

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Committee Room 4 – Tŷ Hywel	P Gareth Williams
Meeting date: 30 January 2023	Committee Clerk
Meeting time: 13.30	0300 200 6565
	SeneddLJC@senedd.wales

1 Introductions, apologies, substitutions and declarations of interest

13.30

2 Food (Wales) Bill: Evidence session

13.30–14.30

(Pages 1 – 24)

[Food \(Wales\) Bill](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)–04–23 – Paper 1 – Briefing

LJC(6)–04–23 – Paper 2 – Letter from Peter Fox MS, 25 January 2023

LJC(6)–04–23 – Paper 3 – Letter from Peter Fox MS to the Economy, Trade, and Rural Affairs Committee, 13 December 2022

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

14.30 – 14.35

Made Negative Resolution Instruments



3.1 SL(6)312 – The Government of Wales Act 2006 (Budget Motions and Designated Bodies) (Amendment) Order 2023

(Pages 25 – 26)

Attached Documents:

LJC(6)–04–23 – Paper 4 – Draft report

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

14.35 – 14.40

4.1 SL(6)308 – The Education (Student Loans) (Repayment) (Amendment) (No. 4) Regulations 2022

(Pages 27 – 30)

Attached Documents:

LJC(6)–04–23 – Paper 5 – Report

LJC(6)–04–23 – Paper 6 – Welsh Government response

5 Inter–Institutional Relations Agreement

14.40 – 14.45

5.1 Correspondence from the Counsel General and Minister for the Constitution: Inter–Ministerial Group for Elections and Registration

(Page 31)

Attached Documents:

LJC(6)–04–23 – Paper 7 – Letter from the Counsel General and Minister for the Constitution, 20 January 2023

5.2 Correspondence from the Minister for Social Justice: Safety, Security and Migration Interministerial Group

(Page 32)

Attached Documents:

LJC(6)-04-23 – Paper 8 – Letter from the Minister for Social Justice, 24 January 2023

5.3 Correspondence from the Deputy Minister for Mental Health and Wellbeing: Food Supplements and Food for Specific Groups (Miscellaneous Amendments) Regulations 2023

(Pages 33 – 38)

Attached Documents:

LJC(6)-04-23 – Paper 9 – Letter from the Deputy Minister for Mental Health and Wellbeing to the Health and Social Care Committee, 24 January 2023

LJC(6)-04-23 – Paper 10 – Letter to the Deputy Minister for Mental Health and Wellbeing from the Health and Social Care Committee, 16 January 2023

6 Papers to note

14.45 – 14.50

6.1 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Animals and Animal Health, Feed and Food, Plants and Plant Health (Amendment) Regulations 2022

(Pages 39 – 40)

Attached Documents:

LJC(6)-04-23 – Paper 11 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 23 January 2023

6.2 Correspondence from the Minister for Economy: Trade (Australia and New Zealand) Bill

(Page 41)

Attached Documents:

LJC(6)-04-23 – Paper 12 – Letter from the Minister for Economy, 25 January 2023

6.3 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd and the Deputy Minister for Mental Health and Wellbeing: The Trade

in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022 and the Food and Feed (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022

(Pages 42 – 47)

Attached Documents:

LJC(6)-04-23 – Paper 13 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd and the Deputy Minister for Mental Health and Wellbeing, 26 January 2023

LJC(6)-04-23 – Paper 14 – Letter to the Minister for Rural Affairs and North Wales, and Trefnydd and the Deputy Minister for Mental Health and Wellbeing, 16 January 2023

6.4 Correspondence from the Counsel General and Minister for the Constitution: Strikes (Minimum Service Levels) Bill

(Pages 48 – 49)

Attached Documents:

LJC(6)-04-23 – Paper 15 – Letter from the Counsel General and Minister for the Constitution to the Llywydd, 26 January 2023

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

14.50

8 Food (Wales) Bill: Consideration of evidence

14.50 – 15.05

9 The Welsh Government's Draft Budget for 2023–24: Draft report

15.05 – 15.30

(Pages 50 – 64)

Attached Documents:

LJC(6)-04-23 – Paper 16 – Draft report

Document is Restricted

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

0300 200 7298 

@Peterfox_ms 

@PeterFox61 

Peter Fox MS 

25 January 2023

Food (Wales) Bill: Stage 1 scrutiny session with Minister

Dear Huw,

Ahead of my appearance before the Legislation, Justice and Constitution Committee on Monday 30 January, I thought it might be helpful if I provide a written response to a number of the concerns raised by the Minister for Rural Affairs and North Wales during her evidence with the Committee this week.

This response does not include all of the areas covered by the Committee during the session, or all of the concerns raised by the Minister. However, a number of the concerns raised by the Minister were more technical or detailed in nature and as such the Committee may find it useful to have a detailed response at this stage. I will of course be happy to discuss any of these areas further when I attend Committee next week.

Issue 1: The Bill has changed substantially during its progress?

While there have been some changes to the Bill, it has not changed significantly during its progress. I set out below how the Bill has changed during the stages of its development.

The initial 'pre-ballot' proposal set out the wide policy objectives for the Bill, and these are still relevant to the Bill as introduced. On 17 November 2021 the Senedd debated whether to grant leave for the Bill to proceed to full development. In accordance with Standing Order 26.91A, I published an Explanatory Memorandum to accompany the debate.¹ This EM stated the main policy objectives were to:

- establish a Welsh Food Commission
- place a duty on Welsh Ministers to produce a Welsh Food Strategy

¹ [Explanatory Memorandum for leave to proceed debate](#) – 17 November 2021

- introduce Community Food Plans
- require Welsh Ministers to report annually on food production
- eliminate food waste

All of these main policy objectives are included in the Bill as introduced, the first three of which as standalone parts of the Bill, with local food production and food waste being included within the detail of the food goals.

