

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Hybrid – Committee Room 3, Senedd, and Video conference via Zoom	P Gareth Williams Committee Clerk
Meeting date: 19 June 2023	0300 200 6565
Meeting time: 13.30	SeneddLJC@senedd.wales

1 Introductions, apologies, substitutions and declarations of interest

(13.30)

2 UK – EU governance inquiry: Evidence Session

(13.30 – 14.30)

(Pages 1 – 36)

Professor Catherine Barnard, Cambridge University

Professor Simon Usherwood, Open University

Attached Documents:

LJC(6)-19-23 – Paper 1 – Evidence session briefing

LJC(6)-19-23 – Paper 2 – Senedd Research guide – UK–EU relations: the responsibilities of Welsh Ministers

LJC(6)-19-23 – Paper 3 – Senedd Research guide – UK–EU Series: Trade & Cooperation Agreement Institutional Framework

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

(14.30 – 14.35)

Affirmative Resolution Instruments



3.1 SL(6)362 – The Equality Act 2010 (Relevant Welsh Authorities) (Amendment) Regulations 2023

(Pages 37 – 39)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-19-23 – Paper 4 – Draft report

4 Inter-Institutional Relations Agreement

(14.35 – 14.40)

**4.1 Written Statement from the Minister for Finance and Local Government:
Common Procurement Vocabulary (Amendment) Regulations 2023**

(Pages 40 – 41)

Attached Documents:

LJC(6)-19-23 – Paper 5 – Written Statement by the Minister for Finance and Local Government, 9 June 2023

4.2 Correspondence from the First Minister: British-Irish Council Summit

(Page 42)

Attached Documents:

LJC(6)-19-23 – Paper 6 – Letter from the First Minister, 12 June 2023

**4.3 Correspondence from the Minister for Finance and Local Government:
Finance Inter-Ministerial Standing Committee**

(Pages 43 – 44)

Attached Documents:

LJC(6)-19-23 – Paper 7 – Letter from the Minister for Finance and Local Government, 13 June 2023

5 Papers to note

(14.40 – 14.45)

5.1 Correspondence from the Minister for Climate Change: The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023

(Page 45)

Attached Documents:

LJC(6)-19-23 – Paper 8 – Letter from the Minister for Climate Change, 12 June 2023

5.2 Correspondence from the Minister for Social Justice and Chief Whip: Protection from Sex-based Harassment in Public Bill

(Pages 46 – 49)

Attached Documents:

LJC(6)-19-23 – Paper 9 – Letter from the Minister for Social Justice and Chief Whip, 9 June 2023

5.3 Correspondence with the Parliamentary Under Secretary of State, Lord Bellamy KC

(Pages 50 – 59)

Attached Documents:

LJC(6)-19-23 – Paper 10 – Letter from Lord Bellamy KC, 12 June 2023

LJC(6)-19-23 – Paper 11 – Letter from the Equality and Social Justice Committee to Lord Bellamy KC, 28 April 2023

LJC(6)-19-23 – Paper 12 – Letter to Lord Bellamy KC, 11 April 2023

5.4 Correspondence from the Minister for Climate Change: The Environment (Air Quality and Soundscapes) (Wales) Bill

(Pages 60 – 73)

Attached Documents:

LJC(6)-19-23 – Paper 13 – Letter from the Minister for Climate Change, 15 June 2023

LJC(6)-19-23 – Paper 14 – Letter to the Minister for Climate Change, 25 May 2023

- 6 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting**
(14.45)
- 7 Legislative Consent Memorandum on the Victims and Prisoners Bill**
(14.45 – 14.55) (Pages 74 – 85)
- Attached Documents:
LJC(6)-19-23 – Paper 15 – Legal Advice Note
- 8 UK – EU governance inquiry: Consideration of evidence**
(14.55 – 15.05)
- 9 Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Data Protection and Digital Information Bill**
(15.05 – 15.15) (Pages 86 – 101)
- Attached Documents:
LJC(6)-19-23 – Paper 16 – Legal Advice Note
LJC(6)-19-23 – Paper 17 – Letter from the First Minister, 14 June 2023
LJC(6)-19-23 – Paper 18 – Letter to the First Minister, 15 May 2023
- 10 Supplementary Legislative Consent Memorandum (Memorandum No. 5) on the Online Safety Bill: Draft report**
(15.15 – 15.20) (Pages 102 – 108)
- Attached Documents:
LJC(6)-19-23 – Paper 19 – Draft report
- 11 Consideration of correspondence: Welsh Government's Elective Home Education Statutory Guidance**
(15.20 – 15.35) (Pages 109 – 110)

Attached Documents:

LJC(6)-19-23 – Paper 20 – Draft response

12 International agreements

(15.35 – 15.40)

(Pages 111 – 115)

Attached Documents:

LJC(6)-19-23 – Paper 21 – Draft report

13 Consideration of the House of Commons' Public Administration and Constitutional Affairs Committee's inquiry into Devolution Capability in Whitehall

(15.40 – 15.45)

[Inquiry page: Devolution Capability in Whitehall](#)

14 Retained EU Law (Revocation and Reform) Bill: Update

(15.45 – 15.55)

Document is Restricted

UK-EU Series: Trade & Cooperation Agreement Institutional Framework

January 2022



The Welsh Parliament is the democratically elected body that represents the interests of Wales and its people. Commonly known as the Senedd, it makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

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research.senedd.wales

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Welsh Parliament
Tŷ Hywel
Cardiff Bay
CF99 1SN

Tel: **0300 200 6472**
Email: **Sara.Moran2@senedd.wales**
Twitter: **[@SeneddResearch](https://twitter.com/SeneddResearch)**
Senedd Research: **research.senedd.wales**

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UK-EU Series: Trade & Cooperation Agreement

Institutional Framework

January 2022

Author:

Sara Moran



The Trade and Cooperation Agreement sets the terms of the UK-EU relationship following the UK's withdrawal from the EU. This series summarises key parts of the agreement and what it means for Wales.

The UK formally withdrew from the EU on 31 December 2019 and entered a transition period while the terms of its future relationship with the EU were negotiated.

On 24 December 2020, the UK and EU announced that they had reached agreement on the terms of their future relationship in the **Trade and Cooperation Agreement** (TCA) alongside a number of other agreements and joint statements.

The agreement applied provisionally from 1 January 2021, pending UK and EU ratification. It entered fully into force on 1 May 2021.

The TCA follows the **Withdrawal Agreement** which set the terms for the UK's withdrawal from the EU. Both agreements remain in force.

The UK and EU have agreed that the TCA will govern future agreements between:

- UK-EU;
- UK-EU plus EU 27 Member States; and
- UK-Euratom bilateral agreements

unless otherwise provided for in the agreements themselves. These agreements are called 'supplementing agreements' in the TCA and form part of the overall framework as an integral part of UK-EU bilateral relations.

Contents

1. Introduction	1
2. UK delegation	3
3. Partnership Council	4
Remit.....	4
Decisions and recommendations.....	4
Additional powers.....	5
Meetings	5
Welsh Government attendance.....	5
4. Committees and Working Groups.....	6
Trade Committees	6
Specialised Committees.....	8
Working Groups	9
5. Civil society.....	11
Representation from Wales	11
6. Parliamentary Partnership Assembly (PPA).....	12
Delegations	12
Role of devolved legislatures	13

1. Introduction

The UK and EU agreed a new joint institutional framework in the Trade and Cooperation Agreement (TCA). The arrangements can be found in Part One on Common and Institutional Provisions.

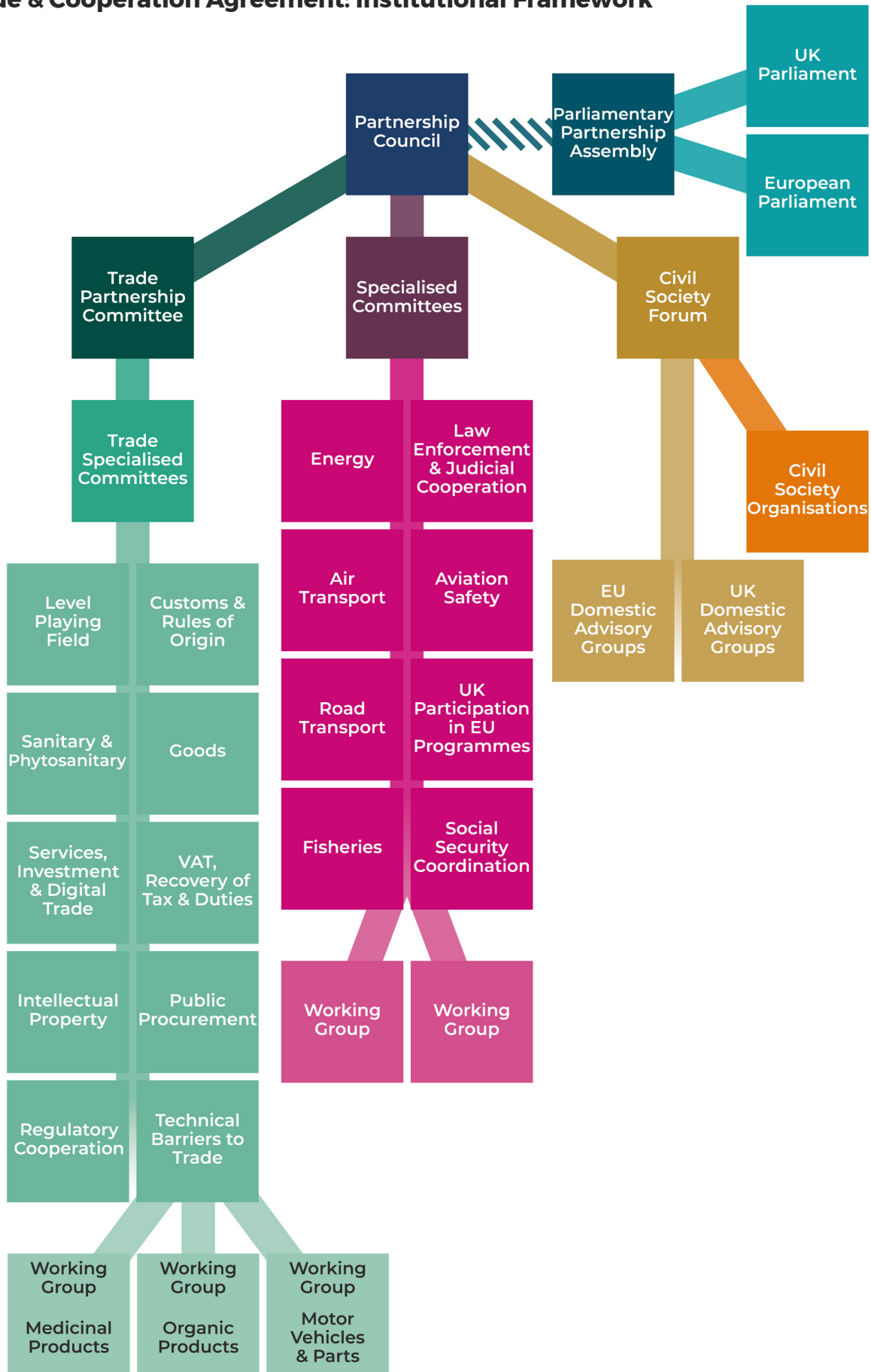
The TCA establishes 24 new committees and working groups to oversee its implementation and application. The participation of civil society is also provided for, as well as parliamentary cooperation between the UK and European Parliaments.

