> <b>six</b> local authorities in Wales were received to the targeted stakeholder consultation. Of these, <del>five</del> <b>two</b> responded to state they <del>rarely</del> <b>never</b> use glue traps and <b>two only in extremely limited circumstances</b> . One local authority quantified this as being far less than 1 per cent of all pest control incidents and another had not used them in the preceding 12 months	Paragraph 7.814
It should be noted that where other licensing systems for the use of glue traps exist, <b>such as the system the State of Victoria in Australia had until recently (they now have a total ban)</b> , professional pest controllers are required to have an operating licence and are regulated by the state government. England has yet to release any details on how pest controllers will be defined in the legislation to ban glue traps in England – this is not due to come into force until spring 2024	Page 350, footnote 320
The Scottish Government, having initially indicated regulations might be introduced to restrict the use of glue traps to professional pest controllers, <del>have recently (in January 2022) announced a complete ban,</del> <b>although they await suitable legislation to take this forward</b> . This followed a petition of over 5,000 signatures in Scotland calling for a ban on the use and sale of glue traps.	Paragraph 7.824
Rentokil is one of the largest pest control businesses in the UK and it has adopted a policy of not using glue traps <del>–</del> , <b>this is despite having contracts with premises identified by the trade body BPCA as 'high risk' (such as hospitals).</b>	Paragraph 7.874
'....but it is unlikely to come into force until <del>late summer / early</del> <b>autumn 2023....'</b>	Paragraph 7.875
Local authorities have responsibility for pest control within various public services (the extent varies from local authority to local authority) and during consultation <del>five</del> <b>two</b> of the <del>seven</del> <b>six</b> local authorities represented reported never using glue traps <del>but</del> <b>and two only in a very</b>	Paragraph 7.877

limited number of cases – one local authority was able to quantify this as far less than 1 per cent of all pest control incidents <b>and the other had not used them in the past year. Shared Regulatory Services (minus Cardiff Council which responded separately) estimated using glue traps for rodents about a dozen times a year.</b>	
Following a ban on glue traps those <del>five</del> <b>four</b> <sup>338</sup> local authorities that use glue traps will have to switch to alternative methods <sup>338</sup> There are <del>45</del> <b>16</b> local authorities who did not respond to the consultation, and it is reasonable to assume there will be a mix of those that do and do not use glue traps amongst them.	Paragraph 7.878
Compliance with the new legislation will be predicated, as most legislation is, upon the majority of people adhering to the law. <del>Once the indicated ban on glue traps has been passed into law in Scotland and England's ban comes into force (spring 2024)</del> <b>it</b> may be possible to introduce restrictions on the sale of glue traps, to further aid enforcement, which would require a review of any impact on the police	Paragraph 7.887
Increased standards in animal welfare clearly benefits wider society <sup>341</sup> .	Paragraph 7.899
<b>Agricultural Markets</b>	<b>Page / Paragraph</b>
The section beginning on page 299 is incorrectly titled as intervention in agricultural markets, when it should be marketing standards. This also applies to the title of Option 2 on page 300.	Page 299 and 300



Jayne Bryant MS  
Chair  
Children, Young People and Education Committee  
Senedd Cymru  
Ty Hywel  
Cardiff Bay  
Cardiff  
CF99 1NA

23 November 2022

Dear Jayne,

### **Tertiary Education and Research (Wales) Act 2022**

During scrutiny of the Tertiary Education and Research (Wales) Act 2022 ('TERA') I committed to provide the Committee with updates on its implementation. This letter is intended to provide an overview of the work completed to date and the steps being taken to refine the implementation plan.

#### Approach to implementation

An overarching implementation plan has been prepared which my officials are working to refine and finalise and this is progressing at pace. My officials are engaging regularly with HEFCW to ensure the work is informed by their knowledge and expertise.

The PCET Reform Strategy Board, which I chair and of which key stakeholders from across the sector are members, is due to meet in early December. At this meeting I intend to seek the views of members on the overarching plan, utilising expertise to further test and refine the plans.

We are adopting a phased approach to the implementation of TERA and the creation of the Commission, guided by three core principles:

- Ensuring continuity of provision for the sector with no discernible disruption for providers or learners during the establishment of the Commission,

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

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

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

- Avoiding undue burden on providers during the implementation phase, for example managing and synchronising the volume and timing of engagement and formal consultation,
- The strategic duties, as set out in Part 1 of the Act, to form the core foundation for the Commission's work from the outset, including the preparation and publication of the Welsh Ministers' statement of priorities.

In addition to the implementation activities and subordinate legislation necessary to provide for the Commission's statutory functions there remains a significant body of work to provide for the necessary consequential amendments to existing enactments and transitional and savings provisions to ensure a smooth transition. My officials are currently focusing substantial resource to scoping this work to ensure the implementation plan is fully informed and to minimise the risk of unintended consequences.

It is important to acknowledge that whilst the Welsh Government will take the necessary steps so that the Commission is enabled to exercise its new functions, the delivery of the reforms provided for in TERA will actually be in the hands of the Commission, which will be best placed to work with the sector and identify how best to implement the provisions, and in what order, to deliver the maximum reforms for the sector and learners.

Whilst the implementation of TERA is central to the establishment of the Commission, its creation will require several other critical activities and a programme of work is being taken forward in relation to finance, governance, system & processes, location and organisational design. Within this work, specific focus is currently being given to developing and agreeing the approach to transferring staff from HEFCW and the Welsh Government to the Commission, working closely with the relevant Trade Unions.

#### High level implementation timeline

The proposed implementation approach will broadly comprise of six steps, which are also set out in a high level timeline at Annex A to this letter:

- a) Autumn 22 – Summer 23: Implementation period  
During this period the focus will predominantly be on the work being undertaken by the CTER implementation programme, in conjunction with HEFCW and key stakeholders, to complete the necessary implementation activities to create the Commission

During this time I also intend, as per section 9 of TERA, to designate a body to provide the Commission with advice for the purpose of supporting it in the discharge of its strategic duty to promote tertiary education through the medium of Welsh.

- b) December 22: Legal entity date  
I will make the first commencement Order under the Act before the end of 2022, creating the Commission as a legal entity. The Commission will have no functions at this time and will not be properly constituted until the minimum number of member appointments are made.

The creation of CTER as a legal entity will enable the Welsh Ministers to appoint the core members of the Commission and the completion of key corporate implementation activities such as the creation of bank accounts etc.

- c) Summer 23: Establishment date  
This will be the point at which the Chair, Deputy Chair, CEO and at least four ordinary members have been appointed and the Commission will be legally constituted.
- d) Summer 23 – April 24: Establishment period  
During this time the Welsh Ministers and HEFCW will continue to exercise their existing functions, whilst certain appropriate functions of the Commission could be brought into force for the purpose of preparatory work.

My officials and I are currently considering how to ensure the Commission is appropriately supported during this time and that there is no discernible disruption or confusion for the sector. This work is underway and I will provide the Committee with further details in due course.

- e) No later than April 24: Operational date  
Subject to the below point, this is the point at which the statutory functions of the Commission will come into force, and the existing functions of HEFCW and the Welsh Ministers will be repealed. This is also the point at which relevant staff from Welsh Government and HEFCW will transfer into the Commission.
- f) Apr 24 – Summer 26: Transitional period  
A core aspect of implementing TERA is the establishment of the new registration and regulation arrangements, as such the transitional period will run until these new arrangements are fully implemented.