There was at that time an additional proposal to strengthen food labelling requirements. However, because of the potential implications of the UK Internal Market Act 2020 it was decided not to include such provisions in the Bill.

Therefore, the only substantial difference between the Bill as introduced and the proposal put forward to the Senedd, and agreed on 17 November 2021, is the inclusion of the Food Goals and associated targets. As the Food Goals themselves provide a mechanism for helping achieve the Bill's policy objectives, I do not believe this is a divergence from the policy objectives originally set out.

Issue 2: The Bill is based on the Good Food Nation (Scotland) Bill

In short – this is simply not the case. You only have to compare the text of the Food Bill against the provisions of the Good Food Nation (Scotland) Act 2022 (“the Scottish Act”) to see that while they cover similar issues they have been drafted in very different ways, and include clearly different provisions.

A prime example of this is the inclusion of food goals in the Bill, which are not included in the Scottish Act. The Minister is correct in her assertion that the legislative framework that we work in in Wales is different to that in Scotland. It is also fair to say, as can be seen from the inclusion of overarching food goals, that it is the Government's own Well-being of Future Generations (Wales) Act 2015 that influenced the development of the Food Bill more than the Scottish Act.

The timing of both Bills would also have made it very difficult for the Food Bill to be based on the Scottish Act. The Good Food Nation (Scotland) Bill, was introduced to the Scottish Parliament on 7 October 2021. My initial proposal (including the call for the Food Commission and food strategies) was submitted to the Senedd's ballot process several months before that Bill was introduced.

On the provision to establish a Food Commission specifically, I'm sure that the Minister will be aware that the provision in the Scottish Act establishing a Scottish Food Commission was inserted by amendment during the passage of the Bill (the relevant amendment being considered on 11 May 2022). The establishment of the Welsh Food Commission has been central to my proposal since the very beginning, it could well be therefore that it was my proposal that helped shape the development of the Scottish Act.

Issue 3: A 3 Month period for establishing the Food Commission

As the Committee will be aware, the commencement provisions set out in the Bill provide that the Act will come into force three months after the date of Royal Assent. At that time (in accordance with Section 8) the Welsh Food Commission will be established as a body corporate. Unfortunately, the Minister's comments around this were very misleading, and misrepresent the effect of the Bill's provisions and what the Bill requires.

The establishment of a statutory body in law at a certain point (in this case three months after Royal Assent) is not the same as requiring that body to be up and running and fully functional at that same point. There are no timescales within the Bill setting out when the Commission has to be operational.

I have been clear all along, and advice from Counsel when drafting the Bill was also clear, that the structure of the Commission will need to be in place very early on as it underpins a lot of the Bill's other provisions. This includes the Commission's commitments to assist Welsh Ministers and public bodies with meeting their own statutory requirements.

It is not, however, the case that the Commission needs to be fully functional before work can begin on other statutory requirements set out in the Bill such as the development of the National Food Strategy or the food goal targets. There will inevitably be a period where work to meet statutory requirements and work to ensure the Commission is fully functional will overlap. I am confident that all of that can be achieved within the deadlines set out in the Bill.

Issue 4: An overlap of functions with the Food Standards Agency

The Minister has raised concerns about the potential cross-over of functions between those set out in the Bill for the Welsh Food Commission and those of the Food Standards Agency (FSA). This is something that was carefully considered during the drafting of the Bill, and I do not believe such a cross-over exists.

The functions of the FSA are set out in the Food Standards Act 1999 ("the 1999 Act")². These functions are fairly extensive, but are also very specific in most areas, and focus more directly on areas such as food safety and standards. Their *general functions in relation to food* (Sections 6 to 8 of the 1999 Act) relate to matters 'connected with food safety or other interests of consumers in relation to food'. The Explanatory Notes to the 1999 Act explain further that the advice, information and assistance the FSA has the function of providing is in relation to improving food safety and standards. For this reason I do not believe there is a cross-over with the proposed functions of the Food Commission as set out in section 10 of the Bill, where food safety does not feature.

As you will be aware, the draft Food (Wales) Bill was subject to formal public consultation, and we received no response from the FSA setting out concerns in this area (or any contact since). I would, of course, be very happy to work directly with the FSA to consider any concerns they have in relation to the Bill generally, but more specifically in relation to the functions of the Food Commission.

² [Food Standards Act 1999](#)

In more general terms, it was disappointing that there appeared to be a lack of engagement on the detail of the Bill by the Minister. While I fully appreciate that this is 'not her Bill' the Food Bill will have major implications for Welsh Ministers if it was successful in securing the support of the Senedd to become an Act of Senedd Cymru.

I look forward to working with the Legislation, Justice and Constitution Committee, with the Minister and with Members across the Senedd as the Bill progresses through the legislative process.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peter Fox', written in a cursive style.

