

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
On-site – Committee Room 5, Tŷ Hywel	P Gareth Williams
Meeting date: 13 June 2022	Committee Clerk
Meeting time: 11.30	0300 200 6565
	SeneddLJC@senedd.wales

1 Introductions, apologies, substitutions and declarations of interest
(11.30)

2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3
(11.30 – 11.35) (Pages 1 – 2)

Attached Documents:

LJC(6)-17-22 – Paper 1 – Statutory instruments with clear reports
Made Negative Resolution Instruments

2.1 SL(6)202 – The Building (Amendment) (Wales) Regulations 2022

3 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3
(11.35 – 11.40)

Made Negative Resolution Instruments

3.1 SL(6)203 – The Non-Domestic Rating (Amendment of Definition of Domestic Property) (Wales) Order 2022

(Pages 3 – 4)

[Order](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-17-22 – Paper 2 – Draft report

4 Inter-Institutional Relations Agreement

(11.40 – 11.45)

4.1 Correspondence from the Counsel General and Minister for the Constitution: The European Parliamentary Elections (Amendment and Revocation) (United Kingdom and Gibraltar) (EU Exit) Regulations 2022

(Pages 5 – 6)

Attached Documents:

LJC(6)-17-22 – Paper 3 – Letter from the Counsel General and Minister for the Constitution, 8 June 2022

4.2 Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd: Attendance at Inter-Governmental meeting on 16 May

(Pages 7 – 8)

Attached Documents:

LJC(6)-17-22 – Paper 4 – Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 9 June 2022

4.3 Written Statement by the Minister for Climate Change: The United Kingdom Internal Market Act 2020: Exclusions from Market Access Principles – Single-use Plastics Regulations 2022

(Pages 9 – 10)

Attached Documents:

LJC(6)-17-22 – Paper 5 – Written Statement by the Minister for Climate Change, 9 June 2022

5 Papers to note

(11.45 – 11.50)

5.1 Correspondence from the Minister of State to the Chair of the Constitution Committee: Revision of the Cabinet Manual

(Pages 11 – 14)

Attached Documents:

LJC(6)-17-22 – Paper 6 – Letter from the Minister of State to the Chair of the Constitution Committee, 1 June 2022

LJC(6)-17-22 – Paper 7 – Letter from the House of Lords Constitution Committee to the Prime Minister Boris Johnson, 16 May 2022

5.2 Correspondence from the First Minister: The Welsh Government's programme and priorities for legislating for Wales

(Pages 15 – 17)

Attached Documents:

LJC(6)-17-22 – Paper 8 – Letter from the First Minister, 9 June 2022

LJC(6)-17-22 – Paper 9 – Letter to the First Minister, 13 May 2022

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

(11.50)

7 Access to justice: Summary of engagement

(11.50 – 11.55)

(Pages 18 – 26)

Attached Documents:

LJC(6)-17-22 – Paper 10 – Briefing

8 Forward Work Programme

(11.55 – 12.05)

(Page 27)

Attached Documents:

LJC(6)-17-22 – Paper 11 – Briefing

Statutory Instruments with Clear Reports 13 June 2022

SL(6)202 – The Building (Amendment) (Wales) Regulations 2022

Procedure: Made Negative

The Building (Amendment) (Wales) Regulations 2022 (“the Regulations”) are made by the Welsh Ministers in exercise of the powers conferred on the Secretary of State by sections 1, 34 and 47(1) of, and paragraphs 1, 2, 4, 4A, 7, 8 and 10 of Schedule 1 to, the Building Act 1984. These powers are now exercisable by the Welsh Ministers, who have also consulted the Building Regulations Advisory Committee for Wales and such other bodies as appear to them to be representative of the interests concerned in accordance with section 14(7) of the Building Act 1984.

The Regulations amend the Building Regulations 2010 (“the Building Regulations”) and the Building (Approved Inspectors etc.) Regulations 2010 (“the Approved Inspectors Regulations”) as they apply in relation to Wales. The amendments made by the Regulations apply the new metric for the measurement of energy efficiency in the form of a target primary energy rate to new dwellings. Previously, primary energy consumption rates applied to buildings other than dwellings.

The amendments also introduce new energy efficiency ratings to new buildings, and introduce a new regulation for on-site electricity generation and in relation to overheating (in particular by virtue of the insertion of paragraph L2 into Part L of Schedule 1 to the Building Regulations and a new Part O). These Regulations also amend the application of Part F relating to mechanical ventilation air flow testing.