In line with the Statement of Policy Intent, published alongside the Act at its introduction, the register will be established in respect of providers of higher education and research from the outset with the intention that the register is populated by summer 2025 and the new regulatory arrangements apply to academic year 2026/27.

In selecting this timeframe for the registration system I am seeking to balance providing the Commission, and the sector, with adequate time to make the necessary arrangements to implement the system whilst also ensuring that the new arrangements are effective on the ground as soon as practicable.

### Appointment of the Commission's members

Following the making of the first commencement Order, I intend to appoint the Chair and Deputy Chair in early 2023.

I am pleased to say we had a strong field of candidates for both posts, interviews have recently concluded, and the Committee's pre-appointment hearing with the preferred candidate for each post is scheduled for 15 December.

The recruitment of the CEO, who I anticipate taking up post in summer 2023, is also progressing well, the advert recently closed and applications are in the initial stages of assessment..

We are now actively planning for the recruitment of the ordinary members, with the intention to recruit six members initially to ensure there is sufficient knowledge and experience of the sector whilst leaving flexibility to recruit further members once the Commission is operational.

Looking ahead, I intend to make the necessary arrangements to enable the appointment of the associate workforce and learner members so as to enable these individuals to influence the decisions of the Commission from the point it becomes operational.

#### Other activities relating to the establishment of the Commission

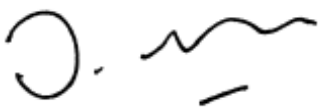
Whilst the Act was undergoing Senedd scrutiny the issue of institutional governance was raised by stakeholders.

I am keen that we take the time to explore the potential to develop core and consistent principles for governance at tertiary education providers in Wales, taking a collective and co-constructed effort. The new strategic duties, as an expression of our shared priorities and values, must be a key influence in how we think about effective, accountable, ethical, civically engaged and transparent governance.

Ideally this work would progress alongside the Commission becoming operational so as to enable the Commission to consider how it could address these matters as soon as practicable. I intend to explore the potential options and timing for this work, and how it may fit with the wider implementation activities and hope to be able to share more details in due course.

I anticipate writing to the Committee again in the New Year with further details of both the implementation plan and the subordinate legislation we will be making to implement TERA. If the Committee have any specific areas of interest I would be happy to provide further information at the appropriate time.

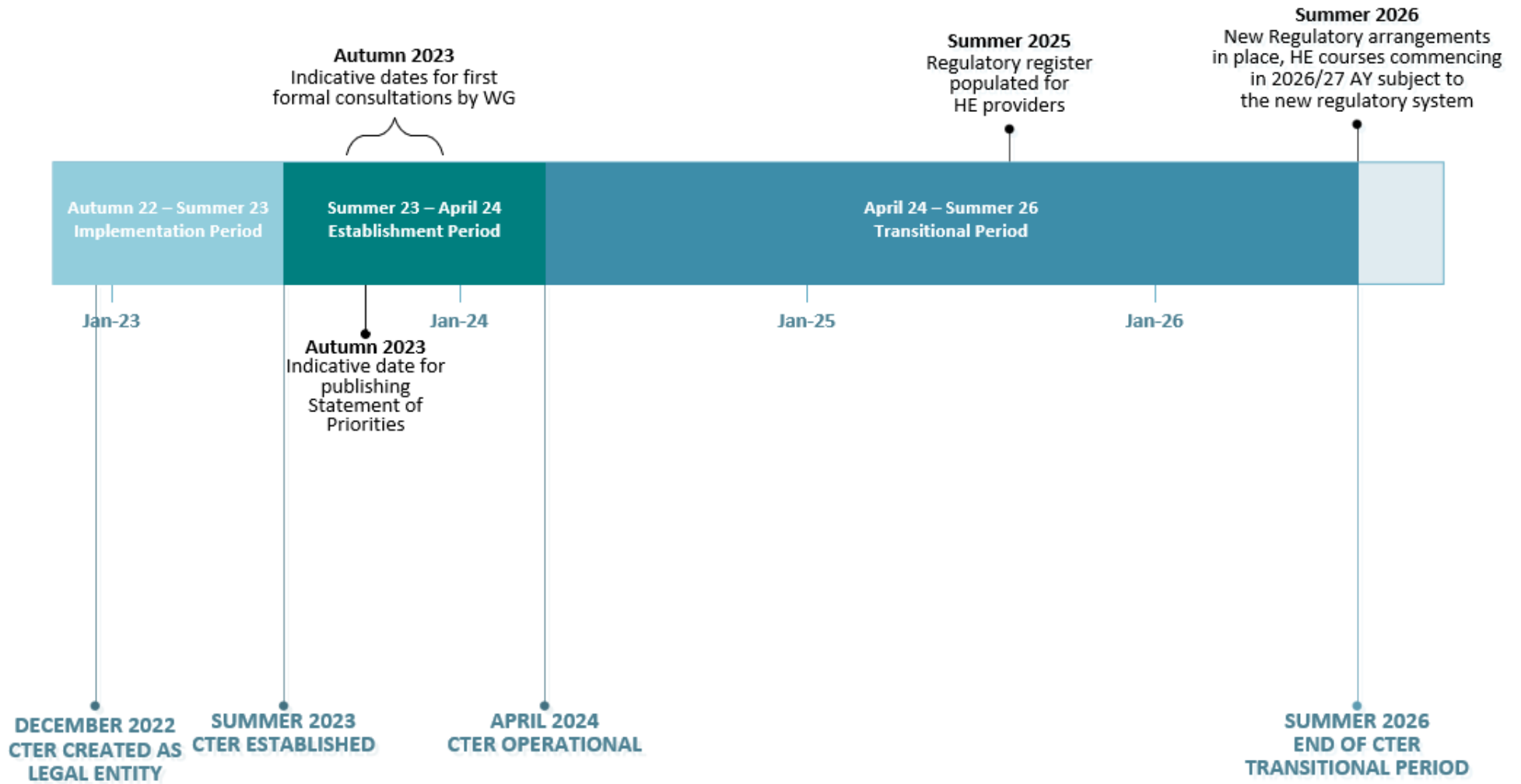
I have copied this letter to the Legislation, Justice and Constitution Committee.

A handwritten signature in black ink, consisting of a stylized 'J' followed by a wavy line and a short horizontal stroke.

**Jeremy Miles AS/MS**

Gweinidog y Gymraeg ac Addysg  
Minister for Education and Welsh Language

# Annex A – TERA Implementation – High Level Timeline



**Jeremy Miles AS/MS**  
Gweinidog y Gymraeg ac Addysg  
Minister for Education and Welsh Language



Llywodraeth Cymru  
Welsh Government

Jayne Bryant MS  
Chair  
Children, Young People and Education Committee  
Senedd Cymru  
Ty Hywel  
Cardiff Bay  
Cardiff  
CF99 1NA

5 December 2022

Dear Jayne

### **Tertiary Education and Research (Wales) Act 2022 – Revised Explanatory Memorandum**

Following the Tertiary Education and Research (Wales) Act 2022 receiving Royal Assent, and in light of the nature of some of the amendments made to the Act at Stage 3, I have today published a revised Explanatory Memorandum incorporating further explanation in respect of the purpose and intended effect of those amendments. I attach a copy for the Committee's information.

Whilst it is not a requirement to produce a revised Explanatory Memorandum after a Bill has been passed, I believe that it would be helpful for stakeholders to understand the policy intention of the amendments made at Stage 3. It also helps provide a pre-implementation baseline for review and will facilitate post-legislative scrutiny.