This guide explains the new UK-EU institutional framework:

- Partnership Council
- Committees
- Working Groups
- Domestic Advisory Groups
- Civil Society Forum
- Parliamentary Partnership Assembly

The framework is shown in an infographic at the start of this guide.

Trade & Cooperation Agreement: Institutional Framework



2. UK delegation

It is for the UK and EU to determine their own delegation for meetings.

The EU is represented by the European Commission, although the **EU has agreed internal arrangements** to allow Member States to attend.

While the UK is mainly represented by the UK Government, the devolved governments have attended some meetings. On 1 July, the UK Government **confirmed** that the number of members of its delegation will vary in number, depending on the meeting's agenda.

This followed a **letter from the UK Government's Lord David Frost** to the devolved governments, which set out how he intends to involve them in UK-EU forums established by both agreements.

The letter confirmed that most forums would be co-chaired by officials from the corresponding lead Whitehall Department, supported by Lord Frost's Cabinet Office team, but that devolved governments could attend where items of devolved competence are on the agenda.

However, this is subject to the final discretion of the UK co-chair. Preparation for such meetings should also involve **representatives from the devolved governments** "as a matter of normal practice."

How Wales is represented is explained in each section.

A December 2021 **article by Senedd Research** shows which meetings have been attended by the Welsh Government to date.

3. Partnership Council

The Partnership Council supervises and facilitates the implementation and application of the TCA and any UK-EU supplementing agreements.

It is co-chaired by one representative of the UK Government and EU Commission, meeting at least once a year or on request. The work of the Partnership Council is governed by Annex 1 [Rules of Procedure of the Partnership Council and Committees].

Remit

The Partnership Council can adopt decisions, make recommendations and adopt amendments to the TCA and supplementing agreements, except in relation to the institutional framework arrangements described here.

It can also:

- discuss any matters;
- delegate some powers to the Trade Partnership Committee or Specialised Committees;
- establish or dissolve committees or change their tasks; and
- make recommendations to the UK and EU regarding the transfer of personal data.

Decisions and recommendations

Decisions of the Partnership Council (and Committees) are binding on all bodies set up by the TCA and supplementing agreements, including the TCA's dispute settlement arbitration tribunal.

Recommendations of the Partnership Council have no binding force.

Decisions and recommendations will be adopted by mutual consent.

Procedural rules specify that decisions and recommendations made in the period between meetings should be by written procedure between the co-chairs. The receiving Party has one month to express its agreement with the draft decision or recommendation, which will be recorded in the minutes of the next Partnership

Council meeting. If the Party does not agree, the draft will be discussed or adopted at the next meeting. Decisions will specify the date on which they take effect.

Additional powers

Additional powers are provided to the Partnership Council throughout the TCA. For example, it has the power to examine the effects of accession of a third country to the EU in future.

Meetings

Meetings shall take place in public and the provisional agenda details will be published beforehand.

English has been adopted as the working language.

Committees shall inform the Partnership Council of their meeting schedules and agendas in advance of their meetings and on their results and conclusions.

Welsh Government attendance

On 9 June, the **first meeting** of the TCA's Partnership Council took place. The Welsh Government's Minister for Economy, Vaughan Gething, attended as an observer.

4. Committees and Working Groups

The TCA establishes 19 new committees to support the Partnership Council. There are 11 trade committees and eight non-trade committees called 'Specialised Committees' which have different powers. The TCA also establishes four Working Groups, but there is an option to establish more.

The new UK-EU committees established by the TCA comprise:

- 11 trade committees, made up of 1 Trade Partnership Committee and 10 Trade Specialised Committees
- 8 Specialised Committees on non-trade areas, such as energy and transport

Committees will

- comprise representatives of each party, who must ensure there is 'appropriate expertise' to the issues under discussion; and
- set their own meeting schedules and agendas by mutual consent.

The work of Committees is governed by Annex 1 [Rules of Procedure of the Partnership Council and Committees], although Committees can amend the rules governing their own work.

Trade Committees

The TCA establishes one Trade Partnership Committee and 10 Trade Specialised Committees.

Trade Partnership Committee (TPC)

Role

The TPC's role is to report to, and assist, the Partnership Council and to carry out any task or exercise any powers assigned to it. The TPC will supervise the implementation of the TCA and supplementing agreements, as well as the work of the Trade Specialised Committees. It can adopt decisions or make recommendations where power to do so has been delegated to it by the

Partnership Council. It also has the power to ‘explore the most appropriate way’ to prevent or solve difficulties arising outside of the TCA’s dispute settlement procedure and to establish or dissolve Trade Specialised Committees and Working Groups.

Remit

The TPC’s remit extends to trade matters covered in:

- TCA Part Two Heading One on Trade (with exceptions for some energy matters);
- TCA Part Two Heading Six on Other Provisions. Heading Six covers trade-related definitions, the relationship between the TCA to WTO agreements, geographical application and termination of Part Two; and
- TCA Annex 27 on energy and environmental subsidies.

The TPC’s remit does not extend to other matters covered in Part Two of the TCA, such as aviation, road transport, social security coordination and visas for short term visits, fisheries and remaining energy matters.

Meetings

The TPC shall be co-chaired by senior representatives of the UK and EU with responsibility for trade-related matters, or their designees. The TPC shall meet on request, or at least annually.

Trade Specialised Committees (TSC)

The TCA establishes 10 Trade Specialised Committees for the following areas:

- 1.** Goods
- 2.** Customs Cooperation and Rules of Origin
- 3.** Sanitary and Phytosanitary (SPS) Measures
- 4.** Technical Barriers to Trade (TBTs)
- 5.** Services, Investment and Digital Trade
- 6.** Intellectual Property
- 7.** Public Procurement
- 8.** Regulatory Cooperation
- 9.** Level Playing Field (LPF) for Open and Fair Competition and Sustainable Development

10. Administrative Cooperation in VAT and Recovery of Taxes and Duties

Role

TSCs have the power to monitor and review the implementation of the TCA and supplementing agreements, assist and report to the Trade Partnership Committee (TPC) (including carrying out tasks assigned to them), conduct preparatory technical work (particularly where the PC or TPC must adopt decisions or make recommendations), adopt decisions, discuss technical issues and to exchange information, share best practice and implementation experiences.

Meetings

The TSCs shall be co-chaired by representatives from the UK and EU and shall meet at least once a year, unless provided for in the TCA or unless the co-chairs decide otherwise.

Specialised Committees

The TCA establishes 8 Specialised Committees (SCs) on the following topics:

- 1.** Energy
- 2.** Air Transport
- 3.** Aviation Safety
- 4.** Road Transport
- 5.** Social Security Coordination
- 6.** Fisheries
- 7.** Law Enforcement and Judicial Cooperation
- 8.** Participation in Union Programmes

These correspond to their relevant headings under Part Two and the entirety of Parts Three and Five of the TCA.

Role

The SCs' role is to monitor and review the implementation of the TCA and supplementing agreements, assist and report to the Partnership Council (including carrying out tasks assigned to them), adopt decisions, including amendments and recommendations for which the TCA provides or where the Partnership Council has delegated its powers, discuss technical issues, exchange

information, discuss best practice and share implementation experience.

Additional powers to resolve UK-EU disputes

Specialised Committees have an additional role and remit to Trade Specialised Committees. They can:

- establish and dissolve Working Groups; and
- play a formal role in the TCA's dispute settlement procedure. Its consultation process can take place in the framework of a Specialised Committee or of the Partnership Council (PC). The SCs may refer the dispute to the PC, but the PC may also decide to hear the matter itself. More detail of how this works is not provided.

SCs have the power to resolve UK-EU disputes by issuing binding decisions in the fields of aviation, road transport, social security coordination and visas for short term visitors, fisheries and some energy matters. SCs are not able to do so in relation to some energy matters.

Meetings

The SCs shall be co-chaired by representatives from the UK and EU and shall meet at least once a year, unless provided for in the TCA or unless the co-chairs decide otherwise.

Working Groups

The TCA establishes four Working Groups (WGs).

The following three Working Groups will support the Trade Specialised Committee on Technical Barriers to Trade:

- Organic Products
- Motor Vehicles and Parts
- Medicinal Products

A fourth Working Group on Social Security Coordination will support the Specialised Committee on Social Security Coordination.

WGs can be established by the Trade Partnership Council or Specialised Committees.

WGs shall work under the supervision of Committees to assist them with tasks, prepare their work and to carry out tasks assigned to them. They shall be co-chaired and attended by representatives of the UK and EU. They will set their own rules of procedure, meeting schedules and agenda by mutual consent.

Welsh Government attendance

The UK delegation to TCA committees has included **officials from the Welsh Government** for the first meetings on social security coordination, energy, fisheries, regulatory cooperation and most trade-related meetings. They were not part of the UK delegation at the **meeting on public procurement**, a devolved area, nor at the **meeting on intellectual property**, a reserved area.

Attendee information for the **remaining meetings** that have since taken place is not yet publicly available.

5. Civil society

A duty is placed on the UK and EU to consult civil society on the TCA's implementation and supplementing agreements. This includes establishing and/or consulting with Domestic Advisory Groups and a Civil Society Forum.

Civil Society Forum

A duty is placed on the UK and EU to facilitate a new Civil Society Forum to conduct a dialogue on the implementation of Part Two of the TCA (on trade, energy, air transport, aviation safety, road transport, social security coordination and fisheries). Its operational guidelines adopted by the Partnership Council.

Attendees shall comprise independent civil society organisations, including members of the Domestic Advisory Groups. Meetings shall take place at least once a year, unless agreed otherwise by the Parties.

Domestic Advisory Groups

The TCA requires both Parties to consult newly created or existing Domestic Advisory Groups (DAGs) on issues covered by the TCA or supplementing agreements. This means that DAGs have a broader remit than the Civil Society Forum described above, whose remit relates only to Part Two of the TCA.

The groups shall comprise independent civil society organisations, such as non-governmental organisations, business and employer organisations, trade unions and those active in social, human rights, environmental and other matters.

A duty is placed on the UK and EU to consider their views or recommendations and aim to consult at least once a year. The UK and EU must also endeavour to publish a list of organisations, including their contact points.

Representation from Wales

The UK Government **consulted** on engagement with business and civil society groups and issued an **Expression of Interest for membership** for a single UK DAG 2021. The consultation ran until the **end of November 2021**.

The **consultation document** stated that it will determine membership having considered “geographical and regional representation” to ensure membership is as “balanced as it can be”.

6. Parliamentary Partnership Assembly (PPA)

The TCA provides an option to establish a Parliamentary Partnership Assembly (PPA) for parliamentary cooperation between the European Parliament and 'the Parliament of the United Kingdom.'

If established, the PPA:

- Shall be informed of the decisions and recommendations of the Partnership Council;
- May request information 'relevant information' regarding the implementation of the TCA and supplementing agreements from the Partnership Council; and
- May make recommendations to the Partnership Council.

Delegations

The UK Parliament and European Parliament have both confirmed their delegations will comprise of 35 members.

On 16 November, the **House of Lords confirmed** that the UK delegation will comprise of 21 MPs and 14 Lords members, respecting the party balances in both Houses.

The PPA will:

- meet twice annually, alternating between London and Brussels/Strasbourg;
- be led by a Bureau, consisting of a Co-Chair and two Vice-Chairs from both delegations. The Bureau is likely to meet between plenary meetings.

Each meeting of the PPA is expected to result in a summary report which will be available to all members.

