

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Committee Room 1, Senedd	P Gareth Williams
Meeting date: 20 November 2023	Committee Clerk
Meeting time: 13.30	0300 200 6565
	SeneddLJC@senedd.wales

1 Introductions, apologies, substitutions and declarations of interest

(13.30)

2 Elections and Elected Bodies (Wales) Bill: Evidence Session

(13.30 – 14.30)

(Pages 1 – 70)

Mick Antoniw MS, Counsel General and Minister for the Constitution

Michael Kay, Deputy Director, Elections Division, Welsh Government

Gareth McMahon, Senior Lawyer, Welsh Government

[Elections and Elected Bodies \(Wales\) Bill](#)

[Explanatory Memorandum](#)

[Statement of Policy Intent](#)

Attached Documents:

LJC(6)–32–23 – Paper 1 – Legal Briefing

LJC(6)–32–23 – Paper 2 – Research Briefing

LJC(6)–32–23 – Paper 3 – Letter from the Counsel General and Minister for the Constitution to the Local Government and Housing Committee, 15 November 2023

LJC(6)–32–23 – Paper 4 – Letter from the Counsel General and Minister for the Constitution, 10 November 2023

LJC(6)–32–23 – Paper 5 – Letter to the Counsel General and Minister for the



Constitution from the Local Government and Housing Committee, 3
November 2023

Break

(14.30 – 14.35)

**3 Instruments that raise no reporting issues under Standing Order
21.2 or 21.3**

(14.35 – 14.40)

(Pages 71 – 72)

Attached Documents:

LJC(6)–32–23 – Paper 6 – Draft report

Made Negative Resolution Instruments

**3.1 SL(6)403 – The Commissioner for Older People in Wales (Appointment)
(Amendment, Transitional and Revocation) Regulations 2023**

Affirmative Resolution Instruments

**3.2 SL(6)411 – The Register of Service Providers (Prescribed Information and
Miscellaneous Amendments) (Wales) Regulations 2023**

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

(14.40 – 14.50)

Made Negative Resolution Instruments

**4.1 SL(6)402 – The Non–Domestic Rating Act 2023 (Consequential Amendments
to Secondary Legislation) (Wales) Regulations 2023**

(Pages 73 – 75)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-32-23 – Paper 7 – Draft report

Affirmative Resolution Instruments

4.2 SL(6)404 – The Environmental Protection (Single-use Plastic Products) (Civil Sanctions) (Wales) Regulations 2023

(Pages 76 – 78)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-32-23 – Paper 8 – Draft report

4.3 SL(6)405 – The Waste Separation Requirements (Wales) Regulations 2023

(Pages 79 – 85)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-32-23 – Paper 9 – Draft report

LJC(6)-32-23 – Paper 10 – Written Statement by the Minister for Climate Change, 7 November 2023

4.4 SL(6)406 – The Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023

(Pages 86 – 93)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-32-23 – Paper 11 – Draft report

LJC(6)-32-23 – Paper 12 – Written Statement by the Minister for Climate Change, 7 November 2023

4.5 SL(6)407 – The Prohibition on Disposal of Food Waste to Sewer (Civil Sanctions) (Wales) Order 2023

(Pages 94 – 99)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-32-23 – Paper 13 – Draft report

LJC(6)-32-23 – Paper 14 – Written Statement by the Minister for Climate Change, 7 November 2023

**4.6 SL(6)408 – The Retained EU Law (Revocation and Reform) Act 2023
(Consequential Amendments) (Wales) Regulations 2023**

(Pages 100 – 101)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-32-23 – Paper 15 – Draft report

**4.7 SL(6)409 – The Plant Health etc. (Miscellaneous Fees) (Amendment) (Wales)
Regulations 2023**

(Pages 102 – 104)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-32-23 – Paper 16 – Draft report

**4.8 SL(6)410 – The Regulated Services (Special School Residential Services)
(Wales) Regulations 2023**

(Pages 105 – 106)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-32-23 – Paper 17 – Draft report

**5 Instruments that raise issues to be reported to the Senedd under
Standing Order 21.2 or 21.3 – previously considered
(14.50 – 14.55)**

6 Inter-Institutional Relations Agreement

(14.55 – 15.00)

6.1 Correspondence from the Minister for Economy: Inter-Ministerial Group on Trade

(Page 107)

Attached Documents:

LJC(6)-32-23 – Paper 18 – Letter from the Minister for Economy, 16 November 2023

7 Papers to note

(15.00 – 15.05)

7.1 Written Statement by the Counsel General and Minister for the Constitution and the Minister for Social Justice and Chief Whip: Research to prepare for the devolution of policing in Wales

(Pages 108 – 109)

Attached Documents:

LJC(6)-32-23 – Paper 19 – Written Statement by the Counsel General and Minister for the Constitution and the Minister for Social Justice and Chief Whip, 14 November 2023

7.2 Correspondence with the Counsel General and Minister for the Constitution: Retained EU Law (Revocation and Reform) Act 2023

(Pages 110 – 116)

Attached Documents:

LJC(6)-32-23 – Paper 20 – Letter from the Counsel General and Minister for the Constitution, 16 November 2023

LJC(6)-32-23 – Paper 21 – Letter to the Counsel General and Minister for the Constitution, 1 November 2023