No changes have been made to the Regulatory Impact Assessment as a result of these amendments and the RIA remains as laid following Stage 2.

I have copied this letter to the Finance Committee and Legislation, Justice and Constitution Committee.

**Jeremy Miles AS/MS**  
Gweinidog y Gymraeg ac Addysg  
Minister for Education and Welsh Language

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

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



Huw Irranca-Davies MS

Chair of the Legislation, Justice and Constitution Committee

6 December 2022

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

Dear Huw,

Thank you for your letter of 25 November 2022 drawing the Business Committee's attention to relevant recommendations in your report regarding the commencement date of provisions in the Environmental Protection (Single-use Plastic Products) (Wales) Bill, in light of the expedited timetable agreed for scrutiny.

The Business Committee considered the letter on 29 November and agreed that there would be merit in requiring the Welsh Government to provide more detailed information about the intended commencement date of the provisions with a Bill, if passed by the Senedd, in the future in circumstances where it is seeking expedited scrutiny by the Senedd.

We note the various issues around the approach to scrutiny of this Bill that have been raised by the Legislation, Justice and Constitution Committee and the Climate Change, Environment and Infrastructure Committee. We would intend to take these into account in the event that we are required to consider any similar requests in future.

Kind regards,

*Elin Jones*

**The Rt Hon. Elin Jones MS**

Y Llywydd and Chair of the Business Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Rt Hon Elin Jones MS  
Llywydd  
Chair, Business Committee

25 November 2022

Annwyl Lywydd

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

Following our [report](#) on the above Bill, we received a [letter](#) from the Minister for Climate Change, Julie James MS (enclosed).

Recommendations in our report sought information from the Minister about her reasons for seeking to expedite scrutiny of the Bill given the impact this could have on the quality of the law made by the Senedd.

In particular, recommendation 5 sought information from the Minister about when the Welsh Government intended to commence all provisions of the Bill so that it is fully operational.

In our view, given that the Bill was subject to an expedited scrutiny process on grounds of urgency, we would have expected to have been provided with a more precise implementation timetable, rather than being advised that "the earliest provision can be commenced is autumn 2023" and that the intention is "for all commencement dates to be within this Senedd term i.e. by April 2026". In our view these comments do not suggest that the legislation is so urgent that it needed an expedited scrutiny process.

We have raised these and other concerns related to the effect of expedited scrutiny on this Bill with the Minister and enclose our letter for your information.

Our purpose in writing is to draw these matters to your attention. We also believe that, in future, there may be merit in requiring the Welsh Government to provide information about the intended commencement date of the Bill (or a breakdown by Part/provisions) if passed by the Senedd, in circumstances where it seeks to expedite scrutiny.

I am copying this letter to the Chair of the Climate Change, Environment and Infrastructure Committee.

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies  
Chair

Julie James MS

Minister for Climate Change

25 November 2022

Dear Julie

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

Thank you for your [letter](#) of 25 October 2022 responding to our [report](#) on the above Bill.

It is not our normal practice to comment on government responses to our Bill reports but your response raises a number of important issues of principle that we believe need to be addressed.

## The effect of the United Kingdom Internal Market Act 2020 (UKIMA)

Our report acknowledged that:

*"... UKIMA cannot limit the Senedd's competence to legislate on matters that are devolved and within its legislative competence. However, our concern is that once law is made by the Senedd, UKIMA can impact on how effective that law is because of the market access principles it introduces across the UK." (paragraph 73).*

Our evidence session and report sought to seek your views on the impact of UKIMA on the Bill should it become an Act. Your response has been to say that the Bill's provisions are within legislative competence, a position with which we agree but which does not directly address the key issue of concern to us.

The response being used continues to conflate two separate issues: whether or not the Bill is within legislative competence and the impact of UKIMA on the effectiveness of the Bill once it becomes an Act. In our view the fundamental point is that UKIMA could impact on the law once it is made; it does not prevent the law being made by the Senedd in the first place.

By not acknowledging and addressing these issues, the Welsh Government is creating confusion and blurring understanding of what the Bill could achieve and therefore its effectiveness as a piece of law made by the Senedd. We have some concerns that this approach could also have had an impact on the amendments Members considered tabling during the amending stages of the legislative process, which is regrettable.

### Expedited Scrutiny and legal challenges

We note your response to recommendation 5 in our report which sought information about when you intend to commence all the provisions of the Bill so that it is fully operational.

In our view, given that the Bill was subject to an expedited scrutiny process on grounds of urgency, we would have expected to have been provided with a more precise implementation timetable, rather than being advised that “the earliest provision can be commenced is autumn 2023” and that the intention is “for all commencement dates to be within this Senedd term i.e. by April 2026”. These comments do not suggest that the legislation is so urgent that it needed an expedited scrutiny process.

Also, during the Climate Change, Environment, and Infrastructure Committee’s Stage 2 proceedings, we note you did not accept the need to include a commencement date (1 January 2024) on the face of the Bill. In doing so, one of the arguments you advanced was that the Welsh Government may need longer to develop guidance, consult with stakeholders and promote the change in law. Again, this does not suggest the urgency you have been advocating.

It is also worth repeating that if the situation was urgent, and the intention was not to fall behind the position in England and Scotland (where broadly the same policy outcome was achieved through regulations in 2020 and 2021), then Regulations could have been used to ban single-use plastics, with a Bill following at a later date to make provision for more plastic types (see paragraph 66 of our report).

In response to recommendation 4, you said:

*“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.**”[Our emphasis].*

It is not clear why taking a Bill through the full Stage 1 Bill process would have prejudiced options available to the Welsh Government to bring a matter to Court, or how those options are preserved by expediting the Bill. Your response links expediting scrutiny to preserving all options in relation to

possible Court action. However, your response to recommendation 11, which sought information about the grounds on which the Welsh Government could make a legal challenge in relation to UKIMA, only made reference to making a legal challenge in relation to legislative competence and not the impact of UKIMA should the Bill become an Act, which highlights again our point above about conflating two separate issues.

As such we do not believe that your response to recommendation 11 addresses the issue because it does not list all the options for legal challenge available; there is no reference to the grounds on which you would test UKIMA in the Courts which we assume, based on your previous legal challenge, is an option that would be covered under "all the options" you refer to in your response to recommendation 4.

In your response to recommendation 4 you acknowledged one of "two good reasons as to why the Bill should be expedited" was "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." We do not believe that it is possible to hold the view that UKIMA "does not bite on the Bill" and then to pursue action on the impact of UKIMA on the legislation through the Courts (save in relation to matters of legislative competence, although this would seem unlikely given the widely held view, including that of the Welsh Government, that the Bill is within the Senedd's legislative competence). If the view of the Welsh Government changed between July 2022 and September 2022 such that it no longer considered the Bill was a suitable vehicle in relation to the Court of Appeal's request referred to above, and therefore one of its reasons to expedite scrutiny no longer applied, it remains unclear why this has not been stated clearly in your response to recommendation 4.

We are therefore drawing your responses to recommendations 4, 5 and 11 and this letter to the attention of the Business Committee.