Amendments are made to the Approved Inspectors Regulations in consequence of these changes. These Regulations also make transitional provision for building work on a particular building where the building work has been started in accordance with a relevant notification provision, provided that the building work on that building has already commenced, or is started within 12 months of the Regulations coming into force.

Schedule 3 to the Building Regulations is amended to reflect changes to bodies participating in self certification schemes. The Building Act 1984 gives the Secretary of State the power to approve and issue documents containing practical guidance with respect to the requirements contained in the Building Regulations. That power is exercisable by the Welsh Ministers insofar as it applies to Wales.



Approved Document L Volume 1, 2022 edition, Approved Document F Volume 1, 2022 edition and Approved Document O, 2022 edition contain practical guidance on meeting the new requirements inserted into the Building Regulations by the Regulations. The Approved Documents are published by the Welsh Ministers and may be accessed at www.gov.wales.

There is a 6 month time period between making the Regulations and their coming into force date of 23 November 2022 to allow industry adequate time to prepare for the new requirements.

Parent Act: Building Act 1984

Date Made: 20 May 2022

Date Laid: 24 May 2022

Coming into force date: 24 May 2022



SL(6)203 – The Non-Domestic Rating (Amendment of Definition of Domestic Property) (Wales) Order 2022

Background and Purpose

This Order amends section 66 of the Local Government Finance Act 1988, which defines domestic property for the purposes of Part 3 (non-domestic rating) of that Act.

These amendments increase the number of days a self-catering property must be intended to be made available to let, have been available to let and actually have been let, within any 12-month period, in order to be classified as non-domestic within the local taxation system. Such properties are liable for non-domestic rates (NDR).

Currently, such properties must be intended to be let and have been made available to let for at least 140 days and actually have been let for at least 70 days.

This Order will increase the requirements from 140 to 252 days and from 70 to 182 days respectively. Self-catering properties which do not meet the letting criteria are classified as domestic, and are liable for council tax.

Procedure

Negative.

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

Technical Scrutiny

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

Paragraphs 5.1-5.3 of the Explanatory Memorandum accompanying the Order notes the responses to the Welsh Government's policy consultation. The Welsh Government states that responses were received from a range of stakeholders, providing various suggestions for non-domestic classification criteria:



A policy consultation took place from 25 August to 17 November 2021. The consultation sought views on, among other matters, the criteria to be met for self-catering properties to be classified as non-domestic for local taxation purposes. A summary of responses was published on 1 March 2022.

The consultation received 974 responses, from a wide range of stakeholders. Respondents included local authorities, town and community councils, self-catering providers, local businesses, representative bodies, professional bodies/associations and private individuals.

Views from the consultation generally supported an increase to the criteria and a range of suggestions was provided. The most common specific suggestions were for 210 days available to let and 105 days actually let, but many respondents also suggested higher numbers. Some respondents were of the view that all properties providing living accommodation should be classified as domestic and liable for council tax, or suggested letting criteria so high that they would have the same effect. The Welsh Government is not duty bound to accept the most common specific response to a consultation.

Paragraph 5.4 of the Explanatory Memorandum notes responses to the technical consultation in relation to a draft of the Order. The Welsh Government states that most responses were from self catering property owners and their representative bodies, who considered that the requirement to let a property for 182 days was too high:

A draft of the 2022 Order was the subject of a technical consultation between 1 March and 12 April 2022. The consultation received 499 responses. The vast majority were from self-catering property owners and representative bodies who stated that the criteria of 182 days actually let is too high. The response to the technical consultation was, therefore, very sector-specific, capturing only part of the broader set of stakeholders which responded to the previous policy consultation. This is generally expected for technical consultations, which mainly attract responses from stakeholders for whom the relevant legislation will be directly applicable. No issues with the technical clarity of the Order were identified. Some areas of misunderstanding with regards to the application and timing of the Order were identified, which will be clarified in revised guidance.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

8 June 2022



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

SeneddLJC@senedd.wales

08 June 2022

Dear Huw

The European Parliamentary Elections (Amendment and Revocation) (United Kingdom and Gibraltar) (EU Exit) Regulations 2022

The Minister for Equalities and Levelling Up Communities has shared the regulations named above with me, prior to their being laid before the Houses of Parliament. The Regulations will remove remaining European Parliament-related references that are no longer necessary from certain secondary legislation relating to domestic elections. I understand the Regulations will be laid in July and the Statutory Instrument will be subject to the negative procedure.

Following careful consideration, I intend to give my consent to the Regulations, so the provisions therein apply in Wales. Normally, it is the policy of the Welsh Government that where powers lie with the Welsh Ministers, it is the responsibility of the Welsh Ministers to legislate for Wales. However, in the extraordinary circumstances of the UK's withdrawal from the EU, we recognise the need for the UK Government to legislate in certain devolved areas in exceptional cases. In this instance the proposed Regulations are a non-controversial and technical change to electoral law.