The European Parliament formally **agreed to appoint** its delegation on 5 October, to **consist of 35 Members**.

Role of devolved legislatures

On 21 September, the UK Parliament's representatives, Lord Kinnoull and Sir Oliver Heald, **responded** to a **request from committees** of the devolved legislatures, saying they would "seek to involve" them in the work of the PPA.

On 16 November, the **House of Lords confirmed** that "observers" from the devolved legislatures will also be invited to attend, subject to the agreement of the European Parliament.

SL(6)362 – The Equality Act 2010 (Relevant Welsh Authorities) (Amendment) Regulations 2023

Background and Purpose

These Regulations amend Schedule 19 to the Equality Act 2010 (“the 2010 Act”). Schedule 19 sets out the public authorities which are subject to the public sector equality duty under section 149 of the 2010 Act, which provides that a public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The Regulations amend Part 2 of Schedule 19 to the 2010 Act to replace the Higher Education Funding Council for Wales (“HEFCW”) with the new Commission for Tertiary Education and Research (“CTER”), following the passing of the Tertiary Education and Research (Wales) Act 2022 (“the 2022 Act”). The Regulations will come into force on 4 September 2023 but until section 23 of the 2022 Act comes into force, the reference to CTER in the 2010 Act will be read as including HEFCW.

Procedure

Draft affirmative.

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

Technical Scrutiny

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

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

There are two points to note in the headnote to the Regulations:-

- a) the English text does not use the standard headnote for draft affirmative statutory instruments. As a result, the words “for approval” appear twice within the sentence; and



b) there is a difference between the English and Welsh text in both headnotes as the words “for approval by resolution of Senedd Cymru” are missing from the Welsh version.

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

Regulation 2(b) fails to identify with certainty where the new entry should be included in Part 2 of Schedule 19 to the Equality Act 2010.

Describing an insertion as being made at “the appropriate place” is only appropriate when the entries are all listed in alphabetical order, so that it is clear where the new entry should be inserted. However, the previous amendments to the same list of other educational bodies have inserted their new entries at the end of the list. As a result, the entries in the existing list are not all in alphabetical order so there could be uncertainty as to where to insert the new entry at the beginning of the list or at the end of the list.

Previous amendments made to Part 2 of Schedule 19 have all described more precisely the location of the insertion by stating “Under the sub-heading “Other educational bodies”....”;

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

Regulation 3 amends Part 2 of Schedule 19, but it does not state that this is Part 2 of Schedule 19 to the 2010 Act. Regulation 3 does refer to the 2022 Act and it is therefore possible that a person reading regulation 3 in isolation would be confused as to its meaning. Reference to the 2010 Act is also missing in the heading to regulation 2.

Merits Scrutiny

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

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.

The Committee notes that these Regulations come into force on 4 September 2023, yet CTER was established on 15 December 2022. The Welsh Government is asked to confirm why these Regulations are being made to take effect on 4 September 2023 rather than 15 December 2022 or in April 2024, which is when the Explanatory Memorandum states that section 23 of the 2022 Act will come into force.

5. 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.

Paragraph 2 of the Explanatory Memorandum refers to the public sector equality duty as:

...the “due regard” duty to ensure that advancement of equality of opportunity and elimination of discrimination...



This description omits the third strand of the public sector equality duty, namely to have due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. If a provision of an Act is to be described in an Explanatory Memorandum it is important that this is done accurately to avoid any misunderstanding. The Welsh Government is therefore asked to explain why it only refers to two strands of the duty and not the third.

Welsh Government response

A Welsh Government response is required to each of the reporting points.

Legal Advisers

Legislation, Justice and Constitution Committee

12 June 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

Pack Page 39



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	The Common Procurement Vocabulary (Amendment) Regulations 2023
DATE	9 June 2023
BY	Rebecca Evans MS, Minister for Finance and Local Government

The Law which is being amended:

Regulation 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (“CPV”)

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

This SI contains provisions that enable functions to be exercised by the Minister for the Cabinet Office, some of which require the prior consent of the Welsh Ministers in relation to Devolved Welsh Authorities.

These functions would constitute functions of either a Minister of the Crown or public authority (Cabinet Office) for the purposes Schedule 7B of the Government of Wales Act 2006, and this therefore will be a relevant consideration in the context of the Senedd’s competence to legislate in these areas in the future.

The purpose of the amendments

The purpose of the amendment is to update two CPV codes that use outdated language that is incompatible with UK-wide equality legislation.

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

[The Common Procurement Vocabulary \(Amendment\) Regulations 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

[The Common Procurement Vocabulary \(Amendment\) Regulations 2023 - Explanatory Memorandum \(legislation.gov.uk\)](https://www.legislation.gov.uk)

Matters of special interest to the Legislation, Justice and Constitution Committee

None identified.

Why consent was given

There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.



Llywodraeth Cymru
Welsh Government

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

SeneddLJC@senedd.wales

12 June 2023

Dear Huw

Inter-Institutional Relations Agreement: 39th British-Irish Council Summit

I am writing in accordance with the inter-institutional relations agreement to notify you of the 39th Summit meeting of the British-Irish Council, which will take place this week and is being hosted by the Government of Jersey.

I will be attending the summit in person. As well as the usual opportunity for a general update on issues, the theme of the Summit relates to housing and energy policy and is titled 'Building for the Future: Green and Affordable'

A communiqué will be agreed by the Council at the Summit detailing the discussions held, and I will write to share these with you. I will also update the Senedd with a written statement in due course.

I have also copied this letter to the Climate Change, Environment, and Infrastructure Committee, the Local Government and Housing Committee, and the Equality and Social Justice Committee.

Yours sincerely

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

Gohebiaeth.Mark.Drakeford@llyw.cymru
Correspondence.Mark.Drakeford@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.

Our Ref: RE/178/2023

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

13 June 2023

Dear Huw,

I am writing to inform you that I will be hosting the next meeting of the Finance: Interministerial Standing Committee (F:ISC) on 22 June in Cardiff.

This will be the first time that Shona Robison MSP, the new Deputy First Minister and Cabinet Secretary for Finance for Scotland, will be attending the F:ISC meeting, and I look forward to her joining us.

The focus of the meeting will be on energy security and looking at this issue through a fiscal and economic lens. Consideration will be given to renewable energy, including grid infrastructure and how to ensure that costs of transitioning to greener energy are socialised and distributed fairly, so the poorest in our communities do not see the largest relative increases in the costs they incur. I will be highlighting innovative projects in Wales and outlining areas requiring UK Government investment and discuss opportunities around job creation and research, development and innovation.

We will also have an item on public spending pressures and economic outlook, which will discuss the Prime Minister's target to halve inflation, and how we can work collaboratively in relation to cost of living support. There will be a focus on NHS funding, and I will also be seeking clarity on how public sector pay awards are being funded in England, and whether this will give rise to consequential funding for Wales. There will also be a discussion on capital funding pressures and budget flexibilities.

There will also be an update on EU replacement funding, reporting on the action from the last meeting, and as the F:ISC has been operational for over a year, we will be discussing plans for the forthcoming review of its Terms of Reference and Operating Procedures.

Lastly, I have requested a bilateral meeting with the Chief Secretary to the Treasury alongside the F:ISC to discuss Wales-specific spending pressures and economic outlook and also climate change resilience, with a focus on supporting industrial communities.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Correspondence.Rebecca.Evans@gov.wales
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 will report to the Committee on the outcome of the meeting.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive style with a period at the end.

Rebecca Evans AS/MS

Y Gweinidog Cyllid a Llywodraeth Leol

Minister for Finance and Local Government

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/JJ/1094/23

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

SeneddLJC@senedd.wales

12 June 2023

Dear Huw,

I am writing to inform you that The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 which will shortly be laid before the Senedd fall under the scope of the Resources and Waste Common Framework.

Yours sincerely

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

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

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

Agenda Item 5.2

Jane Hutt AS/MS
Gweinidog Cyfiawnder Cymdeithasol a'r Prif Chwip
Minister for Social Justice and Chief Whip



Llywodraeth Cymru
Welsh Government

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

09 June 2023

Thank you for the Committee's consideration of the Legislative Consent Memorandum on the Protection from Sex-based Harassment in Public Bill and for your report published 8 June.

I appreciate your feedback and the chance to respond regarding this important area of our work, to end violence against women and girls, and gender-based harassment in all public spaces.

Please find attached the Welsh Government's written response to the Committee's Recommendations.

Yours sincerely,

Jane Hutt AS/MS
Gweinidog Cyfiawnder Cymdeithasol a'r Prif Chwip
Minister for Social Justice and Chief Whip

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.

Written Response by the Welsh Government to the report of the Legislation, Justice and Constitution Committee entitled 'The Welsh Government's Legislative Consent Memorandum on the Protection from Sex-based Harassment in Public Bill'

Thank you for the Legislation, Justice and Constitution Committee's report on the Welsh Government's Legislative Consent Memorandum on the Protection from Sex-based Harassment in Public Bill (the "Bill").

I welcome the conclusion reached by the majority of the Committee that clauses 1, 3 and 4(3) and (4) of the Bill require the consent of the Senedd. This is consistent with the position set out in the Legislative Consent Memorandum.

I note the view of the Committee that the whole of clause 4 including subclauses (1), (2), (5) and (6) of the Bill require the Senedd's consent. The Welsh Government's position is that these provisions do not require consent as they have no substantive legal effect.

I have set out my response to the Report's recommendation below.

Recommendation 1

The Committee recommends that: The Minister should clarify why the Welsh Government has not brought forward its own Bill to create a new offence about the intentional harassment, alarm or distress to a person in public where the behaviour is done because of that person's sex and, in doing so, should explain if the Welsh Government has any concerns about the Senedd's legislative competence to pass its own legislation on this matter.

Response: Accept

My officials explored the option of the Welsh Government bringing forward its own Bill very seriously, but it became clear that this would not have been a timely option in this case. I was also informed that bringing forward our own legislation through the Senedd, with an aim of a similar commencement date to the UK Bill, would have had detrimental impacts on the delivery of other Bills, which I considered unacceptable.

Our principles provide that there are circumstances in which it may be sensible and advantageous to seek provision for Wales, which would be within the Senedd's legislative competence, within UK Parliamentary Bills, with the consent of the Senedd. This is a single-issue Bill, in line with our Programme for Government and our Violence against Women, Domestic Abuse and Sexual Violence Strategy 2022-26, and therefore our recommendation to consent to this Bill is entirely consistent with those principles, in order to ensure that a serious issue is addressed in as timely a fashion as possible.

I do not have concerns regarding the Senedd's legislative competence to pass its own legislation on this matter. As stated, it has simply been a case of timing and

resources available to match the fast progress of the UK Private Members Bill in this case.

Financial Implications: None

Recommendation 2

The Committee recommends that: The Minister should confirm if the Welsh Government sought a power on the face of the Bill for the Welsh Ministers to commence clauses 1 and 3 of the Bill as they apply in Wales before agreeing to enter into a Memorandum of Understanding with the UK Government. If the Minister did not seek such a power, she should explain the reason for not doing so.

Response: Accept

I can confirm that I wrote to the UK Minister for Safeguarding Sarah Dines on three occasions, alongside discussions between our officials, to strongly advocate for a power on the face of the Bill for Welsh Ministers to commence the relevant provisions in Wales. I received two replies to these letters, from UK Minister for Safeguarding Sarah Dines, which refused this request.

Financial Implications: None

Recommendation 3

The Committee recommends that: The Minister should confirm if any discussions have taken place and/or what is the Welsh Government's understanding of what is meant by "reasonable time" which appears in the terms of the Memorandum of Understanding.