## Case study

Recommendation 8 of our report asked you to provide a detailed assessment of our case study on oxo-degradable plastic. Your response said that it did not accurately represent the position, stating:

*"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."*

We acknowledge that the Bill only prohibits the supply of prohibited single-use plastic products to a consumer in Wales; it does not prohibit business-to-business supply. However, in our view the Explanatory Memorandum does not make it clear or explicit that the Bill is not intended to cover business-to-business supply in this particular case. As such we do not believe that it is clear to the public that the farmer in our case study would still be able to purchase the mulch film and use it on their farm. The Bill's Explanatory Memorandum (at paragraph 7.7.31) identifies mulch film as one of

the biggest sources of plastic in agriculture. However, the Bill in its current form seems unlikely to do much to decrease the “2-3 million tonnes” of plastics used in agriculture every year.

The Bill’s Explanatory Memorandum does not in our view explain sufficiently the degree to which the items prohibited by the Bill are used by consumers or by businesses and therefore to what extent the Bill’s provisions would reduce the use of the prohibited single-use plastic items, particularly in relation to oxo-degradable plastic.

This again highlights that a full Stage 1 scrutiny process would have helped provide a greater depth of understanding of what the Welsh Government is seeking to achieve with the Bill and the impact it will have in reducing the single-use plastic items, covered by the Bill, in Wales. In turn, this would have provided Senedd Members with more information to assist them in considering amendments that could be tabled to potentially improve the Bill and contribute to reducing the impact of single-use plastic in Wales.

### Recommendation 12

We are concerned at the language used to justify your position on recommendation 12 and in particular the phrase: “Legislative drafting often involves a trade-off between ease of understanding and absolute certainty”.

Despite the Committee highlighting that one of the underlying principles of the rule of law is certainty (at paragraph 79) and therefore expressing concern at the use of this phrase in your evidence session, we are disappointed to see you repeat these words. We acknowledge that guidance for Welsh Government drafters recognises the need for a judgement to be taken around simplicity, clarity and precision but in our view this is different from “a trade-off between ease of understanding and absolute certainty”.

I am copying this letter to the Chair of the Climate Change, Environment and Infrastructure Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Huw Irranca-Davies". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Huw Irranca-Davies  
Chair



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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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<b>TITLE</b>	<b>Statement on the Interim Report of the Independent Commission on the Constitutional Future of Wales</b>
<b>DATE</b>	<b>07 December 2022</b>
<b>BY</b>	<b>Mick Antoniw MS, Counsel General and Minister for the Constitution</b>

Last year we established the Independent Commission on the Constitutional Future of Wales. We asked the Commission to produce an interim report by the end of this year. I am pleased to notify members the Commission have published a report which can be read here <https://gov.wales/independent-commission-on-the-constitutional-future-of-wales-interim-report> . We will now be considering the report carefully and I would encourage anyone with an interest in our constitution to do the same. I would like to thank the Co-Chairs and members of the Commission for their work to date. We propose to schedule an oral statement in plenary in the New Year to enable members to discuss the report.

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

Agenda Item 9.5

Llywodraeth Cymru  
Welsh Government

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

seneddljc@senedd.wales

6<sup>th</sup> December 2022

Dear Huw,

I would like to thank you and the Committee members for your consideration of the first two Legislative Consent Memoranda laid before the Senedd in respect of the UK Government's Social Housing (Regulation) Bill.

I welcome the report published by the Committee on 22 November and am pleased the Committee has concluded it agrees with my assessment that the clauses and schedules listed in the memoranda fall within a purpose within the legislative competence of the Senedd.

I would like to draw the Committee's attention to the laying of the latest memorandum (Memorandum No 4) on the Bill today, which has been drafted in respect of the amendments tabled by the UK Government for consideration at House of Commons Committee stage, which took place on 29 November.

I note the Committee's conclusion on the importance of providing timely information to Members of the Senedd in relation to the legislative consent process. I recognise the importance of the Senedd's role in scrutinising legislative consent memoranda on UK Bills, and always strive to meet the normal two-week deadline as set out in Standing Order 29. I apologise for the inconvenience caused to the scrutiny Committees where this has not been possible, and have set out my reasons for the delays in each memorandum, as well as in letters to the Llywydd informing the Senedd of my intention to lay outside the normal timescale. I am pleased to note that Memorandum No 4 on the Bill, which I have laid today, does indeed comply with the normal laying deadline.

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

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

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

Yours sincerely

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

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

**Public Accounts and Public  
Administration Committee**

**Senedd Cymru**

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7 December 2022

Dear Chair

**Public Accounts and Public Administration Committee Inquiry into Public Appointments**

The Public Accounts and Public Administration Committee is undertaking an Inquiry into Public Appointments. Evidence received from the Committee's consultation on the scrutiny of public administration in autumn 2021 recommended that an inquiry be conducted in this area. It was considered to be an issue that had been 'under-examined' since the establishment of the Senedd.

Our agreed Terms of the Reference for the inquiry are detailed in Annex A. However, we are aware that concerns regarding the public appointments process may extend beyond those terms of reference. We therefore welcome the views and experiences of your committees on the matters listed and any other issues that you feel are relevant to our work.

I look forward to hearing from you and kindly ask for responses by Friday 27 January 2023.

Thank You.

Kind Regards,



Mark Isherwood MS  
Committee Chair

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

## Annex A

The Committee is undertaking an inquiry into the Welsh Government's approach to the public appointments process, including where this could be improved to increase the diversity of candidates for public appointments made by Welsh Ministers. Issues to be considered include the following:

- The role of the Public Bodies Unit and the effectiveness of its relationship with Public Bodies' Boards in terms of ensuring good governance and effective public appointment arrangements. This includes any ongoing support for board members.
- The views of those corporate bodies that receive public appointments on the public appointments process;
- The role the Commissioner for Public Appointments.
- What are the main barriers to increasing the diversity of candidates for public appointments in Wales? How do these vary by factors including:
  - Age
  - Sex
  - Ethnicity
  - Disability
- How effective are current approaches being taken by the Welsh Government to encourage and increase the diversity of candidates?
- How can the public appointments process be improved to achieve this?
- How can the Welsh Government create a more transparent and open public appointments process?
- Are there examples of best practice elsewhere in the UK and internationally that Wales should learn from?

## UK-EU Parliamentary Partnership Assembly

12 December 2022

The Parliamentary Partnership Assembly (PPA) is a formal body established under the UK-EU Trade and Cooperation Agreement (TCA). It plays an important role in overseeing the implementation of the TCA and all future UK-EU agreements.

The second meeting of the PPA took place in London on 7-8 November. This report provides a summary of the role of Senedd Members in the PPA, the main proceedings of the meeting and sets out proposals for how Senedd engagement in the work of the PPA could be developed in future.

Huw Irranca-Davies, MS, Chair of the Legislation, Justice and Constitution Committee and Luke Fletcher, MS, a member of the Economy, Trade and Rural Affairs Committee participated in the second meeting and the report has therefore been agreed by them in that capacity.



## Contents

<b>1. The Parliamentary Partnership Assembly.....</b>	<b>2</b>
The role of the Senedd.....	3
<b>2. Second meeting .....</b>	<b>3</b>
Northern Ireland .....	4
Implementation of the TCA.....	5
Energy cooperation.....	5
Future relationship.....	6
Citizens' rights, touring artists and security and defence cooperation .....	7
<b>3. Role of Senedd .....</b>	<b>8</b>

## 1. The Parliamentary Partnership Assembly

The UK-EU, the Trade and Cooperation Agreement (TCA) provides for the establishment of a UK-EU Parliamentary Partnership Assembly (PPA) as part of its governance structure. This governance structure will oversee the TCA and all future UK-EU agreements.

The TCA provides that the PPA should include members of the European Parliament and UK Parliament. The PPA has an important role to play in providing oversight of the implementation of the agreement.