Peter Fox MS for Monmouth

Peter Fox OBE MS

Aelod o'r Senedd dros
Mynwy

Member of the Senedd for
Monmouth

Senedd Cymru

Bae Caerdydd, Caerdydd, CF99 1SN
Peter.fox@senedd.cymru

Welsh Parliament

Cardiff Bay, Cardiff, CF99 1SN
Peter.fox@senedd.wales

Paul Davies, MS

Chair of the Economy, Trade, and Rural Affairs Committee

Senedd Cymru,

Cardiff Bay,

CF99 1SN

0300 200 7298 

@Peterfox_ms 

@PeterFox61 

Peter Fox MS 

Date: 13 December 2022

Annwyl Paul,

Re:- The Food (Wales) Bill

Following the introduction of the Food (Wales) Bill into the Senedd on 12 December 2022, please find attached a copy of the Statement of Policy Intent for Subordinate Legislation to be made under the Bill. This document is provided to support the Committee's scrutiny of the Bill.

I look forward to providing evidence to the Committee during the scrutiny process.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee, and the Chair of the Finance Committee.

Yours Sincerely,



Peter Fox MS for Monmouth

Member-in-Charge, Food (Wales) Bill

Food (Wales) Bill

Statement of Policy Intent for Subordinate Legislation to be made under this Bill

December 2022

FOOD (WALES) BILL

STATEMENT OF POLICY INTENT FOR SUBORDINATE LEGISLATION TO BE MADE UNDER THIS BILL

Introduction

This document provides an indication of the current policy intention for the subordinate legislation that the Welsh Ministers are empowered or required to make under the provisions of the Food (Wales) Bill ('the Bill'), as introduced on 12 December 2022.

It has been prepared in order to assist Senedd Committees and Senedd Members during the scrutiny of the Bill and should be read in conjunction with the Bill and the Explanatory Memorandum and Explanatory Notes which accompany it.

Overview of the Bill

The Bill provides a framework that enables a coherent, consistent and strategic cross-governmental approach to policy and practice on all aspects of the food system.

The purpose of the Bill is to establish a more sustainable food system in Wales. This means strengthening our food security through a resilient supply chain, supporting the development of our food industry, improving Wales' socioeconomic well-being and enhancing consumer choice.

In summary, the Bill makes provision for:

Food goals: The Bill established 'food goals' and places a duty on specified public bodies to take reasonable steps to advance those food goals. The Bill sets out the food goals in two categories:

- **Primary Food Goal:** this is the overarching goal of providing affordable, healthy, and economically, environmentally and socially sustainable food for the people of Wales.
- **Secondary Food Goals:** these underpin the primary food goal and cover specific areas including: Economic well-being, Health and social, Education, Environment and Food waste.

The Bill also makes provision for setting 'targets' for each of the secondary food goals.

Welsh Food Commission: the Bill establishes the Welsh Food Commission with the primary objective to promote and facilitate:

- the advancement of the primary and secondary food goals by public bodies; and
- the achievement of the food targets.

National food strategy: The Bill requires the Welsh Ministers to publish a national food strategy setting out the overall strategy and individual policies that they intend to pursue in order to advance the primary and secondary food goals, and achieve the food targets. Specified ‘public bodies’ would then be required to have regard to the national food strategy in exercising any functions related to the primary food goal, the secondary food goals, and the food targets.

Local food plans: The Bill requires public bodies (other than the Welsh Ministers) to publish a local food plan setting out the policies that they intend to pursue in order to contribute to the advancement of the primary food goal and the secondary food goals, and the achievement of the food targets.

Subordinate legislation making powers in the Bill

The Bill contains regulation making powers in the following sections:

- Section 3(2)
- Section 4(1)
- Section 6(1)
- Section 22(2)

The information contained in this Statement on the subordinate legislation making powers in the Bill corresponds to the information provided in Chapter 6 of the Explanatory Memorandum (Power to make subordinate legislation).

Section 23 of the Bill (Regulations) sets out that any power in the Act to make regulations will be subject to the affirmative Senedd procedure – as set out in Standing Order 27.5).

Section 25 of the Bill (Commencement) specifies that the Act in its entirety will come into force at the end of the period of three months after the Bill receives Royal Assent.

Section	Description	Policy Intention
Food Goals		
Section 3(2) Descriptions of Secondary Food Goals	Regulation-making powers to <u>enable</u> Welsh Ministers to amend the description of a secondary food goal.	<p>The Table at Section 3(1) of the Bill contains a list of Secondary Food Goals, and a ‘description’ for each of those Goals (i.e. the actions / outcomes public bodies would be expected to work towards in advancing the Goal under Section 1 of the Bill).</p> <p>It is reasonable to expect that those descriptions may need to be amended over time to react to changing circumstances. The intention of the regulation making powers is therefore to allow the flexibility required for Ministers to make appropriate amendments to the descriptions without the need for further primary legislation.</p> <p>Regulations made under this section are to be made using the affirmative Senedd procedure, so will be brought to the Senedd’s attention and subject to debate and a vote. Before making regulations under this section, the Welsh Ministers must also consult with the Welsh Food Commission.</p>
Section 4(1) & Section 6(1) Targets for Secondary Food Goals	Regulation-making powers to <u>require</u> Welsh Ministers to set one or more targets for each secondary food goal, and to require those regulations to specify a reporting date for any target set.	<p>Section 4(1) of the Bill requires the Welsh Ministers, by regulation, to set one or more targets for each secondary food goal. Section 6(1) of the Bill requires any regulations made under Section 4(1) to specify a reporting date for any target set.</p> <p>It is reasonable to expect that those targets may need to change over time to react to changing circumstances, including any changes made to the secondary food goal descriptions set out above. Similarly any reporting deadline may need to change</p>