Response: Accept

The Welsh Government's understanding of what is meant by "reasonable time" is case specific depending on individual circumstances. This is a common legal concept and we do not consider this term will give rise to any issues.

Financial Implications: None

Recommendation 4

The Committee recommends that: Should the Welsh Ministers propose an alternative commencement date to the one proposed by the Secretary of State, the Minister should confirm whether, when and how a formal dispute resolution process will be engaged should Welsh Government and UK Government officials be unable to agree a suitable commencement date.

Response: Accept

The Memorandum of Understanding, agreed and signed between the Secretary of State for the Home Department and the Welsh Ministers states that, if Welsh Ministers propose an alternative commencement date and the Secretary of State does not agree with it, the Participants will arrange a meeting between officials to discuss and seek to agree a suitable commencement date.

Financial Implications: None

Recommendation 5

The Committee recommends that: The Minister should explain what action the Welsh Government would take should the Secretary of State decide not to propose a commencement date for clauses 1 and 3 of the Bill.

Response: Accept

If the Bill is not commenced for any reason, I will explore further options to legislate for a similar offence in Wales.

As sexual harassment in public is one of the priorities of our Programme for Government and Violence against Women, Domestic Abuse and Sexual Violence Strategy 2022-26, we are also continuing our wider work in this area through the blueprint delivery model which includes a specific workstream on sexual harassment in all public spaces.

Financial Implications: The costs of creating a new Wales offence would be explored as part of the normal consideration of any new legislation.

A handwritten signature in black ink that reads "Jane Hutt". The signature is written in a cursive style with a horizontal line above the first name.

Jane Hutt AS/MS

Gweinidog Cyfiawnder Cymdeithasol a'r Prif Chwip
Minister for Social Justice and Chief Whip

Agenda Item 5.3

Ministry
of Justice

Lord Bellamy KC
Parliamentary Under-Secretary of State for
Justice

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

MoJ ref: ADR104770

12K

June 2023

Dw Mr. Irranca - Davies,

EVIDENCE TO THE LEGISLATION, JUSTICE AND CONSTITUTION COMMITTEE

Thank you for your letter of 11 April. I am grateful to you for sharing the evidence you have received from stakeholders who have an interest in, or work in, the justice system in Wales.

I shall take the topics they raised with you in turn.

Accessibility of digital court services

His Majesty's Courts and Tribunals Service (HMCTS) is committed to designing and delivering inclusive services. Where possible, HMCTS 'designs out' barriers that users may face and, where it cannot, develops support so users can access its services.

Under the Reform programme, many HMCTS services have moved online. Whilst it is important HMCTS modernise and digitise the justice system, it is also fundamental that no one is disadvantaged in this process. As a response to this, HMCTS are committed to improving their paper forms and provide a Digital Support Service, helping users who lack the digital skills, confidence or tools to access and complete online applications. The National Digital Support Service has been live since 1 June 2022, supporting users throughout England, Wales and Scotland through either remote or face-to-face appointments. The Service is provided by 'We are Digital' and their partnership network. HMCTS currently support users to complete their online applications in the Single Justice Service, Social Security and Child Support, Online Civil Money Claims, Divorce and Probate and aim to expand in other services in the coming year.

T 020 3334 3555
F 0870 761 7753

E <https://contact-moj.service.justice.gov.uk/>
www.gov.uk/moj

102 Petty France
London
SW1H 9AJ

Disaggregation of data

Data collection, disaggregation and analysis are vital for the proper administration of justice. The Ministry of Justice already collects and, where possible, disaggregates a large volume of data in Wales. The Criminal Justice Delivery Data Dashboard is one example of this.

We are considering whether additional data can be collected and disaggregated. My officials have had discussions with the Welsh Government regarding areas in which the Welsh Government believe Wales-specific data is not currently available. I hope to be able to discuss this with the Counsel General in due course. We seek to fill any gaps in data collection and disaggregation that could aid the effective administration of justice in Wales.

Remote hearings

We are committed to making remote hearings as accessible as we can, but we recognise that attending a hearing remotely will not always be appropriate. The option to hold a remote hearing is at the discretion of the judge, who will decide if it is appropriate, taking into account the needs of the parties involved. HMCTS are looking to improve the way they support people with disabilities, to make sure they can access HMCTS services without barriers. This will include checking whether video hearings are appropriate.

Research forms an integral part of our commitment to accessible and inclusive services. Recent research on Crown Court remote hearings suggests outcomes remain the same when remote hearings are used. We intend to evaluate the Video Hearings Service, building upon an evaluation published in 2021 which explored the use of remote hearings during the Covid-19 pandemic. The Ministry of Justice is also conducting a study to understand the experiences of particularly vulnerable groups with different legal needs across the administrative (i.e. tribunals), family, civil, and criminal jurisdictions. The study is looking both at people who do and who do not interact with our services, to explore what would help the latter access our services. We have also commissioned an evaluation of the HMCTS National Digital Support Service. The evaluation aims to understand users' perceptions and experiences of the service in order to assess what is working well and for whom, as well as identifying areas for improvement to best support our users in the future. More information on the various evaluation projects can be found at **HMCTS Reform MOJ Evaluation: Progress Report - GOV.UK (www.gov.uk)**.

Recruitment, retention and the career development of individuals from Black, Asian and other minority ethnic groups within the legal profession

The legal profession in England and Wales is independent of Government. Statutory responsibility for encouraging a diverse legal profession sits with the approved regulators, overseen by the oversight regulator, the Legal Services Board (LSB).

The LSB has a broad programme of work aimed at encouraging a diverse workforce, including guidance for legal services regulators, research on the experiences of legal professionals from different backgrounds, and initiatives designed to address counter-inclusive practices that act as barriers to underrepresented groups.

In terms of recruitment, new education pathways introduced by regulators have been designed to enhance access to the profession for underrepresented groups, for example the recently introduced

Solicitors Qualifying Examination and Chartered Institute of Legal Executives (CILEX) Professional Qualification.

The sector is also undertaking work to improve diversity at the Bar. For instance, the Bar Council's Accelerator Programme aims to break down barriers and obstacles that prevent minority groups from progressing at the Bar. Additionally, last year the Bar Standards Board published a three-year Equality and Diversity Strategy outlining how it aims to hold the Bar to account for reducing racial and other inequalities across the profession and also how it aims to promote a culture of inclusion at the Bar and in legal services more generally.

With regards to retention and career development, we are exploring what can be done to make duty solicitor work easier for those with caring responsibilities and have asked the Criminal Legal Aid Advisory Board to investigate the disparities in criminal lawyers' income linked to gender and race.

Levels of trust in the criminal justice system, especially among Black, Asian, and other minority ethnic communities

We recognise that there is more we can do to collect better data on minority ethnic communities. The Government introduced the landmark Victims and Prisoners Bill to Parliament on 29 March 2023. The Bill requires criminal justice bodies and Police and Crime Commissioners to keep compliance with the Victims' Code under review. This duty will help to build a better picture of whether victims are accessing the services they are entitled to and it will help drive any necessary improvement, building transparency and trust in the system.

In September 2022, the Criminal Justice Board for Wales published a Criminal Justice Anti-Racism Action Plan for Wales setting out shared commitments which all criminal justice organisations in Wales will deliver against. At the same time, an Independent Oversight and Advisory Panel was launched. This is made up of 12 people from diverse backgrounds with a range of expertise and lived experiences of the criminal justice system and racial injustice. The Panel will support the Board, to test if the work is resulting in real change within communities and help to build trust among minority ethnic people and increase transparency. The Board is developing a race disparity dashboard to improve transparency around minority ethnic representation within the workforce across the criminal justice system and to support identification and examination of disparity and disproportionality of outcomes in the system for people from a minority ethnic background.

Monitoring capacity in the legal aid market

The Legal Aid Agency (LAA) monitors capacity in the legal aid market and produces a capacity review every quarter which details the number of legal aid providers, their locations, and their areas of expertise across the different categories of law covered by legal aid contracts. The LAA engages with Ministry of Justice policy colleagues and Ministers to explain challenges and agree options and operational approaches to service provision issues, including running additional tender exercises to address any gaps in provision.

The "jagged edge"

I recognise the distinction being made by Professor Emyr Lewis regarding the "jagged edge" in your letter. However, with regard to your point about the practical difficulties created by the "jagged edge", as I said in my letter of 14 March we do not believe there are significant practical difficulties and, in fact, reserved authorities and devolved authorities work extremely effectively together to deliver the services for which they are responsible.

Furthermore, I can assure you and the Committee that the Ministry of Justice engages regularly and proactively with HM Treasury to stress the importance of the justice system in Wales and England.

I talk regularly to the Welsh Government's Counsel General and Minister for the Constitution. My officials do the same with their counterparts in the Welsh Government.

Yours sincerely

Christopher Bellamy

LORD BELLAMY KC

Lord Bellamy KC
Parliamentary Under Secretary of State
Ministry of Justice

28 April 2023

Dear Lord Bellamy

Equality and Social Justice Committee report: Women's experiences in the criminal justice system

Further to our letter of 9 March enclosing a copy of our [report](#) on women's experiences in the criminal justice system, we have now received the Welsh Government's response, a copy of which is attached for information. Given their relevance to your portfolio, we would welcome your comments in relation to the following recommendations and the subsequent commentary from the Welsh Government:

Recommendation 1: The Welsh Government should map out the cost of the services it provides to identify those that it is responsible for as part of the current devolution settlement and those that currently fall within the responsibility of the Ministry of Justice. This work should be carried out by June 2023 and the Welsh Government should keep us informed of progress.

Recommendation 7: The Welsh Government should work with the Ministry of Justice and HMPPS to identify gaps and to ensure there are sufficient community-based alternatives to custody available specifically for women across Wales.

Recommendation 8: The Welsh Government must work with counterparts in the Ministry of Justice and with HMPPS to more clearly articulate the purpose and services the proposed Residential Women's Centre will offer.

Recommendation 9: The Welsh Government should work with the Ministry of Justice to ensure that Wales is represented in the development of the operational instructions and guidance relating to Residential Women's Centres.

A Senedd debate on our report is scheduled to take place on 24 May and we would therefore be grateful to receive a response by midday on 17 May if possible.

Yours sincerely,

A handwritten signature in black ink that reads "Jenny Rathbone". The signature is written in a cursive style with a large initial 'J' and a long, sweeping underline.

Jenny Rathbone MS

Chair, Equality and Social Justice Committee
Welsh Parliament

Lord Bellamy KC
Parliamentary Under-Secretary of State for Justice
Ministry of Justice

11 April 2023

Dear Lord Bellamy,

Evidence to the Legislation, Justice and Constitution Committee

Thank you for your letter of 14 March 2023 in response to my letter of 16 December 2022 which followed your appearance before my Committee on 5 December 2022.

As I explained in my previous letter, we sought the evidence of our stakeholders who have an interest in or work within the justice system in Wales on the evidence you provided; I have used the evidence we received within my response below.

I am grateful to you for providing an outline of the Ministry of Justice's progress towards responding to the Thomas Commission's recommendations. With regard to the accessibility of digital court services, Race Council Cymru brought to our attention research which suggests that the movement to online advice services during the Covid-19 pandemic potentially disadvantages groups that are digitally excluded. I would therefore be grateful if you could provide further information on the steps you are taking to ensure that movement towards such services does not disadvantage digitally-excluded groups.