It is the only body that can jointly hold the TCA Partnership Council to account. The Partnership Council is the body with overall responsibility for the TCA. It is made up of European Commission representatives and UK Government Ministers.

The PPA:

- can request information on the TCA and future UK-EU agreements from the Partnership Council, which must provide the information;

- must be informed of decisions and recommendations of the Partnership Council; and
- may make recommendations to the Partnership Council.

The PPA has also adopted [its own rules of procedure](#) since its establishment which set out how it will operate in practice.

The PPA is chaired jointly by a representative of the UK Parliament and of the European Parliament. The current Co-chairs are Sir Oliver Heald MP and Natalie Loiseau MEP. A full list of [UK](#) and [EU](#) parliament delegations can be found on their respective websites.

An infographic setting out where the PPA sits within the overarching governance framework can be found in this [Senedd Research guide](#).

## The role of the Senedd

The TCA does not provide a formal role for the UK's devolved legislatures nor the EU's regions and cities or civil society in the work of the PPA. However, given that large parts of the TCA fall within areas of devolved competence or have an impact on them, the rules of procedure adopted by the UK and EU parliaments allow for the devolved legislatures and other EU institutions to be invited to attend meetings as observers.

Observer status means that representatives from the devolved legislatures do not have ordinary speaking rights during Plenary sessions and have no voting rights.

The Senedd was invited to send two Senedd Members to the first two meetings of the PPA. The Senedd's Chair's Forum has decided that, given their respective remits, the Senedd should be represented by the Chair or a Member of the Legislation, Justice and Constitution Committee and the Chair or a Member of the Economy, Trade and Rural Affairs Committee.

## 2. Second meeting

The operation of the PPA as a meaningful forum evolved significantly during the second meeting, held on 7-8 November 2022.

We were able to fully participate in the important discussions that took place in the working group sessions and spoke during the Plenary session about how the devolved legislatures and European civil society could be involved in the work of the PPA.

The [agenda](#) provides the full details of speakers and sessions. [Webstream recordings](#) of the Plenary proceedings over the two days are also available .

## Northern Ireland

Although the Northern Ireland Protocol forms part of the Withdrawal Agreement and not the TCA, the need to find a negotiated solution to the issues raised by the Northern Ireland Protocol has dominated discussions in all PPA sessions. It was welcome that Members of the Northern Ireland Assembly were able to attend the meeting to set out for themselves the issues facing Northern Ireland.

European Commission Vice-President Šefčovič and the UK Government's Europe Minister Leo Doherty provided an update on the ongoing negotiations ns to seek to resolve the issues related to the Protocol. They reported a constructive tone to the discussions. Vice-President Šefčovič [said](#) the disagreement came down to 'minimal checks versus no checks'. He called for the Northern Ireland Protocol Bill, currently proceeding through UK Parliament, to be withdrawn. He asked UK delegation members to recognise that it has not been easy for the EU to proceed with negotiations whilst the Bill continues to proceed through the UK Parliament.

Minister Doherty [said](#) that it was clear that the Protocol has caused economic and political 'problems' in Northern Ireland but that the UK Government was engaged in constructive discussions with the EU to find a solution. He said the Northern Ireland Protocol Bill will continue to proceed through the UK Parliament but will not be expedited. He emphasised the UK Government's desire to find a negotiated outcome.

The need to urgently find pragmatic and negotiated solutions to the issues related to the Protocol was expressed by Members of both delegations, including the need to address the democratic deficit in Northern Ireland and to engage its Assembly Members and citizens in the negotiations.

## Implementation of the TCA

The PPA considered general issues related to the implementation of the TCA agreement. Members identified several areas where there is support for deeper cooperation between the UK and the EU including many areas of interest to the Senedd. These include cooperation on research and development, energy security, climate change and the green transition, student and youth mobility and the mutual recognition of professional qualifications.

The Minister Doherty and Vice-President Šefčovič agree that the governance structures of the TCA are broadly functioning well.

Minister Doherty identified areas in which progress has been made such as on energy and an agreement of the mutual recognition of architecture qualifications. However, he also said the UK Government believes the implementation of some elements of the TCA need to be 'accelerated'. In particular the UK Government would like to see further progress on UK participation in EU funding programmes, on reducing barriers for UK businesses to register for VAT for online sales in the EU and energy transmission.

Vice-President Šefčovič said that on many areas such as fisheries and civil society engagement progress is being made. However, he said that the EU was playing close attention to the UK's adherence to level playing field commitments in the TCA. He reiterated the EU's view that the TCA is not and cannot be a replacement for membership of the EU's Single Market. He said that the UK is free to diverge from the EU but this will lead to greater friction and increased trading costs.

Vice-President Šefčovič reiterated the European Commission's view that there is a fundamental link between the implementation of the TCA and the full implementation by the UK of the Withdrawal Agreement including the Northern Ireland Protocol.

## Energy cooperation

The PPA adopted its first recommendation to the Partnership Council on energy cooperation. The recommendation demonstrates the intent of the PPA to use the powers provided to it under the TCA to hold the Partnership Council to account.

At the heart of the recommendation is the unwavering support of PPA members for Ukraine and the need to respond urgently to the energy crisis created by Russia's invasion of Ukraine.

The recommendation:

- Sets out the imperative need for the EU and the UK to cooperate as closely as possible to ensure the security of supply and effective functioning of the energy market in the winters of 2022-23 and 2023-24;
- Calls for the building of further interconnectors between the UK and the EU;
- Calls on both parties to produce concrete solutions to ensure more efficient electricity trading arrangements;
- Calls for support for joint UK-EU projects to promote renewable energy and, in particular, to follow through on commitments made to develop offshore renewable energy;
- Calls for the Memorandum of Understanding between the UK and the North Sea Energy Cooperation grouping to be adopted as soon as possible<sup>1</sup>.

Support for further collaboration on energy security, climate change cooperation and the transition to renewable energy was evident in Plenary discussions. Steps to sign a Memorandum of Understanding between the UK and the North Sea Energy Cooperation (NSEC) grouping was welcomed by the UK Government, EU Commission and delegates.

## Future relationship

Members of the PPA identified several areas where there is common interest on further collaboration. Many of these are in areas of importance to Wales. However, all speakers to the Plenary identified that trust needs to be re-built between both sides before more in-depth discussion can take place on further areas of cooperation.

The EU's then Ambassador to the UK, João Vale del Almeida and Deputy Minister for European Affairs, Marek Havrda, representing the Czech Presidency of the EU, stressed that resolving the issues related to the Northern Ireland Protocol and full implementation of all international agreements between the UK and the EU are a pre-requisite to deeper collaboration on other areas. Both said however,

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<sup>1</sup> The North Sea Energy Cooperation Grouping brings together eight EU Member States with Norway to discuss the development of renewable energy and offshore grids in the North Sea.

that if the issues related to the Protocol can be resolved then there is support from the EU for cooperation in a number of areas.

A number of speakers welcomed the UK's participation in the newly formed European Political Community (EPC). The EPC brings together leaders from 44 European countries including the EU's 27 Member States, Western Balkan states, the UK, EFTA states, Ukraine, Georgia, Moldova, Armenia, Azerbaijan and Turkey.

## **Citizens' rights, touring artists and security and defence cooperation**

These issues formed the basis of discussions in a series of working groups in which we participated fully. We raised issues identified by the work of Senedd Committees. In particular the Equality and Social Justice Committee and the Culture, Communication, Welsh Language, Sport and International Relations (CCWSLIR) Committee.