		<p>to reflect amended or newly set targets. The intention of the regulation making powers is therefore to allow the flexibility required for Ministers to set targets, and to change or set new targets without the need for further primary legislation.</p> <p>Regulations made under this section are to be made using the affirmative Senedd procedure, so will be brought to the Senedd's attention and subject to debate and a vote. Before making regulations under this section the Welsh Ministers must also seek advice from—</p> <ul style="list-style-type: none"> (a) the Welsh Food Commission, and (b) other persons the Welsh Ministers consider to be independent and to have relevant expertise.
Section 22(2)	Regulation-making powers to <u>enable</u> Welsh Ministers to amend the list of those 'persons' who are deemed to be a public body for the purposes of this Bill.	<p>Section 22(1) of the Bill provides the list of persons deemed to be a 'public body' for the purposes of the Act. Section 22(2) of the Bill enables Welsh Ministers, by regulation, to amend that list of persons.</p> <p>The Welsh Ministers are themselves listed as persons deemed to be a 'public body', and Section 22(2) prohibits Welsh Ministers from removing themselves from the list of persons.</p> <p>It is reasonable to expect that changes to the list of persons deemed to be a public body could be required in the future. The intention of the regulation making powers is therefore to allow the flexibility required for Ministers to amend the list of persons in Section 22(1) without the need for further primary legislation.</p>

		<p>Regulations made under this section are to be made using the affirmative Senedd procedure, so will be brought to the Senedd's attention and subject to debate and a vote. Before making regulations under this section the Welsh Ministers must consult with—</p> <ul style="list-style-type: none">(a) the Welsh Food Commission;(b) if the regulations add a person, that person;(c) any other person the Welsh Ministers consider appropriate.
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SL(6)312 – The Government of Wales Act 2006 (Budget Motions and Designated Bodies) (Amendment) Order 2023

Background and Purpose

The Government of Wales Act 2006 (Budget Motions and Designated Bodies) (Amendment) Order 2023 ("this Order") amends the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2018 (the "2018 Order"), which designates bodies in relation to the Welsh Ministers. The effect of the this Order is to insert four further bodies into the list of designated bodies contained within the Schedule to the 2018 Order. The purpose of such designation is so that information relating to the resources expected to be used by such bodies can be included within a Budget motion.

The Welsh Ministers have consulted with HM Treasury on the bodies to be designated within this Order, in accordance with the Government of Wales Act 2006.

Procedure

Negative.

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

Technical Scrutiny

The following 2 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 article 2(2), "**Her** Majesty's Chief Inspector of Education and Training in Wales" is inserted in the list of designated bodies in the Schedule to the 2018 Order.

Following the death of the Queen and her succession by Charles III it is appears that "**His** Majesty's Chief Inspector of Education and Training in Wales" should be inserted instead.

Although the legal name "Her Majesty's Chief Inspector of Education and Training in Wales" was given to the role by section 73(1) of the Education and Skills Act 2000, section 10 of the Interpretation Act 1978 notes "In any Act a reference to the Sovereign reigning at the time of the passing of the Act is to be construed, unless the contrary intention appears, as a reference to the Sovereign for the time being."



Furthermore, Owen Evans is described as “His Majesty’s Chief Inspector of Education and Training in Wales” on Estyn’s website.

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

In article 2(2), in the Welsh language version, the bodies have not been listed correctly in alphabetical order. “Cyngor y Gweithlu Addysg” should come before “Cymwysterau Cymru” because the letter “ng” comes before the letter “m” in the Welsh alphabet. As a result the description of the amendment which notes that the bodies are to be inserted at the “appropriate place” is unclear.

Merits Scrutiny

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

Welsh Government response

Technical Scrutiny point 1:

The statutory name of the body, namely “Her Majesty’s Chief Inspector of Education and Training in Wales”, as provided for in section 73(1) of the Learning and Skills Act 2000, is correctly inserted to the list of designated bodies in the Schedule to the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2018. Under sections 10 and 23 of the Interpretation Act 1978, the reference to this statutory body is construed as “His Majesty’s Chief Inspector of Education and Training in Wales”.

Technical Scrutiny point 2:

Article 2(2) of the Order uses the plural “at the appropriate places insert” and “yn y lleoedd priodol mewnosoder”. As the Schedule to the 2018 Order is an alphabetical list, the four bodies listed within the 2023 Order will be inserted alphabetically into the 2018 Order, regardless of their appearance within the 2023 Order. The insertion is therefore clear.

Legal Advisers

Legislation, Justice and Constitution Committee

20 January 2023



SL(6)308 – The Education (Student Loans) (Repayment) (Amendment) (No. 4) Regulations 2022

Background and Purpose

The Education (Student Loans) (Repayment) (Amendment) (No.4) Regulations 2022 (“these Regulations”) amend the Education (Student Loans) (Repayment) Regulations 2009 (the “2009 Regulations”), which govern repayments of student loans by borrowers who have taken out income-contingent loans for courses which begin on or after September 1998.

The 2009 Regulations (and subsequent amendments to them) have been made as composite instruments; meaning they have been made by both the Secretary of State and the Welsh Ministers (in relation to Wales).

The amendments of the 2009 Regulations:

- reorganise student loans within the scope of the 2009 Regulations into five plans, including a new plan 5 loan for certain courses beginning on or after 1st August 2023;
- for borrowers who have a plan 2 loan (formerly a “post-2012 student loan”):
 - maintain the income-based repayment threshold (above which a borrower who has reached the statutory repayment due date in regulation 15 is required to make repayments) at £27,295 until the end of 5th April 2025, and
 - change the annual uprating of the repayment threshold thereafter from a calculation based on differences in average earnings to one based on the retail price index;
- introduce fixed instalment rates, which:
 - are used to calculate repayments by overseas borrowers who have not provided required information about their income,
 - replace the fixed instalments set out in regulation 76 (which is omitted), and
 - for repayments of a plan 2 loan, a plan 3 loan (formerly a “postgraduate degree loan”) or a plan 5 loan, are recalculated annually based on the median salary for graduates;
- consolidate the provisions reducing interest rates on plan 2 and 3 loans applied by S.I. 2021/677, 1005, 1378, 2022/889 and 1151 (which are revoked);
- omit spent provisions;
- make incidental, supplemental or technical amendments.