Although it is encouraging that you note the importance of data for underpinning decisions about the justice system, the committee is disappointed to hear you say that you are not aware of any areas in which further disaggregation of data is required to improve outcomes. Since the Thomas Commission reported, the issue of the limited disaggregation of data about the justice system in Wales has been raised by the Welsh Government, academics at Cardiff University and in a recent Westminster Hall debate. It is clear that this remains an issue of concern. We would therefore be grateful if you could

share the list the Welsh Government has shared with you of areas in which Wales-specific data is not published, and explain which barriers prevent you from publishing such data routinely.

Race Council Cymru also raised evidence of barriers facing disabled people seeking to access justice, and evidence that court modernisation – including the rapid roll-out of remote hearings – might negatively affect participation for certain groups. I would be grateful to hear if you have undertaken, or if you are you planning to undertake, research to investigate these issues in further detail.

Race Council Cymru also shared with us its assessment that barriers remain to the recruitment, retention and the career development of individuals from Black, Asian and minority ethnic groups within the legal profession, and lower levels of staff wellbeing exist among those groups. It also remarked about levels of trust in the criminal justice system:

"... mistrust among Black, Asian, and Minority Ethnic communities often stems from the evidence and/or experience of unequal treatment in the CJS. Trust should therefore be (re)built as outcomes improve, with the entire programme of work to tackle race disparity trained on this objective. However, given the systemic nature of the reforms and the need to unpick historical relationships with the CJS, it may take some time for improved outcomes to have the desired impact on trust."

In addition, it notes that "there is evidence that Black, Asian, and Minority Ethnic and foreign national women can have distinctly different experiences or outcomes at some stages of the Criminal Justice System in comparison to other offenders, and that these may differ between faiths and cultures."

I would therefore be grateful if you could also set out the steps you are taking:

- to help individuals from Black, Asian and minority ethnic communities to overcome barriers to recruitment, retention and career development within the legal profession;
- to increase levels of trust in the criminal justice system, especially among Black, Asian, and minority ethnic communities; and
- to reduce any disparities in experiences of those communities of the criminal justice system, in comparison to the experiences of other communities.

It is encouraging to hear that you are investigating options to improve the experience of those who use and work in the Cardiff Civil and Family Justice Centre, in light of repeated concerns we have heard about the condition of the centre. We would be grateful if you could provide us with timely updates on how this work progresses. Stakeholders, including participants in our engagement work, have raised concerns about the accessibility and deterioration of court buildings, in addition to a mixed experience of remote justice. In the same vein, Race Council Cymru is calling for adequate funding across the justice system and a greater focus on early intervention and "diverting people away from the system".

Race Council Cymru also notes that the Legal Aid Agency monitors capacity in the legal aid market and the provision of services, and takes action when gaps appear. It has asked us to seek clarity from you on how this monitoring work is undertaken, and what measures are being put in place “to ensure consistency across the board”; I would be very interested to hear your response.

Finally, Professor Emyr Lewis from Aberystwyth University shared with us his view of the comments you made during the evidence session in respect of what has been described as the “jagged edge” of the Welsh criminal justice system. He argues:

“One cannot make a comparison between the difficulties of working across (1) on the one hand, the boundary between the operational departments of a central Government and those of a devolved Government, and (2) on the other, the boundary between the various operational departments of a central Government alone. When all is said and done, the departments of the central Government are all accountable to and under the ultimate executive control of the same authority – the Prime Minister and Cabinet in London – and they have the same power and the same locus standi as each other. That enables policy and operational co-ordination, and it also ensures that any disputes can be easily resolved. On the other hand, devolved departments are accountable to and under the executive control of the First Minister of Wales and the Cabinet in Wales. They do not have any power centrally except to try and influence and persuade. This lack of symmetry in terms of power is one of the main sources of practical difficulties created by the jagged edge. Furthermore, of course, the London Government, ultimately, is democratically accountable to the Parliament of the United Kingdom, while the Cardiff Government is accountable to Senedd Cymru.”

As a Committee, we believe much more needs to be done to overcome the practical difficulties created by the jagged edge which exists within the justice system in Wales. These difficulties have been expertly and eloquently analysed by Professor Lewis and other distinguished and learned observers of the operation of the justice system. We therefore impress on you the importance of continuing to engage with the Welsh Government, and to proactively work with the Treasury, to find ways in which resources can be more effectively shared to ensure a constructive joint approach to overcome these barriers which currently detract from the beneficial outcomes we would all want to see within the justice system in Wales.

I am copying this letter to the Chair of the Equality and Social Justice Committee.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair

Agenda Item 5.4

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: JJ/PO/185/2023

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

15 June 2023

Dear Huw,

Thank you for your letter of 25 May which set out a number of questions posed by the Legislation, Justice and Constitution Committee in relation to The Environment (Air Quality and Soundscapes) (Wales) Bill.

The responses to the questions are set out in the Annex to this letter. I hope the Committee finds the responses helpful.

Yours sincerely,

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

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

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 Questions posed in Legislation Justice and Constitution Committee Letter of May 25 2023 to the Minister for Climate Change on the Environment (Air Quality and Soundscapes) (Wales) Bill

Accessibility

1. In September 2021, we recommended in our report on the Welsh Government's Legislative Consent Memorandum for the Environment Bill that a future environmental Bill introduced by the Welsh Government should address devolved issues contained within the UK Government's Environment Bill, following appropriate consultation with stakeholders. You accepted this recommendation in principle. Please can you advise if the Bill contains matters relevant to that UK Bill and if so, how it addresses the recommendation in our report?

There is a complex framework of Environmental law, some of which pre-dates devolution. Through our actions on this Bill, and more generally, we have taken steps to secure the best possible outcomes for Wales. I am aware of the recommendation in the September 2021 Report and our agreement to accept it in principle. That has not changed.

Preparation and planning for the Bill has been ongoing for a long time, and pre-dates September 2021. The Bill aims to fulfil air quality policy commitments in our Programme for Government and Clean Air Plan for Wales. The Bill also takes forward many proposals outlined in the White Paper on the Clean Air Bill which went out to consultation in January 2021.

Our Bill does amend a limited number of provisions inserted into the Environment Act 1995 by the Environment Act 2021. This includes the amendment to give Welsh Ministers a regulation making power to amend the review period for the National Air Quality Strategy, so we do keep Welsh legislation in UK Acts under constant review. However, to incorporate the provisions for which we gave legislative consent in the Environment Act 2021 into our Bill would risk a very fragmented approach.

2. In the evidence session the following comments were made by you and your officials:

“it's a Bill that's intended to fit into other legislation—the attempt to do that in this Bill would have caused ripples across the other legislation in a way that was less than helpful and might actually make the Bill less accessible. So, I understand the sentiment of what you're saying entirely, but, as I understand it, you'd then have to look at the interaction between this and various environment Acts and so on, and then the ripples of that would start to go out and you'd start to be looking at a very different Bill.” [RoP 37].

“in this case, the Bill has got a particular focus, and to carve out parts of the body of environmental law and put them elsewhere—our view is that that results in a partial retelling of the story about air quality, for legislation about air quality. You mentioned the Clean Air Act 1993; taking out Part 3 of that takes it out of its context with other Parts of that Act that are about air quality. So, yes, overall, the view was that it wouldn't improve accessibility of law in this instance to just take those parts out.” [RoP 38]

“the environment Act ... is replete with Secretary of State for England things, which also then apply to Wales. So, it's quite complicated. I defer to the lawyers, and, actually, I'm in awe of who on earth worked their way through this.” [RoP 46]

“It didn't seem necessary or optimal in any way to transfer the entire framework, only to say, 'It's exactly the same, apart from these little bits', really. So, it's part of the same conversation. We've been trying to limit the Bill that this committee is now scrutinising, and, obviously, the policy committees have scrutinised as well, to its own parameters. We've been very clear that it's not an all-encompassing Bill, and a lot of what you're talking about would stretch it back out into starting to take in a whole pile of other things. So, I'm afraid it's part of the same issue, isn't it? And then, for me, there's a big issue about implementation, so do we have to spend the next two years doing consequential amendments before the thing is implementable? I didn't want to get into that. And also, you start to have what should be a fairly straightforward Bill taking up two thirds of the legal resource of the Welsh Government.” [RoP 54]

- A. How are the comments about accessibility consistent with the fact that legislation on air quality will now be set out in one Welsh Act and two Acts covering England and Wales?**

We have made some standalone provision, but many of the aims of the Bill could be achieved via amendments to existing legislation.

This Bill has a particular focus. In considering how to approach drafting we took the view that consolidating the legislation the Bill amends and supplements would result in a partial retelling of the story about air quality. This could be detrimental to accessibility of law.

In some cases, for example in relation to local air quality management provisions, the amendments being made by this Bill are relatively minor. To restate a large portion of the legislation while making such amendments could lead to confusion.

Producing a Bill to consolidate all air quality legislation that relates to Wales would have been a lengthy process and a balance has to be struck between the need for consolidation and the need to implement the provisions of this Bill as quickly as possible.

- B. We are unclear why the opportunity was not taken to use the Bill to update, improve and simplify elements of the Environment Act 1995 related to air quality in order to make the legislation more accessible. For example, air quality is covered in the Environment Act 1995 in 11 sections (Part 4 of the Bill). Why couldn't these self-contained provisions be transposed into this Bill and updated where necessary?**

As noted above, our view is that restating a large portion of legislation while also making specific and relatively discreet amendments could be confusing and would amount to a partial retelling of the story of air quality.

C. Was the decision not to consolidate air quality law into one Bill influenced by the capacity and resource constraints you refer to?

As was made clear during the Committee session, resourcing implications do have to be considered when embarking on a Bill process. However, the decision was borne out of an assessment of the existing provisions and the nature of the amendments we were seeking to make.

3. Given that regulations under sections 1 and 2 of the Bill may not be laid until the Seventh Senedd, why was a more all-encompassing, comprehensive environmental Bill on air quality not introduced until later in the Sixth Senedd, which could potentially have delivered better outcomes through primary legislation and be consistent with the Welsh Government's objective to improve the accessibility of Welsh law?

The Bill is comprehensive. Its provisions, when implemented, will result in demonstrable improvements in the air environment, both in terms of air quality and soundscapes. We are in a climate and nature emergency. Consequently, the Bill was prioritised for introduction early in this Senedd term, so its provisions could be scrutinised and the Bill, hopefully, passed to enable us to proceed with implementation. Delayed introduction would result in delayed implementation, which I do not think any of our stakeholders have advocated.

Also, delaying the Bill's introduction would not impact upon its provisions. For reasons I have outlined, targets are not to be set on the face of the Bill. They need to be set in regulations, so we have the flexibility to amend and keep them up to date in accordance with scientific evidence and advice.

We are prioritising work to set a target for PM 2.5 which, evidence shows, causes the most damage to health. There is a significant amount of complex work to be done to set a stretching but achievable target, which will be subject to public consultation and expert evidence and advice. That is why we have placed a duty on Welsh Ministers to set a target within 3 years of Royal Assent.

Alongside this a second phase of work is already progressing to consider target options for the other pollutants covered by the WHO guidelines and ammonia. There is more work to do in relation to those pollutants, and so we are working to a longer timeline. Officials anticipate being in a position to provide initial advice to Ministers on target proposals for these other pollutants by summer 2025. Future action will then be dependent on Ministerial consideration at this time.

Air Quality – National Targets

4. Please can you summarise the existing air quality legislative framework, including by providing information about existing air quality targets and the basis on which they have been set?