Each of the workshops agreed a series of conclusions and outcomes which the PPA members agreed will be shared with the Partnership Council.

Citizens' rights outcomes:

-There should no diminution of rights for citizens, noting the democratic deficit arising with a particular need to focus on citizens in Northern Ireland and the challenges they face;

-We note that difficulties remain with the implementation of the EU settlement scheme, including the number and uncertainty of those with pre-settled status, engaging with the digital process and the lack of physical evidence of status; and we invite the Partnership Council to provide its own analysis of the current settlement scheme.

-Noted and welcome the work of the Independent Monitoring Authority in the UK; and compare this with the lack of support for organisations advocating for British citizens in Member States.

-We note that different nationalities are treated differently by the UK when applying for work visas, and in particular, we invite the Partnership Council to set out if it has considered a future mobility scheme for young people between the UK and the EU.

### Touring artists

- The lack of an agreement on touring artists in the TCA is creating problems, especially for young and emerging artists;
- The Partnership Council should encourage the EU and the UK to negotiate a comprehensive agreement to allow artists to tour freely in the EU and the UK;
- In the meantime, the Partnership Council should look at steps that can be taken now to lessen the burdens that the current rules create.

### Cooperation on defence and security

- With the Russian attack on Ukraine acting as a security wake up call, how will the UK and the EU consider how their relationship and cooperation needs to evolve to take this into account and ensure Ukraine receives the support it needs?
  - There should be a more regular systematic dialogue on issues of strategic interest to the UK and the EU, and invite the Partnership Council to consider how this might be achieved, for example taking the EU/US Trade and Technology Committee as a template and extending it to a trilateral format with the UK?;
- The practical steps that can be taken by the UK and EU under the TCA to improve dialogue and operational cooperation against wide-ranging hybrid threats, in particular cybercrime, for example through UK participation in relevant PESCO projects?

## 3. Role of Senedd

Engagement of the members of the devolved legislatures in the proceedings of this second meeting of the PPA was much improved. Work is now needed to embed these approaches in future

meetings and to make the most of the engagement and scrutiny opportunities it affords the Senedd.

Senedd Members are not currently full members of the UK delegation. We don't have formal speaking rights during Plenary sessions and have no voting rights.

However, we were able to participate fully in working group discussions during the second meeting and the Plenary session included a formal agenda item on the engagement of the devolved legislature and European civil society in the work of the PPA.

During this agenda item we set out the importance of the TCA to Wales, the responsibilities the Welsh Government and Senedd have for its implementation in devolved areas and the seriousness with which the Senedd has approached this task during the Sixth Senedd. We made a positive case for the inclusion of devolved legislatures in the work of the PPA.

Taken together, these two initiatives were incredibly important for further developing the cooperation between the devolved legislatures and the PPA. We hope this progress is solidified in future sessions and its work programme as it develops.

As welcome as these developments are more work could be done, to embed the contribution of the devolved legislatures and other EU institutions in the work of the PPA and by us as a Senedd to better engage Welsh stakeholders on the Senedd's work with the PPA.

We hope the production of this report marks the beginning of further engagement between the PPA and Senedd business and committees. We hope that sharing this summary of proceedings will not only aid scrutiny of governments and implementation of the TCA but also encourage Senedd Members and committees to make the most of the opportunities for engagement between the Senedd and PPA members.

Welsh civil society organisations have found opportunities to engage and work collaboratively with European counterparts more difficult post-Brexit. We hope to develop better engagement with Welsh stakeholders on the work of the PPA.

Recent developments, such as the EPC and themes that emerged from the second meeting of the PPA, may warrant consideration of a joint scrutiny session of Senedd committees working on UK-EU issues with a UK Minister. Joint engagement with EU institutions could also be considered.

In particular, to further develop the relationship between the Senedd and the PPA, we recommend:

- 1.** That the improvements made to the participation of the devolved legislatures in the formal meetings of the PPA are now embedded as ordinary working practice.
- 2.** That consideration continue to be given by the Bureau of the PPA to devolved legislatures being able to participate in Plenary discussions on areas of devolved competence.
- 3.** That Senedd representatives and relevant Senedd committees work together to develop informal relationships with UK and EU delegation members outside of the formal PPA meetings on areas of common interest.
- 4.** That reports on the outcomes of sessions are routinely shared and drawn to the attention of relevant Senedd committees and the Welsh Government.
- 5.** That mechanisms are developed to engage with Welsh civil society on the work of the Senedd on the PPA - both in advance of the formal meetings to shape the contributions made by Senedd members and after meetings to feedback on proceedings and the responses received to priority issues.



Llywodraeth Cymru  
Welsh Government

Huw Irranca-Davies  
Chair  
Legislation, Justice and Constitution Committee  
Welsh Parliament  
Cardiff  
CF99 1SN

7 December 2022

Dear Huw,

Thank you for your letter of 25 November regarding the committee evidence session on Monday 21 November for the Agriculture (Wales) Bill.

I have carefully considered the committee's further questions and in order to assist considerations of the Bill I have provided the information in the annex attached to this letter.

Regards,

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

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

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

**Annex: Response to Legislation, Justice and Constitution Committee’s further evidence questions on the Agriculture (Wales) Bill – Dec 22**

**1. Please could you identify, for every regulation-making power in the Bill, when you first intend to use that power to make the relevant regulations?**

Due to some of the complexities of the provisions, policy decisions were taken during the drafting of the Bill that some provisions would be automatically commenced and some were to be commenced by Order.

We intend to commence them by Order two months after Royal Assent (along with most of the automatic provisions), so there will be no difference to timing, only the vehicle in which commencement occurs.

The provisions in respect of Sustainable Land Management ("SLM"), Welsh Ministers’ Power to Provide Support, Powers to Modify Legislation Relating to Financial and Other Support, Agricultural Tenancies and Wildlife come into force two months after the day on which the Bill receives Royal Assent.

All other provisions set out in the Bill (such as collection and sharing of data) will come into force by way of separate commencement Order.

Certain provisions in Part 4 relating to Forestry come into force the day after the date on which the Bill receives Royal Assent for the purposes of making regulations under section 32 of the 1967 Act. The other forestry provisions will come into force by way of separate commencement Order.

There are a number of regulation-making powers within the Bill which are outlined below:

**Part 1 Sustainable Land Management:**

Section 6(10) – power to amend section 6(9), which defines the “reporting period” for SLM reports. The reporting period for the first report ends on 31 December 2025 and for subsequent reports are successive periods of five years. There are no plans in place to amend the SLM reporting period. The power may be used, for example, to align with the power to provide support Impact Report (section 13) should the respective reporting periods fall out of synchronisation.

## **Part 2 Chapter 1: Power to Provide Support provisions**

Section 8(4) – power to amending the list of purposes. There are no plans currently to make any amendments to the list of purposes. However, following the evaluation of the support provided, it may be identified that some, or all of the purposes are no longer fit for purpose. If so, then, if required, the regulation-making power to add a purpose, remove a purpose or alter the description of a purpose from the list, could be used.

Section 10(1) – Publication of information about support. No date has been set for when this power will be first used.

Section 11(1) – power to make provision about checking eligibility for support (and other matters). No date has been set for when this power will be first used.

Section 13(7) – Power to amend the reporting period for the Impact Report at section 13(6). There are no plans in place to utilise this power. The Impact Report provisions already provide for an extended first reporting period which ends on 31 December 2029 and thereafter every five years to align with the SLM reporting period. They would be expected to be used, for example, should the alignment with the SLM report fall out of synchronisation.