The change introduced by these Regulations will result in a number of benefits and savings to the Welsh Government, the detail of which is further set out in the Regulatory Impact Assessment contained in Part 2 of the accompanying [Explanatory Memorandum](#).

In consequence of drafting errors in these Regulations, they themselves have been amended by the [No. 5 Regulations](#) of the same name. The Explanatory Memorandum thereto states:



"An error has been identified in the commencement provisions in the 2002 No.4 regulations (SI 2022/1335) which means aspects of the instrument relating to the prevailing market rate interest rate cap for Plan 2 (post-2012 undergraduate) and Plan 3 (Postgraduate) student loans may not come into force on 16 January as intended.

This error may create uncertainty and lead to further difficulty when the relevant provision needs amending in February 2023. To rectify this, the 2022 No.5 Regulations will correct the commencement provision."

Procedure

Composite Negative

The Regulations were made by both the Welsh Ministers and the Secretary of State, before being laid before both the Senedd and the United Kingdom Parliament.

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. The United Kingdom Parliament can also annul the Regulations, in accordance with the rules for annulment that apply to the United Kingdom Parliament.

Technical Scrutiny

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

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

These Regulations have been made as a composite instrument, meaning the Regulations have been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the Senedd and the United Kingdom Parliament. We note, as a result, the Regulations have been made in English only.

The Explanatory Memorandum explains that:

"This composite statutory instrument is subject to the negative resolution procedure. As the regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually."

Merits Scrutiny

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

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

We note there has been no formal consultation on these Regulations. In particular, we note the paragraph 5.1 of the Explanatory Memorandum:



"There is no statutory requirement to consult on these regulations and no consultation has been undertaken."

Bearing in mind these Regulations reorganise student loans under the 2009 Regulations and, in particular, change the manner in which the repayment threshold for Plan 2 loans is calculated post 5 April 2025 and the basis on which Plan 2, 3 and 5 loans are recalculated annually, it is unclear why a consultation was not undertaken.

Welsh Government response

A Welsh Government response is required in relation to reporting point 2.

Committee Consideration

The Committee considered the instrument at its meeting on 23 January 2023 and reports to the Senedd in line with the reporting points above.



Government Response: The Education (Student Loans) (Repayment) (Amendment) (No. 4) Regulations 2022

Merit Scrutiny point 2: The Government considered whether a consultation in response to changes being made by the UK Government would be possible. This is an area of the student finance system where there is very limited scope for Wales to take an alternative path and the limited time available to legislate in respect of Welsh loans in response to the UK Government's changes for English borrowers, did not allow for a consultation to be undertaken. The Explanatory Memorandum has been withdrawn, amended and re-laid to reflect this.

The merits point makes reference to Plan 5 - to clarify, loans provided by the Welsh Ministers will not be Plan 5 loans.

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

Agenda Item 5.1



Llywodraeth Cymru
Welsh Government

Ein cyf/Our: ref 2023/01/25 IGR

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

SeneddLJC@senedd.wales

20 January 2023

Dear Huw

I am writing in accordance with the inter-institutional relations agreement to let you know that I will be representing the Welsh Government at an Inter-Ministerial Group for Elections and Registration on 25 January. The agenda will cover the implementation of the Elections Act 2022 and the Scottish and Welsh Government's consultations on electoral reform and their respective legislative plans.

The meeting will be held virtually and on this occasion chaired by Lee Rowley MP, Parliamentary Under Secretary of State, Department for Levelling Up, Housing and Communities. Other attendees will be George Adam MSP, Minister for Parliamentary Business, Scottish Government and Steve Baker MP, Minister of State, Northern Ireland Office.

I will write again following the meeting.

Yours sincerely

Mick Antoniw AS/MS
Gwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Mick.Antoniw@llyw.cymru
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.

Agenda Item 5.2

Jane Hutt AS/MS
Y Gweinidog Cyfiawnder Cymdeithasol
Minister for Social Justice



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: Safety, Security and Migration IMG

Huw Irranca-Davies MS
Chair of the Legislation, Justice and Constitution Committee
SeneddLJC@senedd.wales

Cc Jenny Rathbone MS, Chair of the Equality and Social Justice Committee.
seneddequality@senedd.wales

24 January 2023

Dear Huw,

Inter-Institutional Relations Agreement: Safety, Security and Migration Interministerial Group

I am writing in accordance with the Inter-Institutional Relations agreement to let you know that the first IMG for Safety, Security and Migration will be held on Wednesday 1 February. I will be joining the meeting virtually to represent the Welsh Government.

A Senior Officials meeting took place on Thursday 19 January where the agenda was finalised. I will be able to provide you with a copy of the finalised agenda as soon as I receive a copy.

A communique will be issued after the meeting.

I am also copying this letter to Jenny Rathbone MS, Chair of the Equality and Social Justice Committee.

Jane Hutt AS/MS
Y Gweinidog Cyfiawnder Cymdeithasol
Minister for Social Justice

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Jane.Hutt@llyw.cymru
Correspondence.Jane.Hutt@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.