The air quality legislative framework in Wales and the UK is currently derived from a mixture of domestic and international legislation and consists of three main strands:

1. Legislation regulating concentrations of pollutants in ambient air – the Air Quality Standards (Wales) Regulations 2010. Welsh Ministers are responsible for reporting on and complying with a range of pollutant target types. For example, pollutants with targets include nitrogen dioxide, particulate matter, sulphur dioxide, ground level ozone and heavy metals. The targets were based on analysis and negotiation at an EU level, and economic analysis of the costs and benefits in the UK was undertaken by UK Government.
2. Legislation regulating total national emissions of five air pollutants (nitrogen oxides, sulphur dioxide, non-methane volatile organic compounds, fine particulate matter and ammonia) – the National Emission Ceilings Regulations 2018 and the Gothenburg Protocol to the UNECE Convention on Long-range Transboundary Air Pollution. The Secretary of State is responsible for reporting and compliance on targets agreed at a UK wide level; and
3. Legislation regulating emissions from specific sources, such as industrial emissions to air and domestic burning, including the Environmental Permitting (England and Wales) Regulations 2016 and the Clean Air Act 1993.

Under the Environment Act 1995, which predated the EU Directives from which much of the above legislation stemmed, Welsh Ministers have broad powers in relation to air quality. Under the Act, local authorities are required to tackle air quality issues at a local scale through the Local Air Quality Management process (LAQM). LAQM requires local authorities to review and assess air quality, producing action plans where air quality is found to be poor and at risk of breaching air quality objectives. The standards (levels) were based on the work of the UK Government's Expert Panel of Air Quality Standards (EPAQS) and other expert groups.

Separate to this legislation, local authorities have duties to investigate nuisance smoke, fumes, odours and dust complaints made by members of the public under the Environmental Protection Act 1990.

5. What does this Bill enable you to achieve on air quality targets that you cannot achieve within the existing air quality legislative framework?

The Bill builds on a very broad regulation making power in Section 87 of the Environment Act 1995, which enables the Welsh Ministers to make provision in relation to air quality which could include setting long or short-term targets in relation to air quality.

The provisions in the Bill build on this by providing specific, rather than general, powers to set long-term targets and a duty to set a target in relation to PM_{2.5} as well as placing a duty on the Welsh Ministers to ensure the targets are met.

The Bill establishes a framework for producing targets and specific duties require the Welsh Ministers to obtain and publish air quality data that they consider necessary to monitor the progress being made towards meeting these targets. Targets must also be reviewed and reported on.

Therefore, with the Bill, we have taken the opportunity to introduce measures that both strengthen and complement the existing legislative framework; placing duties on Welsh Ministers where none currently exist.

The provisions in the Bill will ensure not only that targets are set but that the current and future Welsh Governments are held to account for these targets.

6. How will Part IV, Air Quality of the Environment Act 1995 interact and work with Part 1 of the Bill? Specifically how will sections 1 and 2 of the Bill interact with section 87 of the 1995 Act (Regulations for the purposes of Part IV)?

Section 87 contains a broad regulation making power that applies to regulations made under Part IV of the Environment Act 1995.

Section 87 provides Welsh Ministers with power to make regulations relating to air quality.

Section 87 will complement Part 1 of the Bill, in particular the new, enhanced powers and duties we have taken in sections 1 and 2. There is potential for future regulations relating to air quality to be made using powers in both section 87 and sections 1 and/or 2 of the Bill.

As set out above in relation to question 5, the provisions in Part 1 of the Bill go beyond the provisions in Part IV of the Environment Act 1995. Therefore, the legislative framework has been strengthened by taking these new powers and duties.

7. Section 1 gives the Welsh Ministers a general regulation-making power to set long-term targets in respect of any matter relating to air quality in Wales. Why is such a broad power needed?

It is part of a framework setting the Welsh Ministers' powers to make long term targets. It is supplemented by the additional duties set out in section 3 (which sets the target setting process), section 4 (the effect of targets), section 5 (reporting), section 6 (review) and section 7 which places a new duty on Welsh Ministers to make arrangements for collecting data about air quality to monitor the progress towards meeting targets set under the Bill.

As set out above in the response to question 5, the powers and duties in Part 1 of the Bill go beyond and complement the existing powers and duties placed on Welsh Ministers in existing legislation relating to air quality.

The power in section 1, and more broadly in Part 1 reflects the nature of Welsh Ministers' ambitions in this area.

8. Why is there no definition of air quality on the face of the Bill?

Air quality is not defined in primary legislation. For example, there is no definition of air quality in Part IV of the Environment Act 1995. Similarly, it is not defined in the Environment Act 2021. The expression is intended to have its ordinary meaning and so a definition is not required.

9. If air quality is to have its ordinary meaning, what do you understand that ordinary meaning to be?

Air quality is a term used to describe how polluted the air we breathe is. When air quality is poor, pollutants in the air may be hazardous to the environment and to people, particularly those with lung or heart conditions. Pollutants may be emitted from man-made or natural sources.

10. In order to understand how the regulation-making power in section 1 could be used, we would be grateful if you could address the following:

- A. Are there any matters in the Clean Air Plan for Wales that would not be covered by the regulation-making power?**
- B. What matters, if any, outside of the Clean Air Plan for Wales could be addressed by the regulation-making power?**
- C. Are there any industries, bodies or premises that could not be subject to regulations made under section 1?**
- D. Could regulations under section 1 be used to control matters related to air quality such as, for example, public nuisance or odours?**

The power in section 1 allows Welsh Ministers to make regulations to set long term targets in respect of any matter relating to air quality in Wales.

The purpose of any new air quality targets is to reduce the harm caused by exposure to poor air quality to human health, nature and the environment. Alongside providing a 'minimum' level of air quality across Wales, we also want targets to drive long-term continuous improvement to reduce exposure to pollution whilst maximising the associated benefits.

The Clean Air Plan for Wales covers a range of actions, which go beyond the setting of regulations. For example, promotion of cultural change to deliver air quality improvements through means such as raising public awareness about air pollution. Therefore, there are actions in the Plan which are beyond the scope of a regulation making power. However, the purpose of the air quality targets that may be set under section 1 is wholly consistent with the overarching aim of the Plan, which is to improve air quality in Wales.

In terms of industries, bodies or premises that could not be subject to regulations made under section 1, it is Welsh Ministers who would be subject to regulations made under section 1. It is the Welsh Ministers who must ensure (in accordance with section 4(1)(a)) that targets set under sections 1 and 2 of the Bill are met. Regulations under section 1 will set targets relating to air quality in Wales. They will not be source specific i.e. they will not specify particular industries, bodies or premises. It is actions taken outside the regulations that will enable the targets to be achieved.

The regulation making power was not developed to control matters relating to public nuisance and odour. It will set long term targets (to be achieved at least 10 years after the date the target is set) for improving air quality. There is existing legislation that covers nuisance for matters including emissions of smoke, dust, gases and odours, set out for example in the Environmental Protection Act 1990.

11. When will regulations under section 1 be first laid, and why is there no end period by which the first set of regulations must be laid (as there is for regulations under section 2)?

We intend for regulations setting a target for fine particulate matter (PM2.5) to be laid within 36 months of the Act receiving Royal Assent. However, this is a time limit to allow for the completion of the important groundwork to get it right, not an aim.

We have existing air quality standards which continue to have effect in Wales, providing continuity and ensuring standards are maintained.

The Welsh Government is considering the range of updated WHO air quality guidelines in developing new target proposals, alongside independent expert advice, evidence and analysis on a diversity of factors.

As set out in relation to question 3 above, we are prioritising work to set a target for PM 2.5 which, evidence shows, causes the most damage to health. There is a significant amount of complex work to be done to set a stretching but achievable target that has been subject to public consultation and expert evidence and advice. That is why we have placed a duty on Welsh Ministers to set a target within 3 years of Royal Assent.

Alongside this a second phase of work is already progressing to consider target options for the other pollutants covered by the WHO guidelines and ammonia. There is more work to do in relation to those pollutants, and so we are working to a longer timeline. Officials anticipate being in a position to provide initial advice to Ministers on target proposals for these other pollutants by summer 2025. Future action will then be dependent on Ministerial consideration at this time.

We want targets to be ambitious, credible, cost-effective and supported by society. It is therefore critical that specialists and stakeholders' input into this process to ensure that relevant evidence is properly gathered, scrutinised and tested.

12. Section 2(4) says that regulations setting a PM2.5 air quality target may make provision defining "ambient air". Why is this definition only relevant to PM2.5 air quality targets and why is it to be defined in regulations rather than appearing on the face of the Bill?

Section 1 creates a general power to set long term targets in respect of air quality. It may not always be the case that these targets will be set in relation to the level of particular pollutants in ambient air. For example, targets could be set for total emissions of an air pollutant in Wales. Therefore, the concept of "ambient air" may or may not be relevant for these purposes and as the term is not used in section 1 there is no need for a definition of this term to be applied to section 1.

By contrast section 2 contains a power to create a very specific type of target in relation to the levels of particulate matter in the ambient air. It is therefore necessary to define what is meant by "ambient air". This definition is left to regulations to enable the Welsh Ministers to have sufficient flexibility to set an appropriate target, and indeed to be able to set more than one target if required.

Data Quality

13. In the Explanatory Memorandum you state the Welsh Government will be developing a delivery plan with stakeholders which could cover improving air quality data (paragraph 3.82).

A. What delivery plans are you referring to and what is their statutory basis?

We have proposed to implement the promoting awareness duty by developing a delivery plan with stakeholders.

The purpose of the delivery plan is to ensure that Welsh Ministers are proactively discharging our duty under this provision.

The explanatory memorandum set out possible actions that could be included in the plan. For example, this may include improvements to the way existing air quality data is presented and ensuring it is easy to understand. But it may also include initiatives that actively engage communities in air quality improvement, such as citizen science or anti-idling activities.

It is important to develop the plan collaboratively with stakeholders to ensure it is effective. However, we have provided example actions to indicate the broad range of activities we could take in implementing this duty.

B. Why is there no statutory duty to collect data and / or improve its quality? How will data collection and quality be improved under the Bill as drafted?

The Bill does strengthen data collection requirements. Section 7 places a new duty on Welsh Ministers to make arrangements for obtaining such data about air quality in Wales as they consider appropriate to monitor progress towards meeting targets set under sections 1 and/or 2 of the Bill. All data obtained must be published. This will undoubtedly improve the quality and quantity and transparency of air quality data in Wales.

The existing air quality monitoring networks are kept under regular review to ensure they meet robust data quality and assessment criteria set out in legislation. National air quality monitoring is also supplemented with air quality modelling to provide spatial coverage and an estimate of the contributing pollution sources.

Local authorities manage air quality at a local level through the Local Air Quality Management process to tackle local hotspots. This involves reviewing air quality by taking account of statutory policy and technical guidance provided by the Welsh Government. Where risks are identified, air quality monitoring may be used to help understand local levels of pollution, the sources, and compliance with local air quality objectives.

The majority of local authority monitoring does not form part of the national monitoring network as they fulfil a different purpose, focusing on hotspots, and because they may not meet the strict data quality and location criteria of national networks.

Julie James MS
Minister for Climate Change

25 May 2023

Dear Julie

The Environment (Air Quality and Soundscapes) (Wales) Bill

Thank you for appearing before the Committee on 15 May for an evidence session on the Environment (Air Quality and Soundscapes) (Wales) Bill.