## **Part 2 Chapter 2: powers to modify legislation relating to financial and other support**

As I have set out in question 2, we do not intend to make changes until we can demonstrate a new system is adequately designed, we have undertaken the relevant impact assessments and we are confident it is administratively practicable.

For the power to modify legislation relating to support for an apiculture scheme which is part of retained EU law. There are no plans currently to modify this legislation.

## **Part 2 Chapter 3: Intervention in Agricultural Markets**

Sections 20 and 21 – provisions to declare exceptional market conditions and provide financial support to agricultural producers in such conditions. No date has been set for when these powers will first be used.

Section 22 – provision to modify retained EU legislation relating to public market intervention and private storage aid.

The Welsh Ministers are planning to amend these provisions, due to the circumstances explained in the answer to Question 18. The changes planned to retained EU legislation governing public market intervention and private storage aid are due to use powers in the Agriculture Act 2020, as the provisions in the Agriculture (Wales) Bill will not be in force for when they are due to be made. No date has been set for when the powers in the Agriculture (Wales) Bill will first be used.

### **Part 3 Chapter 1: Collection and Sharing of Data:**

Section 24(2) – Provision of information relating to Agri-food Supply. No date has been set for when this power will be used.

Section 26(2) – Provision of information relating to relevant activities. No date has been set for when this power will first be used.

Section 31(1) – Provision for enforcement of information requirements. Again no date has been set for the first time this power will be used, however it is expected that its use will align with the regulation-making powers at sections 24(2) and 26(2).

### **Part 3 Chapter 2: Marketing Standards**

Sections 32(1) and 32(6) – provision about the standards with which the agricultural products listed in Schedule 1 must conform and provision to amend Schedule 1. No date has been set for when these powers will first be used.

### **Part 3 Chapter 3: Carcass Classification**

Section 33(1) - provision about the classification, identification and presentation of bovine, pig and sheep carcasses. No date has been set for when these powers will first be used. We are planning to create sheep carcass classification regulations, but using powers in the Agriculture Act 2020, as powers under this Bill will not be in force when these regulations are expected to be laid.

### **Part 6: General**

Section 50 – Provides the power to amend the meaning of “agriculture” (section 48) and “ancillary activity” (section 49). There are no plans to amend these definitions at present. The power to amend has been developed alongside an exhaustive definition of Agriculture and Ancillary Activities, and is there to ensure that the Bill, and the powers and functions within, are able to adapt to reflect any changes to agricultural practices as a result of land management or technological changes in the future and remain in pace with the sector.

**2. Please can you provide further information about why you do not have any plans to sunset either the BPS or the CAP continuation powers, particularly when it is intended that the Sustainable Farming Scheme will be the main source of funding for farmers in future and the BPS will be phased out over the transition period.**

I have announced my intention to continue with the Basic Payment Scheme to 2023 to provide support for farmers as we work together to transition to the Sustainable Farming Scheme.

We will not make changes until we can demonstrate a new system is adequately designed, we have undertaken the relevant impact assessments and we are confident it is administratively practicable.

Evidence being gathered through Co-design will feed into a wider evidence base (alongside other evidence workstreams) and help shape future scheme design. I will consult on the final scheme and how we transition in 2023.

A final decision on the proposals and, therefore, regulations which form the scheme will be made after the consultation in 2023.

**3. Please can you identify what assessment you have made of the potential impact of UKIMA on the effectiveness of the provisions of the Bill should they be passed by the Senedd and become law?**

Wales will be able to make its own standards with which the agricultural products listed in schedule 1 to the UK Internal Market Act must conform when they are marketed in Wales and the classification, identification and presentation of bovine, pig and sheep carcasses.

Likewise, England, Scotland and Northern Ireland will have the power to make their own provisions in these subject matters.

As is the case in respect of the Environmental Protection (Single-Use Plastics Products) (Wales) Bill, we are clear that the Senedd can legislate free from the requirements of UKIMA.

Therefore, the standards set in respect of agricultural products marketed in Wales will apply regardless of where in the UK those products come from.

The Welsh Government has made its position on UKIMA very clear throughout the passage of the Environmental Protection (Single-Use Plastics Products) (Wales) Bill. This remains our position – In devolved areas, the Senedd continues to be able to legislate free from the requirements of UKIMA.

**4. Section 23 of the Bill provides Agricultural Holdings Act tenants with a route to dispute resolution. Is this sufficient to ensure that tenants can access agricultural support provided under the Bill? Have you considered any alternative, or additional, provision to promote access?**

Tenanted land makes up a significant portion of farmland in Wales and making sure tenants have fair access to the Sustainable Farming Scheme (SFS) and future support is important for us to deliver our outcomes.

The provision, in combination with careful scheme design, aims to ensure fair access for tenant farmers to agricultural support under the Bill.

The universal actions are being designed with the aim that they can be delivered by farmers on tenancy agreements. These actions will help farms become more sustainable. They should be within reach of most farmers and can be integrated into current farming practice. The intention being to provide the building blocks to enable the farmer to go on and do more by choosing optional actions and receiving additional payments.

We want to offer as much flexibility as practicable for farmers to carry out the universal actions in a way which works best for their farm, while seeking to achieve the purposes for which support may be given, and which contributes towards the SLM objectives. We recognise some farms may not be able to deliver the full range of universal actions from the outset (for example, because of their farm type, topography, or contracts). Exemptions may therefore be in place, but our starting position is that farms in the SFS should undertake all universal actions.

We understand some tenants may find their ability to take up optional actions constrained by the terms of their tenancy agreement. We are exploring how landlords and tenants could collaborate to enter mutually beneficial agreements, similar to the examples included in the Rock Review.

We have established a tenancy working group to work with us to explore barriers tenant farmers may face to participation in the SFS.

The provision in the Bill introduces a route to dispute resolution for 1986 Act tenancies. We did consider whether similar provisions should be inserted into the 1995 Act, however it already includes a general dispute resolution procedure, making additional procedures unnecessary.

**5. Accessibility Section 29 of the Bill requires the Welsh Ministers to “publish” a draft requirement under sections 24(1) or 26(1). Where will this be published? Will the lack of precision in relation to the publication of this information impair accessibility?**

In line with all consultations, the requirements and privacy notices for data collection and sharing will be published on the Welsh Government website and will be available bilingually.

**6. In addition to a range of subordinate legislation making powers, the Bill amends a number of older pieces of (English language) legislation, such as the Forestry Act 1967. Did you consider making provision on the face of the Bill, rather than amending other legislation, so as to enable the provisions to be fully bilingual and to improve the accessibility of the law for the people of Wales?**

The Bill amends some well-established statutory regimes, such as those set out in the Forestry Act 1967 and the Wildlife and Countryside Act 1981.

Achieving the policy by way of freestanding provisions in a Senedd Bill would have resulted in inaccessibility issues and undesirable complexity.

If what is being suggested is that the Bill could have been used to remove all Welsh provision from the 1967 Act, and re-state it subject to any necessary revisions, then this would have been a significant piece of work and faced with that and refocussing the Bill at the expense of agricultural reforms, or making the amendments that I consider necessary to implement my important policies in this area, I chose the route set out in the Bill.

**7. How are the powers to allow the Natural Resources Body for Wales (NRW) to amend, suspend or revoke a tree felling licence it has issued, appropriate and proportionate? How will Welsh Government ensure that NRW are using these powers appropriately?**

Officials have issued non-statutory guidance to NRW on how these powers are to be implemented to ensure appropriate and proportionate use.