Russell George MS,
Chair, Health and Social Care Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

24 January 2023

Dear Russell,

Food Supplement and Food for Specific Groups (Miscellaneous Amendments) Regulations 2023

Thank you for your follow up letter dated 16 January 2023 regarding the above amending regulations. I take each of your points in order.

1. Could you confirm when the Regulations are expected to be laid and enter into force?

The legislation was laid on Friday 13 January. The link is attached [The Food Supplements and Food for Specific Groups \(Miscellaneous Amendments\) Regulations 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukdsi/2023/01/13/202300011/engandwelsh).

2. Could you outline why the Regulations have been delayed, and whether the delay will give rise to any consequences?

DHSC officials advised on 12 December that the Regulations would not be laid 14th December 2022 due to them not being unable to get the necessary Ministerial clearance in time.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Lynne.Neagle@llyw.cymru
Correspondence.Lynne.Neagle@gov.wales

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

3. Could you clarify whether standards will be different in GB and Northern Ireland as a result of the amendments to be made by the Regulations

The standards will be the same across GB and Northern Ireland. The GBSI makes minor amendments and forms part of a single GB legislative framework. This is consistent with the approach taken in respect of previous legislative amendments in this area. The EU has made legislation to make the same amendments which are already applicable in corresponding nutrition regulations across the EU.

4. What consideration was given to the impact of the UK Government making regulations on the accessibility of the law and the availability of bilingual legislation

They met the following criteria specified by the Counsel General for when such legislation may be made in the UK Parliament on behalf of Welsh Ministers.

- a. where the interconnected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for provision for both to be taken forward at the same time in the same legislative instrument; and
- b. where the devolved provisions in question are minor or technical and non-contentious.

The regulations are considered to be technical in nature for this purpose and as such I considered there to be limited impact.

5. Could you provide details of which stakeholders were consulted, and how any responses are reflected in the Regulations?

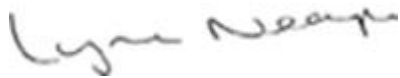
The consultation invited comments from the food and nutrition industry, representative groups, the public and other interested parties across the UK on the proposed approach. The consultation document was also placed on the Knowledge Hub, a closed forum for Local Authorities, to discuss views on enforcement issues.

There was overall support for the technical amendments to food supplements and the respondents welcomed the changes which were proposed. There was a request for a longer transition period for the change in unit of measurement used for labelling copper in food supplements and this was agreed and reflected in the SI.

6. Could you provide further information about the rationale for reverting to a narrower definition, and what the implications of such a change might be?

This change will provide a more precise definition of residues taken from Regulation (EC) No 396/2005 (on maximum residue levels of pesticides in or on food and feed of plant and animal origin) and give more clarity and consistency with the definition which is used in the legislation for general food .

Yours sincerely,



Lynne Neagle AS/MS

Y Dirprwy Weinidog Iechyd Meddwl a Llesiant
Deputy Minister for Mental Health and Wellbeing

Lynne Neagle MS
Deputy Minister for Mental Health and Wellbeing
Welsh Government

16 January 2023

Dear Lynne

Food Supplement and Food for Specific Groups (Miscellaneous Amendments) Regulations 2022

Thank you for your letter of 20 December 2022 regarding the above Regulations. We considered your response, and your recent exchange of correspondence with the Legislation, Justice and Constitution Committee, at our meeting on 11 January 2023. Following our discussion, we would welcome clarification of the following issues (including, where appropriate) where the relevant information can be found in the Explanatory Memorandum to be laid alongside the Regulations.

Timing of the Regulations

Your letter of 21 November indicated that the Regulations would be laid before the UK Parliament on 14 December 2022, and that they would come into effect on 18 January 2023. Your subsequent letter of 20 December 2022 states that the Regulations will be laid "in December". We noted at our meeting on 11 January 2023 that the Regulations do not yet appear to have been laid.

1. Could you confirm when the Regulations are expected to be laid and enter into force?
2. Could you outline why the Regulations have been delayed, and whether the delay will give rise to any consequences?

Divergence with Northern Ireland

You indicate in your letter of 20 December 2022 that no formal assessment has been undertaken of divergence between GB and Northern Ireland regarding barriers to trade or public health.

3. Could you clarify whether standards will be different in GB and Northern Ireland as a result of the amendments to be made by the Regulations?

Bilingual legislation

In your answer in your letter of 20 December to question 3 from our letter of 1 December 2022, you explain that you considered different options for taking forward the proposed amending regulations, including the option for Welsh Government to bring forward its own Statutory Instrument. However, you did not indicate whether the availability of legislation in Welsh and in English, and the implications for the accessibility of law in Wales, was a factor in your consideration.

4. What consideration was given to the impact of the UK Government making regulations on the accessibility of the law and the availability of bilingual legislation?

Consultation with stakeholders

In your response to the LJC Committee's letter, you explain that the UK Government undertook a three week consultation with specific stakeholders on the proposed changes.

5. Could you provide details of which stakeholders were consulted, and how any responses are reflected in the Regulations?

Amendments to be made by the Regulations

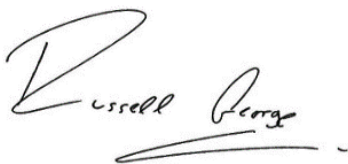
Thank you for the information you have provided on the rationale for the amendments to be made by the Regulations. We welcome the indication that the Welsh Government will be bringing forward its own Regulations regarding baby food.