In order to inform fully our consideration of the Bill before we report to the Senedd, I would be grateful if you would respond to the questions in the Annex to this letter by 15 June.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair

Accessibility

Question 1: In September 2021, we recommended in our report on the Welsh Government's Legislative Consent Memorandum for the Environment Bill that a future environmental Bill introduced by the Welsh Government should address devolved issues contained within the UK Government's Environment Bill, following appropriate consultation with stakeholders. You accepted this recommendation in principle. Please can you advise if the Bill contains matters relevant to that UK Bill and if so, how it addresses the recommendation in our report?

Question 2: In the evidence session the following comments were made by you and your officials:

"it's a Bill that's intended to fit into other legislation—the attempt to do that in this Bill would have caused ripples across the other legislation in a way that was less than helpful and might actually make the Bill less accessible. So, I understand the sentiment of what you're saying entirely, but, as I understand it, you'd then have to look at the interaction between this and various environment Acts and so on, and then the ripples of that would start to go out and you'd start to be looking at a very different Bill." [RoP 37].

"in this case, the Bill has got a particular focus, and to carve out parts of the body of environmental law and put them elsewhere—our view is that that results in a partial retelling of the story about air quality, for legislation about air quality. You mentioned the Clean Air Act 1993; taking out Part 3 of that takes it out of its context with other Parts of that Act that are about air quality. So, yes, overall, the view was that it wouldn't improve accessibility of law in this instance to just take those bits out." [RoP 38]

"the environment Act ... is replete with Secretary of State for England things, which also then apply to Wales. So, it's quite complicated. I defer to the lawyers, and, actually, I'm in awe of who on earth worked their way through this." [RoP 46]

"It didn't seem necessary or optimal in any way to transfer the entire framework, only to say, 'It's exactly the same, apart from these little bits', really. So, it's part of the same conversation. We've been trying to limit the Bill that this committee is now scrutinising, and, obviously, the policy committees have scrutinised as well, to its own parameters. We've been very clear that it's not an all-encompassing Bill, and a lot of what you're talking about would stretch it back out into starting to take in a whole pile of other things. So, I'm afraid it's part of the same issue, isn't it?"

And then, for me, there's a big issue about implementation, so do we have to spend the next two years doing consequential amendments before the thing is implementable? I didn't want to get into that. And also, you start to have what should be a fairly straightforward Bill taking up two thirds of the legal resource of the Welsh Government." [RoP 54]

- a. How are the comments about accessibility consistent with the fact that legislation on air quality will now be set out in one Welsh Act and two Acts covering England and Wales?
- b. We are unclear why the opportunity was not taken to use the Bill to update, improve and simplify elements of the *Environment Act 1995* related to air quality in order to make the legislation more accessible. For example, air quality is covered in the *Environment Act 1995* in 11 sections (Part 4 of the Bill). Why couldn't these self-contained provisions be transposed into this Bill and updated where necessary?
- c. Was the decision not to consolidate air quality law into one Bill influenced by the capacity and resource constraints you refer to?

Question 3: Given that regulations under sections 1 and 2 of the Bill may not be laid until the Seventh Senedd, why was a more all-encompassing, comprehensive environmental Bill on air quality not introduced until later in the Sixth Senedd, which could potentially have delivered better outcomes through primary legislation and be consistent with the Welsh Government's objective to improve the accessibility of Welsh law?

Air quality – national targets

Question 4: Please can you summarise the existing air quality legislative framework, including by providing information about existing air quality targets and the basis on which they have been set?

Question 5: What does this Bill enable you to achieve on air quality targets that you cannot achieve within the existing air quality legislative framework?

Question 6: How will Part IV, Air Quality of the *Environment Act 1995* interact and work with Part 1 of the Bill? Specifically how will sections 1 and 2 of the Bill interact with section 87 of the 1995 Act (Regulations for the purposes of Part IV)?

Question 7: Section 1 gives the Welsh Ministers a general regulation-making power to set long-term targets in respect of *any matter* relating to air quality in Wales. Why is such a broad power needed?

Question 8: Why is there no definition of air quality on the face of the Bill?

Question 9: If air quality is to have its ordinary meaning, what do you understand that ordinary meaning to be?

Question 10: In order to understand how the regulation-making power in section 1 *could* be used, we would be grateful if you could address the following:

- a. Are there any matters in the Clean Air Plan for Wales that would not be covered by the regulation-making power?
- b. What matters, if any, outside of the Clean Air Plan for Wales could be addressed by the regulation-making power?
- c. Are there any industries, bodies or premises that could not be subject to regulations made under section 1?
- d. Could regulations under section 1 be used to control matters related to air quality such as, for example, public nuisance or odours?

Question 11: When will regulations under section 1 be first laid, and why is there no end period by which the first set of regulations must be laid (as there is for regulations under section 2)?

Question 12: Section 2(4) says that regulations setting a PM2.5 air quality target may make provision defining "ambient air". Why is this definition only relevant to PM2.5 air quality targets and why is it to be defined in regulations rather than appearing on the face of the Bill?

Data quality

Question 13: In the Explanatory Memorandum you state the Welsh Government will be developing a delivery plan with stakeholders which could cover improving air quality data (paragraph 3.82).

- a. What delivery plans are you referring to and what is their statutory basis?
- b. Why is there no statutory duty to collect data and / or improve its quality? How will data collection and quality be improved under the Bill as drafted?

Agenda Item 7

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

Document is Restricted

Agenda Item 9

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

Document is Restricted



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

huw.Irranca-Davies@senedd.wales

14 June 2023

Dear Huw

I would like to thank you for your letter of 15 May regarding the Legislative Consent Memorandum: Data Protection and Digital Information (No. 2) Bill which I laid on the 24 March. You will also have seen that I laid a Supplementary Memorandum on this Bill on 25 May.

Your letter requested a response to a number of questions to help inform the Legislation, Justice and Constitution Committee's report to the Senedd on the Memorandum. A response to each of your questions is set out in the Annex.

I trust that this letter provides the Committee with the information they require.

I am copying this letter to the Minister for Economy, Minister for Social Justice, and Counsel General, along with the Economy, Trade and Rural Affairs Committee and to the Culture, Communications, Welsh Language, Sport and International Relations Committee.

Yours sincerely

MARK DRAKEFORD

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

Gohebiaeth.Mark.Drakeford@llyw.cymru
Correspondence.Mark.Drakeford@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.

Annex

Clauses 54 (Power of public authority to disclose information to registered person) and 56 (Code of practice about the disclosure of information)

Question 1: Please would you clarify why, if the Welsh Government is of the view that the devolved areas of public services, economy and business are engaged for clauses 54 and 56, the Senedd's consent should not also be sought for other substantive provisions of Part 2 of the Bill (clauses 46 to 60).

Response:

Clauses 54 and 56 confer a power on public authorities to provide personal information about individuals (subject to consent) to organisations providing Digital Verification Services (DVS). The purpose is to facilitate the provision of DVS and improve the service offered to the user. Unlike the other clauses in Part 2, they do not relate to the regulation of DVS.

Question 2: Specifically in relation to clause 56, at paragraph 39 of the Memorandum you state that further consideration needs to be given to the devolved implications of a UK-wide Code of Practice, and that you will provide an update in due course. Are you as yet in a position to provide an update to the Senedd?

Response:

My officials are considering whether the powers provided to the Secretary of State in relation to clause 56 are appropriate as the resulting Code of Practice would apply to Welsh public bodies.

Clauses 61 to 77 (Part 3, Customer Data and Business Data)

Question 3: At paragraph 42 of the Memorandum, you state that further consideration needs to be given to the devolved implications of the regulation-making powers in clauses 61 to 77 and that you will provide an update in due course. Are you as yet in a position to provide an update to the Senedd?

Response:

My officials are currently considering whether the powers provided to the Secretary of State and Treasury in respect of clauses 61-77 are appropriate and whether it would be appropriate for Welsh Ministers to have powers in this area.

Clause 92 (Disclosure of information to improve public service delivery to undertakings)

Question 4: Please would you confirm that our understanding of the position is correct and that the amendments made by clause 92 do extend a pre-existing Henry VIII power exercisable by the Welsh Ministers, and clarify the reasoning behind this omission of information from the Memorandum.

Response:

As the Committee notes, the amendments made by clause 92 extend a pre-existing Henry VIII power, exercisable by the Welsh Ministers, by enabling the sharing of information to improve the delivery of public services to 'undertakings'. Consequently reference to this was not made in the LCM laid on 24 March as this is a modification of an existing power, rather than a conferral of a power. However, for completeness the regulation making power in

section 35 of the Digital Economy Act 2017 (the power being modified), is subject to the affirmative procedure.

Clause 93 (Implementation of law enforcement information-sharing agreements)

Question 5:

- a) Could you provide an update on these discussions?
- b) What is the Welsh Government's view of the reserved and devolved matters in this area?
- c) Could you give an example of how international agreements falling under clause 93 might fall to the Welsh Government and/or devolved public bodies to deliver?
- d) Are you aware of upcoming international agreements that would be implemented via the Bill's powers?
- e) We raised concerns during our scrutiny of the Welsh Government's Legislative Consent Memorandum for the Health and Care Bill about the implementation of international healthcare agreements using secondary legislation, as proposed in this Bill. At that time, the Minister for Health and Social Services provided assurances that such agreements would be governed by an intergovernmental Memorandum of Understanding (MoU) that was updated to reflect the Bill (a version was made available to us in February 2022). Could you confirm whether similar intergovernmental arrangements will be put in place for international agreements falling under clause 93 of this Bill (if and when enacted)? Is this something the Welsh Government is advocating for?
- f) During our consideration of the UK/Switzerland Convention on social security coordination in November 2021, you explained that no new requirements were being placed on Welsh Local Health Boards to deliver its arrangements. What is your view on the extent to which international agreements falling under clause 93 might place additional requirements on the Welsh Government or Welsh public bodies to deliver?

Response:

This is an area where we have continued to have discussions with the UK Government. The UK Government has tabled Amendments 8-16 and NC5 which relate to Clauses 93 and 108, and our position on these clauses is set out in Supplementary Legislative Consent Memorandum No 2 which was laid on 25 May.

Amendments 8-16 and NC5 would give Welsh Ministers concurrent powers to make regulations for the purpose of implementing an international agreement relating to sharing information for the aspects of law enforcement within the Senedd's competence. As you will be aware, we are opposed to concurrent powers without constitutional safeguards, and this is something we continue to discuss with the UK Government.

Our understanding is that Clause 93 primarily relates to the I-LEAP programme, which is broadly designed as a successor to the [European Union Schengen Information System II](#) which we had access to before leaving the EU. The I-LEAP programme is designed to increase international cooperation through improving access and use of the INTERPOL system. More information on the programme is available [here](#).

The Senedd has competence to make provision for the prosecution of criminal offences and execution of criminal penalties on a range of devolved matters such as environmental or wildlife crime. On this basis, there is a possibility that the Welsh Government could have an interest in any activity delivered through I-LEAP which interfaces with these areas.

Under the current devolution settlement we expect this interest to be fairly limited in practice. We also do not expect it to place any notable additional requirements on Welsh Government or on any public bodies under the current devolution settlement, especially as I-LEAP would broadly replace an existing set of arrangements in place during our time in the EU.

From a constitutional perspective it is our firm view that the devolution settlement should be protected and the competence of the Senedd respected.

Moreover, in preparation for a future where policing is devolved in line with the recommendations of the Silk Commission and Thomas Commission, it is important to ensure that legislation drafted now is prepared for the more substantive future powers we expect Welsh Ministers to have in this space in the future.