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Correspondence.Mick.Antoniw@gov.Wales

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

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

I can confirm that the Welsh Government will write to the UK Government shortly to provide consent for the European Parliamentary Elections (Amendment and Revocation) (United Kingdom and Gibraltar) (EU Exit) Regulations 2022, to apply to Wales on this occasion.

I will notify the Senedd in a Written Statement that I have consented to this SI when it is laid in Parliament.

Yours sincerely,

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

Mick Antoniw AS/MS

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

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE Attendance at Inter-Governmental meeting on 16 May

DATE 09 June 2022

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

In accordance with the inter-institutional relations agreement, I wish to notify you that a further meeting of the Inter-Ministerial Group for Environment, Food and Rural Affairs was held on 16 May.

The meeting was attended by Edwin Poots MLA, Minister of Agriculture, Environment and Rural Affairs, Northern Ireland Executive (Chair), George Eustice MP, Secretary of State for Environment, Food and Rural Affairs, UK Government; Victoria Prentis MP, Minister of State, Defra, UK Government; Mairi McAllan, Minister for Environment and Land Reform, Scottish Government; Lorna Slater MSP, Minister for Green Skills, Circular Economy, and Biodiversity, Scottish Government.

At the meeting we revisited the Ukraine crisis and the impacts for the production costs of fertiliser, feed, and fuel. We also discussed pet quarantine where I pressed the UK Government for assurances quarantine facility spaces would be available to all nations of the UK regardless of policy differences.

The UK Government (UKG) provided a paper outlining their latest position regarding preparations for border controls and confirmed no further import controls would be introduced in 2022. I outlined my concerns that once again checks were being delayed without prior consultation with the Devolved Governments, which has become a recurring pattern of behaviour on UKG's part. I also noted the concerns of my Chief Veterinary Officer regarding the biosecurity implications of the delay, as well as the disappointment stakeholders have regarding the lack of a level playing field between importers and exporters, which places domestic producers at a competitive disadvantage.

The UK Government outlined their future legislative programme and proposals emerging from the Queen's speech which included a Genetic Technology (Precision Breeding) Bill; an Animal Welfare (Kept Animals) Bill; a Trade (Australia and New Zealand) Bill and a Procurement Bill.

The Scottish Government concluded by presenting their framework for the future of agriculture policy in Scotland which focuses on land reform, nature restoration and sustainable farming initiatives. Scotland is pursuing a similar path to Wales with a system of base support and additional conditional payments based on the climate and biodiversity outcomes.

We agreed our next meeting would be held in person at the Royal Welsh Show on Wednesday 20 July, when I plan to outline future Welsh agricultural proposals.

A communique regarding this meeting will be published on the UK Government website at

[Communiqués from the Inter Ministerial Group for Environment, Food and Rural Affairs](#)

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE: The United Kingdom Internal Market Act 2020: Exclusions from Market Access Principles – Single-use Plastics Regulations 2022

DATE: 09 June 2022

BY: Julie James MS, Minister for Climate Change

Schedule 1 to the United Kingdom Internal Market Act 2020 (UKIMA) provides that the mutual recognition and non-discrimination principles under Part 1 of UKIMA will not affect the application of certain legislative restrictions and requirements. Section 10 of UKIMA provides that the Secretary of State may amend Schedule 1 by statutory instrument (SI). For example, to give effect to an agreement that forms part of a Common Framework agreement and provides that certain cases, matters, requirements or provision should be excluded from the application of the market access principles.

On 9 June, the Secretary of State made the United Kingdom Internal Market Act 2020 (Exclusions from Market Access Principles: Single-Use Plastics) Regulations 2022 (“the exclusion SI”) using the powers under section 10 of UKIMA. The exclusion SI excludes eight single use plastic items (straws, stirrers, plates, cutlery, balloon sticks, expanded polystyrene food containers and cups and cotton buds) from the market access principles under UKIMA. In accordance with section 10 of UKIMA, the Secretary of State has sought the Welsh Ministers’ consent to the making of the exclusion SI.

The exclusion was requested by the Scottish Government to support their regulations to ban a number of single use plastic items. The Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021 are scheduled to come into force on 1 June 2022. The Exclusion SI should come into force as soon as close to this date as possible. Given the time constraints, I have written to the Legislation, Justice and Constitution Committee signalling my intent to consent for the exclusion SI to be laid.