We note that one amendment will update the definition of pesticide residue from the terminology used in Regulation (EC) No 1107/2009 to a narrower definition taken from an earlier regulation (Regulation (EC) No 396/2005).

6. Could you provide further information about the rationale for reverting to a narrower definition, and what the implications of such a change might be?

We would be grateful for a response by 24 January 2023.

Yours sincerely

A handwritten signature in black ink that reads "Russell George". The signature is written in a cursive style with a long horizontal stroke underneath.

Russell George MS

Chair, Health and Social Care Committee

cc Jayne Bryant MS, Chair, Children, Young People and Education Committee

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

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



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

SeneddLJC@senedd.wales

23 January 2023

Dear Huw,

Thank you for your report on the Statutory Instrument Consent Memorandum for the Animals and Animal Health, Feed and Food, Plants and Plant Health (Amendment) Regulations 2022. The above stated Statutory Instrument addresses minor European Union Exit related deficiencies, further deficiencies not anticipated at the time of withdrawal from the EU and ensures the functioning of a GB-wide import regime. It also makes minor amendments to the Plant Varieties and Seeds Act 1964.

Standing Order 30A states that a member of the Government must lay a Statutory Instrument Consent Memorandum in relation to any statutory instrument, or a draft statutory instrument, laid before the UK Parliament by UK Ministers which makes provision ("relevant provision") in relation to Wales amending primary legislation within the legislative competence of the Senedd.

The amendments to the Plant Varieties and Seeds Act 1964 meet these criteria and a SICM was laid on the 21 November. I thank the Committee for understanding the reason for the delay in tabling the memorandum and for considering these Regulations and providing its report in a shorter timeframe than is normally provided. I am pleased the Committee is content with substance of the Memorandum.

Response to the Committee Recommendation

Recommendation 1: The Committee recommended:

The Minister should table a motion under Standing Order 30A.10 to seek the Senedd's agreement to the inclusion of a relevant provision in The Animals and Animal Health, Feed and Food, Plants and Plant Health (Amendment) Regulations 2022.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

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

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

Response: Reject

In my view the amendments in these Regulations were neither novel nor contentious. I therefore, did not table a motion for this SICM in line with the position set out in the First Minister's letter of November 2020 and in compliance with the requirements of Standing Order 30A. Furthermore, the Regulations were subsequently made by the Secretary of State on 13 December and came into force on the same date.

However, I recognise the Committee's concerns as regards these processes, in particular I note the recent correspondence from the Committee surrounding clarification of Standing Order 30A. I would, of course, welcome further engagement on any such clarification or review of Standing Order 30A.

Yours sincerely,

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

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

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy

Agenda Item 6.2



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/VG/0134/23

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

25 January 2023

Dear Huw,

I agreed on 14 December to keep the committee up to date on with the timing of the Trade (Australia and New Zealand) Bill through the UK parliamentary process.

The Bill had its second reading in the House of Lords on 9 January and the next committee stage is scheduled for the 23 January.

I have scheduled a Senedd debate to be held on the 31 January.

Yours sincerely,

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

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

26 January 2023

Dear Huw,

The Trade in Animals and Related Products (Amendment and Legislative Functions and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022 and the Food and Feed (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022

Thank you for your letter of 16 January 2023 regarding the above Statutory Instruments. You have a number of questions in your letter, and the Government's responses are set out below.

Q1. Please can you confirm when the correcting instrument will be made to address the identified two errors in the TARP Regulations.

We propose introducing a bespoke Statutory Instrument early in March to correct the errors.

Q2. Please can you confirm that the 12 other reported errors were corrected before the TARP Regulations were published by the National Archives.

We confirm these errors were corrected on making.

Q3. Please can you confirm when and how the change to the scrutiny procedure in the TARP Regulations will be made.

We have not yet identified an appropriate enabling power to make this amendment. We are continuing to analyse available powers and will update the Committee by letter as soon as a power has been identified, along with a timetable to make the amendment.

Q4. Please can you provide clarity on what steps the Welsh Government has (or will) put in place to ensure that a request to approve knowingly defective regulations is not put before the Senedd in the future. In particular, the Welsh Government is aware that the Retained EU Law (Revocation and Reform) Bill includes a sunset provision such that the majority of retained EU law will expire on 31 December 2023. Given that the ‘turning off’ of the powers in the European Union (Withdrawal) Act 2018 on 31 December 2022 was a key factor in the Welsh Government’s decision to push ahead with defective regulations, we would welcome clarity on how the Welsh Government will ensure it can act in a timely manner so that, in December this year, we do not find ourselves in the same situation.

In relation to the UK’s exit from the European Union, the volume and complexity of legislation required has been unprecedented. Whilst it is unavoidable legislation must be prepared under considerable time pressure at times, we can assure the Committee, legislation will continue to be drafted in accordance with Welsh Government’s usual drafting policy, applying approved and tested approaches and checks. Should the Retained EU Law (Revocation and Reform) Bill receive Royal Assent, we will aim to make any necessary legislation in good time.

Q5. Please can you provide a more precise estimate of when the correcting instrument will be made to address the identified three errors in the Food Regulations.

We intend to address the three outstanding points in a planned Food and Feed Statutory Instrument currently to be made/laid in mid-March 2023. Subject to any unforeseen delays to the planned timetable, further amendments will come into force in early April 2023.

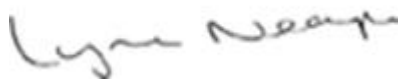
Q6. Please can you confirm that the SI Registrar has agreed to address the two identified errors in the Food Regulations via correction slip.