Clause 36 (Interview notices)

Question 6:

- a) Please would you clarify if this represents the Welsh Government's chosen and preferred position?
- b) Has the Welsh Government had discussions with the UK Government about the drafting of clause 36 and its effect in Wales?

Response:

I agree with your assessment that clause 36 of the Bill inserts new sections 148A-148C into the Data Protection Act 2018 which confer powers on the information commissioner to require certain persons to attend for interview where it is suspected that a person is not complying with particular requirements of the DP legislation. Further, that within new section 148B, sub-section (9) places certain restrictions on the circumstances in which the Commissioner can require a person to answer questions under an interview notice, and excludes certain persons from the ambit of the power.

I have asked my officials to consider our position with regard to these provisions, where Welsh Ministers are the regulator for the equivalent services in Wales, namely Care home services provided wholly or mainly for children, Residential family centres, Fostering services and Adoption services.

Other matters

Question 7:

- a) Are you able to expand on the implications for Wales should that adequacy decision from the EU be lost?
- b) b) If the Bill passes in its current form, what is your view of its impact on the EU's adequacy decision?
- c) What discussions have you had with the UK Government in relation to this issue?

Response:

On point a, Data adequacy refers to the European Commission's power to determine, on the basis of article 45 of Regulation (EU) 2016/679, whether a country outside the EU offers its citizens an adequate level of personal data protection. At any time, the European Parliament and the Council may request the European Commission to withdraw any adequacy decision.

Most businesses in Wales, and especially those in financial services and tech sectors, rely on cross-border data flows; being able to smoothly transfer personal data about their customers or staff to offer goods and services, and to operate cloud-based email or file storage.

If the UK lost its data adequacy status for transfers under the GDPR, the EU would require 'appropriate safeguards', as specified under article 46 of Regulation (EU) 2016/679, to be put in place by companies transferring data between businesses/organisations in the EU and businesses/organisations in the UK.

EU businesses would be required to assess the data adequacy of UK businesses on a case-by-case basis and implement one of six specified data transfer safeguards. For example, standard EU Commission data protection clauses could be required in contracts between EU and UK businesses, or UK businesses could be required to sign up to binding corporate rules in the case of multinationals with subsidiaries located in the UK and the EU.

Implementing such additional data safeguards when trading with a UK business would mean that EU businesses would face additional administrative and reporting requirements. This increased complexity and cost could make UK, and therefore, Welsh, businesses less attractive to EU businesses as trading partners, reducing our competitiveness.

Requirements to comply with additional data safeguards would also cause disruption for Welsh businesses, as efforts will need to be made in undertaking additional compliance activities. Efforts will involve staff time, legal resources, and additional financial costs. Welsh subsidiaries of EU-owned companies would likely be most impacted, as additional costs and bureaucracy could potentially make Wales and the UK less attractive for investment from EU companies.

Data protection regulators in EU countries are responsible for ensuring companies in their territories comply with EU data protection law. Regulators can impose fines on companies which do not put in place appropriate data safeguards. For example, on 22 May, Ireland's Data Protection Commission (DPC) published a decision to impose a fine of 1.2bn euros on Meta Platforms Ireland Limited (previously known as Facebook Ireland Limited), Meta's EU HQ operation, and suspend transfers of user data between the EU and the US. The US has not been ruled as 'data adequate' by the EU. The DPC said that Meta had violated rules requiring data safeguards to be in place.

On point b, the new version of the Bill does not appear to assess the risk that amending the GDPR regime could threaten the EU GDPR adequacy decision made regarding the UK. Our view is that changes to the UK's GDPR regime as outlined in the Bill could jeopardise the EU GDPR adequacy decision, which is constantly monitored and can be withdrawn at any time.

On point c, this issue has been raised several times with UK Government at official level, who have provided assurances that they see no threat to the adequacy agreement by the Bill. Officials have also requested that UK Government share a copy of its risk assessment on the matter, which we are yet to receive. This issue was also raised at a meeting between the Minister for Economy and the Minister of State, Department for Science, Innovation and Technology on 17 May.

Rt Hon Mark Drakeford MS
First Minister of Wales

15 May 2023

Dear Mark

Legislative Consent Memorandum: Data Protection and Digital Information (No. 2) Bill

At our meeting on 9 May 2023 we considered for the first time the Welsh Government's Legislative Consent Memorandum for the Data Protection and Digital Information (No. 2) Bill (the Memorandum).

We have a number of questions to put to you, which will help inform our report to the Senedd on the Memorandum.

I would be grateful to receive a response to the questions in the Annex by 1 June 2023.

I am copying this letter to the Economy, Trade and Rural Affairs Committee and to the Culture, Communications, Welsh Language, Sport and International Relations Committee, as these matters may be of interest to their work.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair

ANNEX

Clauses 54 (Power of public authority to disclose information to registered person) and 56 (Code of practice about the disclosure of information)

You are aware that the UK Government is of the view that clauses 54 and 56 of the Bill do not require the Senedd's consent as, in its view, these clauses relate to reserved matters. We note that it is your view that the UK Government has taken an "extraordinarily wide interpretation" of the reserved matter of 'internet services', and that you consider that these clauses relate to devolved matters of public services, economy and business and are, therefore, relevant provisions for the purposes of Standing Order 29.

Question 1: Please would you clarify why, if the Welsh Government is of the view that the devolved areas of public services, economy and business are engaged for clauses 54 and 56, the Senedd's consent should not also be sought for other substantive provisions of Part 2 of the Bill (clauses 46 to 60).

Question 2: Specifically in relation to clause 56, at paragraph 39 of the Memorandum you state that further consideration needs to be given to the devolved implications of a UK-wide Code of Practice, and that you will provide an update in due course. Are you as yet in a position to provide an update to the Senedd?

Clauses 61 to 77 (Part 3, Customer Data and Business Data)

Clauses 61 to 77 of the Bill provide various delegated powers to the Secretary of State and to the Treasury.

Question 3: At paragraph 42 of the Memorandum you state that further consideration needs to be given to the devolved implications of the regulation-making powers in clauses 61 to 77 and that you will provide an update in due course. Are you as yet in a position to provide an update to the Senedd?

Clause 92 (Disclosure of information to improve public service delivery to undertakings)

You will be aware that this clause amends section 35 of the *Digital Economy Act 2017* (the DEA Act 2017) to enable the sharing of information to improve the delivery of public services to businesses, expanding on the existing gateway which allows specified public authorities to share information to improve the delivery of public services to individuals and households. "Specified persons" are listed in Schedule 4 to the DEA Act 2017 and include 'Welsh Bodies' (various devolved Welsh authorities). Section 35 of the DEA Act 2017 allows the "appropriate national authority" to make regulations to add "specified persons" and "specified objectives". The "appropriate national authority" includes the Welsh Ministers in relation to Wales.

The amendments made by clause 92 of the Bill to section 35 of the DEA Act 2017 have the effect of extending a pre-existing delegated power (a Henry VIII power) exercisable by the Welsh Ministers in relation to Wales, by adding the word “undertakings” (meaning businesses and charitable bodies) alongside individuals and households. As an example, the Welsh Ministers would have the power to set a “specified objective” that, subject to other conditions in section 35, would have the purpose of improving a public service provided to undertakings. Previously, the scope of this power would have been limited to improving a public service to individuals and households.

Question 4: Please would you confirm that our understanding of the position is correct and that the amendments made by clause 92 do extend a pre-existing Henry VIII power exercisable by the Welsh Ministers, and clarify the reasoning behind this omission of information from the Memorandum.

Clause 93 (Implementation of law enforcement information-sharing agreements)

You will be aware that clause 93 provides a delegated power to the Secretary of State to implement, via regulations, international agreements relating to the sharing of information for law enforcement purposes.

In the Memorandum you state that the Welsh Ministers should be given appropriate powers to make regulations for the purpose of implementing an international agreement relating to sharing information for the aspects of law enforcement within the Senedd’s competency, and that this issue is subject to ongoing discussions with UK Government.

Question 5:

- a) Could you provide an update on these discussions?
- b) What is the Welsh Government’s view of the reserved and devolved matters in this area?
- c) Could you give an example of how international agreements falling under clause 93 might fall to the Welsh Government and/or devolved public bodies to deliver?
- d) Are you aware of upcoming international agreements that would be implemented via the Bill’s powers?
- e) We raised concerns during our scrutiny of the Welsh Government’s Legislative Consent Memorandum for the Health and Care Bill about the implementation of international healthcare agreements using secondary legislation, as proposed in this Bill. At that time, the Minister for Health and Social Services provided assurances that such agreements would be governed by an intergovernmental Memorandum of Understanding (MoU) that was updated to reflect the Bill (a version was made available to us in February 2022). Could you confirm whether similar intergovernmental arrangements will be put in place for international agreements falling under clause 93 of this Bill (if and when enacted)? Is this something the Welsh Government is advocating for?

f) During our consideration of the UK/Switzerland Convention on social security coordination in November 2021, you explained that no new requirements were being placed on Welsh Local Health Boards to deliver its arrangements. What is your view on the extent to which international agreements falling under clause 93 might place additional requirements on the Welsh Government or Welsh public bodies to deliver?

Clause 36 (Interview notices)

You will be aware that clause 36 inserts into the *Data Protection Act 2018* new section 148A which makes provision about interview notices, which can be used to require a person to attend an interview and answer questions when required by the Information Commissioner (the "Commissioner"). We note that, in practice, the reference to the Commissioner will be read as a reference to the newly-formed Information Commission, courtesy of section 102(2) of the Bill.

Additionally, clause 36 inserts new section 148B, which places certain restrictions on the circumstances in which the Commissioner can require a person to answer questions under an interview notice. Subsection (9) lists bodies to whom the Commissioner cannot give an interview notice, including: "the Office for Standards in Education, Children's Services and Skills in so far as it is a controller or processor in respect of information processed for the purposes of functions exercisable by His Majesty's Chief Inspector of Education, Children's Services and Skills by virtue of section 5(1)(a) of the Care Standards Act 2000." The functions referenced relate to the registration of children's homes in England, residential family centres in England, fostering agencies in England or, where the activities of a fostering agency are carried on from two or more branches, the branches in England, voluntary adoption agencies whose principal office is in England, and adoption support agencies in England or, where the activities of an adoption support agency are carried on from two or more branches, the branches in England.

No similar exemption is contained in the Bill for functions related to registration of similar establishments and agencies in Wales meaning that the Commissioner will be able to issue an interview notice in relation to those matters in Wales but not in England.

Question 6:

- a) Please would you clarify if this represents the Welsh Government's chosen and preferred position?
- b) Has the Welsh Government had discussions with the UK Government about the drafting of clause 36 and its effect in Wales?

Other matters

In the Memorandum, you outline various concerns that you have with the Bill as a whole. In particular, at paragraph 34, you explain that there are concerns that "the introduction of the Bill creates a risk to



the UK's current adequacy decision, which was granted in June 2021 by the EU for a period of 4 years initially. The potential loss of EU data adequacy is a key concern from a trade perspective as this would be a major threat for Welsh exporting businesses, whose main overseas market continues to be the EU."

Question 7:

- a) Are you able to expand on the implications for Wales should that adequacy decision from the EU be lost?
- b) If the Bill passes in its current form, what is your view of its impact on the EU's adequacy decision?
- c) What discussions have you had with the UK Government in relation to this issue?

Agenda Item 10

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

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