I am mindful the Senedd did not consent to the making of UKIMA itself. The Act, which has been imposed on Wales by the UK Parliament, purports to restrict the Senedd’s ability to legislate in devolved matters. This is something we simply cannot accept and have set out our objections in a legal challenge.

In consenting to the exclusion SI, our position with regard to UKIMA has not changed. We do not believe UKIMA has the impact on Senedd competence it purports to have. However, with the UKIMA litigation between the Welsh and UK governments yet to conclude, we recognise it may be in our interests to cooperate with the exclusions process. This is without prejudice to the litigation. On this basis, I have consented to the exclusion SI.

The scale of the nature and climate emergency means our environment must be prioritised. We have a short window in which to act. I will soon be bringing forward Welsh legislation to ban a number of commonly littered single use plastic items and have ambition to go further. The Senedd cannot be held back from taking required action to address these challenges and protect the Welsh environment, both now and for future generations.



Lord True CBE
Minister of State
Cabinet Office 70 Whitehall London SW1A 2AS

The Baroness Drake CBE
Chair of the Constitution Committee
House of Lords
London
SW1A 0AA

1st June 2022

Dear Baroness Drake

Cabinet Manual

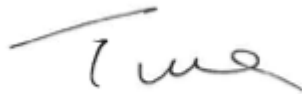
Thank you for your letter dated 16 May 2022. As ever, I welcome your interest in the work we are undertaking to review the Cabinet Manual. Since we announced our intention to update the current edition within this Parliament in response to your committee's report, work has started to identify the areas where the Cabinet Manual has become out of date.

Unlike the production of the first edition of the Cabinet Manual between 2010 and 2011, we will not be producing the document from scratch but instead updating the Manual to reflect changes in processes, practice and convention since it was first published. Our process for updating the Cabinet Manual, including any engagement, will reflect the extent to which significant changes are required or whether the updates are more limited in nature e.g. to reflect where legislation has been updated. We will of course keep your committee and others updated as the work progresses.

On ministerial duties, when the first edition was published it was endorsed by the Cabinet. The then Prime Minister made it clear that he would expect everyone working in Government to be mindful of the guidance it contains. This remains the case. Officials will be very happy to meet your Committee officials to provide background on the timetable and our approach. I am grateful for the Committee's support in this work.

I am copying this letter to the Speaker of the House of Commons, the Lord Speaker, the Chair of the Liaison Committee, the Convener of the Scottish Parliament's Constitution, Europe, External Affairs and Culture Committee, the Chair of the Senedd Legislation, Justice and Constitution Committee and the Northern Ireland Assembly Committee for the Executive Office so that they are aware of the latest developments.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'True', with a long horizontal stroke above the first letter.

Lord True CBE



HOUSE OF LORDS

Select Committee on the Constitution

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The Prime Minister
10 Downing Street
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16 May 2022

Dear Prime Minister,

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

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

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

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

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

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

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

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

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

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

Yours sincerely,



Baroness Drake
Chair of the Constitution Committee

Huw Irranca-Davies
Chair, Legislation, Justice and
Constitution Committee,
Welsh Parliament,
Cardiff Bay,
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9 June 2022

Dear Huw,

Thank you for your letter dated 13 May 2022.

On behalf of the Welsh Government, the Counsel General and Minister for the Constitution would be pleased to explore the Welsh Government's approach to legislating at a session early in the Autumn term, alongside the Permanent Secretary.

Yours sincerely,



MARK DRAKEFORDD

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

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

The Rt Hon. Mark Drakeford MS
First Minister of Wales

13 May 2022

Dear Mark

The Welsh Government's programme and priorities for legislating for Wales

During the course of the first year of the Sixth Senedd, the bulk of our scrutiny work has focused on legislation: two Welsh Government Bills, some 200 pieces of subordinate legislation as well as legislative consent memoranda concerning 19 UK Government Bills proposing to legislate in devolved areas.

This scrutiny has highlighted a range of issues at the heart of our constitutional arrangements including the Welsh Government's approach to legislating (as part of its [Programme for Government](#)) and also how available Welsh Government resources can influence the approach adopted.

We would like to explore these issues with you in September and in the context of the Welsh Government's legislative statement for the second year of the Sixth Senedd, which we anticipate you will deliver in July. We would also be happy to extend this invitation to the Permanent Secretary, should you consider that to be appropriate.

The clerks to the Committee can liaise with your office to identify and secure an appropriate slot if that would be helpful. I look forward to hearing from you in due course.

I am copying this letter to Dr Andrew Goodall CBE, the Permanent Secretary.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair

Agenda Item 7

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

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