NRW have developed a high level approaches paper reflecting this guidance. These documents have been published on the Welsh Government website as part of the Statement of Policy Intent which supports the Bill.

NRW are now developing full internal and external guidance to ensure a consistent and proportionate approach to implementing these powers. These will be published to align with commencement of the provisions.

My officials will conduct a post implementation review of the legislation within 3 years of commencement of amendments to the Forestry Act 1967.

We will work with NRW and stakeholders to agree a collection of relevant data following commencement in order to monitor the impact of the forestry provision within the Bill.

**8. Do the Welsh Ministers have sufficient powers to intervene in the event that NRW were found not to be using their powers appropriately?**

Welsh Government has powers to give a direction to NRW in respect of the implementation of these powers if necessary.

**9. Section 40 amends section 17 of the Forestry Act 1967 (penalty for felling without licence) to increase the maximum fine for illegal felling from a level 4 fine (£2,500) to a level 5 fine (unlimited). In your view, is this increase in monetary penalty proportionate and justified?**

As the Forestry Act 1967 currently stands, a person can be fined less for illegal felling than for being in breach of a felling licence condition.

This anomaly is addressed by increasing the monetary penalty for illegal felling in line with the existing enforcement penalty for non-compliance with felling conditions. Leaving this anomaly unresolved would potentially undermine the new powers set out in the forestry provision.

It also gives the Courts flexibility to impose a higher fine in the event of a major incident and should also serve as a better deterrent for illegal felling.

This is in line with England, where the limit on these fines was removed by the 2021 Environment Act Schedule 16 para 2. (not yet commenced).

**10. What safeguards are provided in the Bill to protect individuals' personal data?**

The Bill's data collection provisions are compliant with the UK GDPR and overarching data protection legislation.

The Bill's data sharing provisions are very detailed and include several limitations and safeguards, such as the purposes for which data can be collected and how the data is to be processed.

Data can only be collected in furtherance of one or more of a specific and limited list of purposes which are set out in the Bill, such as helping to increase productivity, promoting transparency or fairness in agri-food supply chains or monitoring supply sources for food.

Furthermore, any regulations under the Bill made by the Welsh Ministers introducing obligations to provide information can only be made using the affirmative Senedd procedure, which provides significant scrutiny powers to Senedd members in relation to the information being collected.

There are further safeguards in place. As per our statutory obligation to consult with the Information Commissioners Office (ICO), as the UK Regulator (Article 36(4) of the General Data Protection Regulation) when drafting legislation which impacts upon the processing of personal data, my officials have consulted with the ICO on the data provisions within the Bill.

This is an area of ongoing engagement on all aspects of data collection and data protection regarding the Bill. The ICO ensures the provisions are compliant with the data protection principles enshrined in the UK GDPR and the Data Protection Act 2018. Consequently, the Welsh Government cannot put in place legislation which overrides these principles and which does not respect UK GDPR.

**11. Could you explain the measures that the Welsh Government will put in place to ensure that individuals clearly understand how their information will be used and processed?**

In advance of any data being collected, we will publish our intent on the type of data to be collected, the purpose for the collection, how the data will be collected and used, as well as the frequency for collecting data under the requirement.

The Bill requires the Welsh Ministers to have published their proposed draft requirements for at least four weeks, for comment, prior to information requirements being introduced. These requirements must set out the purposes for which the information will be processed and the processing of the information cannot breach the set requirements.

Individuals will be provided with clear privacy information about how their data will be used by Welsh Government and any partners.

**12. In line with UK GDPR and other data protection legislation, will individuals, including farmers, be required to consent to the processing of their data?**

Where data is collected from farmers on a voluntary basis, for example, the Annual Farm Business Survey, their consent is required to the processing of the data.

The Bill also contains statutory mechanisms which can require specific types of data to be provided by farmers for limited and particular purposes and whilst farmers' consent will not be required where these mechanisms are used, farmers will be able to influence those requirements by making representations themselves, via stakeholder representatives or Senedd members about the nature, effect and practical impact of the proposed requirements.

As previously stated, individuals including farmers will be provided with clear privacy information about how their data will be used by Welsh Government and any partners.

**13. We note that it is not the Welsh Government's policy nor wider intent to sell any data collected in accordance with Chapter 1 of Part 3 of the Bill to third parties. As such, would you consider amending the Bill to expressly prohibit the sale of such data?**

Whilst there is no provision within the Bill which specifically prevents the sale of collected information to third parties, it is not the policy nor wider intent of the Welsh Government to sell data onto third parties, therefore I do not think it is necessary to expressly prohibit the selling of data.

Under **UK GDPR it is only necessary to state what will be done with any data**, and, therefore, it is not a requirement to state what will not be done. We only state what can be done with the data within the Bill and accompanying regulations.

Including a provision to expressly prohibit the selling of data, would result in also needing to consider implementing further provisions to address **all** areas for which data will not be used.

**14. The Bill would grant powers to the Welsh Ministers to modify retained EU law. Does the Welsh Government intend to preserve retained EU law in the fields covered by this Bill using powers under the Retained EU Law Bill?**

The Welsh Government is considering how it will respond to the situation, in effect, imposed by the UK Government on reviewing REUL. In general our position is that retained EU law, like EU law before it, works well and, consequently, beyond gradually amending the law as appropriate over time as with any body of law, we had no intention to repeal, revoke or amend REUL to an arbitrary deadline on ideological grounds.

**15. Could the Welsh Government preserve retained EU law in the fields covered by this Bill, or is it reliant on the UK Government to also preserve relevant retained EU law, in whole or in part, to replicate the situation as it currently stands?**

As currently drafted the REUL Bill has powers which the Welsh Government could exercise to preserve REUL in areas of devolved competence. The Welsh Government is considering how it will respond to this Bill and will work with the UK Government to identify all devolved REUL including those instruments made by the UK Government and Parliament.

**16. What discussions have taken place with other UK governments in relation to retained EU law in the fields covered by this Bill, for example, is the Welsh Government aware of any UK Government plans for this retained EU law?**

Some UK Government departments (including DEFRA) have started to share their initial interpretation of the reserved/ devolved split of REUL with Welsh Government officials and they are considering how to respond and what further information is required. This work is dynamic as new REUL instruments are being identified as work progresses.

**17. How might such plans affect powers granted to Welsh Ministers by this Bill?**

We will continue to engage and in parallel are considering how to respond in the coming months as the new UK Government's position on the Bill is understood.

**18. Under the Retained EU Law Bill, the retained EU law in the fields covered by this Bill could automatically expire at the end of 2023. How might that impact the ability of the Welsh Government to deliver the objectives of**

**this Bill (specifically in relation to public market intervention or aid for private storage)?**

As I have said previously, we will continue to engage and in parallel are considering how to respond in the coming months as the new UK Government's position on the Bill is understood. Once we have more clarity, we will then be in a better position to assess how the REUL Bill will impact on public intervention and private storage aid.

We are planning to end Public Intervention and reform Private Storage Aid schemes in Welsh legislation next year.

Public Intervention schemes are an inefficient form of market support and have high associated costs, so we are planning to end their use because they represent poor value for money.

We are also planning to remove the requirements for operators to lodge a security for Private Storage Aid contracts and for the Rural Payments Agency to conduct interim inspections of products in such schemes.

# Agenda Item 11

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

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# Agenda Item 13

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

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