As reflected in the Government’s response to the Committee’s reporting points, two minor typographical mistakes in the Food and Feed (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022 (points 1 and 4 of the Committee’s report) were identified as being of the nature of something that could be covered by a correction slip. It is clear the two mistakes were obvious minor typographical errors that did not affect the substantive meaning of the Instrument. The corrections were minor and the text and location were equally obvious. In line with the commitment made to the Committee and also in Plenary, these two mistakes were remedied after the Instrument had been made. In this instance, the corrections were made as part of the registration process which eliminates the need for the production of a correction slip. It also ensures the published version was corrected prior to the Instrument coming into force.

Yours sincerely,

A handwritten signature in cursive script that reads "Lesley Griffiths".

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

A handwritten signature in cursive script that reads "Lynne Neagle".

Lynne Neagle AS/MS
Y Dirprwy Weinidog Iechyd Meddwl a Llesiant
Deputy Minister for Mental Health and Wellbeing

Lesley Griffiths MS
Minister for Rural Affairs and North Wales, and Trefnydd
Lynne Neagle MS
Deputy Minister for Mental Health and Wellbeing

16 January 2023

Dear both

The Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022 and The Food and Feed (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022

At our meeting on 9 January 2023 we formally considered your written responses to our reports on the above regulations and your letter dated 13 December 2022 which responded to our letter of the previous day.

You will recall that we had significant concerns that the Welsh Government was to seek the Senedd's approval for these regulations, despite both instruments being defective.

We thank you for addressing some of the points we raised in our letter during the debates on the regulations in Plenary on 13 December 2022, and for providing the full written response.

In your letter, and in relation to the Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022 (the TARP Regulations), the Minister said that a correcting instrument, which you proposed to make early this month using powers in the *Animal Health Act 1981*, will be needed to address two errors, while you would be asking for 12 others to be corrected before the regulations were published by the National Archives.

1. Please can you confirm when the correcting instrument will be made to address the identified two errors in the TARP Regulations.

2. Please can you confirm that the 12 other reported errors were corrected before the TARP Regulations were published by the National Archives.

Point 30 in our report on the TARP Regulations noted that regulation 6 creates a new Henry VIII power. During the Plenary debate the Minister committed to changing the procedure which applied to this regulation-making power, from the negative to the draft affirmative procedure.

3. Please can you confirm when and how the change to the scrutiny procedure in the TARP Regulations will be made.

During the Plenary debate I also asked the Minister to provide my Committee and the Senedd with details about how the situation we found ourselves in on 13 December with these regulations can be avoided in the future.

4. Please can you provide clarity on what steps the Welsh Government has (or will) put in place to ensure that a request to approve knowingly defective regulations is not put before the Senedd in the future. In particular, the Welsh Government is aware that the Retained EU Law (Revocation and Reform) Bill includes a sunset provision such that the majority of retained EU law will expire on 31 December 2023. Given that the 'turning off' of the powers in the *European Union (Withdrawal) Act 2018* on 31 December 2022 was a key factor in the Welsh Government's decision to push ahead with defective regulations, we would welcome clarity on how the Welsh Government will ensure it can act in a timely manner so that, in December this year, we do not find ourselves in the same situation.

In your letter, and in relation to the Food and Feed (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022 (the Food Regulations), the Deputy Minister said that three of the five errors we identified in our report would be addressed via a correcting instrument to be made "towards the end of the first quarter, or early in the second quarter of 2023".

5. Please can you provide a more precise estimate of when the correcting instrument will be made to address the identified three errors in the Food Regulations.

The Deputy Minister also told us that "Points 1 and 4 [in our report] concern minor typographical errors and are proposed to be addressed by correction slips."

6. Please can you confirm that the SI Registrar has agreed to address the two identified errors in the Food Regulations via correction slip.

I would be grateful to receive a response by 26 January 2023.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: CG/PO/25/2023

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

Llywydd@senedd.wales

26 January 2023

Dear Elin,

The Secretary of State for Business, Energy and Industrial Strategy introduced the Strikes (Minimum Service Levels) Bill to the House of Commons on 10 January. The Bill will allow UK Ministers to make regulations for levels of service, including in the devolved areas of health and education, during strike action in certain sectors. The second reading of the Bill took place on 16 January and the remaining Commons stages are expected to take place on 30 January.

The Bill was subject to a Topical Question in the Senedd on 11 January and in my response, I highlighted some of the Welsh Government's concerns. The Bill lacks detail and will undermine our Social Partnership approach here in Wales. Moreover, prior to its publication, there has been a lack of effective engagement with the Welsh Government or with the trade unions and employers who will be affected by the Bill.

A number of devolved public services for which Welsh Ministers are responsible and accountable are in scope of the Bill. However, because of the lack of engagement, the absence of a published Impact Assessment and a draft version of the Bill not being shared with us ahead of its introduction, it has not been possible to fully consider the consequences for Wales at this stage. Officials are taking forward their analysis of this Bill at pace, and we will confirm whether we consider that a Legislative Consent Memorandum is required as soon as possible.

I am copying this letter to the First Minister, Mark Drakeford MS, the Minister for Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths MS, the Deputy Minister for Social

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Mick.Antoniw@llyw.cymru
Correspondence.Mick.Antoniw@gov.Wales

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Pack Page 48

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Partnership, Hannah Blythyn MS, and the Chair of the Legislation, Justice and Constitution Committee, Huw Irranca-Davies MS.

Yours sincerely,

A handwritten signature in blue ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AS/MS

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

Agenda Item 9

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

Document is Restricted