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

(15.05)

9 Elections and Elected Bodies (Wales) Bill: Consideration of evidence

(15.05 – 15.25)

10 Legislative Consent Memorandum on the Economic Activity of Public Bodies (Overseas Matters) Bill

(15.25 – 15.35)

(Pages 117 – 130)

Attached Documents:

LJC(6)-32-23 – Paper 22 – Draft report

LJC(6)-32-23 – Paper 23 – Letter from the Minister for Finance and Local Government, 15 November 2023

LJC(6)-32-23 – Paper 24 – Letter to the Minister for Finance and Local Government, 9 November 2023

11 Draft principles for legislating via UK Bills

(15.35 – 16.05)

(Pages 131 – 136)

Attached Documents:

LJC(6)-32-23 – Paper 25 – Draft paper

LJC(6)-32-23 – Paper 26 – Letter from the Counsel General and Minister for the Constitution, 13 November 2023

LJC(6)-32-23 – Paper 27 – Written Statement by the Counsel General and Minister for the Constitution, 10 November 2023

Document is Restricted



Eich cyf/Your ref CG/PO/383/2023
Ein cyf/Our ref qA1762325

15th November 2023

Dear John

Thank you for your letter of 3 November in relation to the Elections and Elected Bodies (Wales) Bill. I have provided further information below in answer to your queries.

Electoral Registration without Application

The provisions requiring an open register sit within the Representation of the People (England and Wales) Regulations 2001. As this is secondary legislation, we will use secondary legislation to remove its application to the local government register in Wales. This will be done following Royal Assent of the Bill. To make this change Welsh Ministers will exercise powers under Section 53 of the Representation of the People Act 1983, these regulations will be subject to the affirmative procedure in the Senedd.

The impact of removing the open register for the local government register in Wales is likely to have a minimal impact on organisations that are not able to access the full register. A 2013 report by the House of Lords concluded that the open register served no public good and presented risks to privacy. It also concluded that the existence of the register can be a disincentive to registering to vote. Given that we will be automatically registering electors, removing access to information for some organisations felt necessary to build confidence in this new way of registering and to safeguard our citizens. For those eligible to register for the Parliamentary register, the open register will still exist. This means that we are largely protecting those young people aged 16 and 17 that will be on the local government register but are not eligible to be on the Parliamentary register. For those electors on the Parliamentary register, the choice will still be in place as to whether they wish to be on the open register or not.

Services to promote diversity in persons seeking elected office

It is important the barriers which prevent people standing for election and therefore taking a full role in democracy are identified and addressed. While we are clear that the socio-economic circumstances individuals find themselves in can impact on their options in life,

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

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

more research is needed as to the appropriate criteria to use to determine eligibility under section 28 of the Bill and what measures can be taken to support individuals.

We will therefore shortly be commissioning research in this area aimed at identifying steps which can be taken to encourage people with a range of different socio-economic backgrounds to consider standing for election. It is intended to identify where an individual's socio economic background has or could lead to inequality of outcome along with identifying the measures that could be put in place to support individuals during the election process.

It is also important we consider intersectionality and how protected characteristics can combine with certain socio-economic circumstances to present barriers to individuals' participation in democracy.

This is a complex area, which requires further exploration, and we will be seeking a wide range of views to shape both the eligibility criteria and the services which can be made available under section 28 of the Bill.

I look forward to attending the Local Government and Housing Committee again on 7 December to discuss the Bill further.

Yours sincerely,

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

Mick Antoniw AS/MS

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

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Counsel General and Minister for the Constitution



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/CG/2145/23

Huw Irranca-Davies, MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
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10 November 2023

Dear Huw,

Ahead of meeting with the Committee on 20 November, I attach to this letter a corrected version of Chapter 5 of the Explanatory Memorandum for the Elections and Elected Bodies (Wales) Bill ('the Bill') for your information. Amendments have been made to rows 3-6 in table 5.1 of this Chapter to ensure that factual and cross references regarding electoral pilots align with the Bill as introduced. These amendments will be included in the Explanatory Memorandum when it is updated and republished at the next available opportunity.

I look forward to giving evidence to the Committee on 20 November.

I am also writing to the Chair of the Local Government and Housing Committee.

Yours sincerely,

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

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**Chapter 5 of the Explanatory Memorandum to the
Elections and Elected Bodies (Wales) Bill
November 2023**

5. Power to make subordinate legislation

5.1 The Bill contains provisions to make subordinate legislation and issue determinations. Table 5.1 (subordinate legislation) and Table 5.2 (directions and guidance) set out in relation to these:

- i. the person upon whom, or the body upon which, the power is conferred;
- ii. the form in which the power is to be exercised;
- iii. the appropriateness of the delegated power;
- iv. the applied procedure; that is, whether it is “affirmative”, “negative”, or “no procedure”, together with reasons why it is considered appropriate.

5.2 The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when the proposals have been formalised.

Table 5.1: Summary of powers to make subordinate legislation in the provisions of the Elections and Elected Bodies (Wales) Bill

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
New section 20E(3)(c) of the 2013 Act (as inserted by section 1)	Welsh Ministers	Regulations	This allows Welsh Ministers to confer further functions (in addition to new sections 20A to 20D of the 2013 Act and chapter 3 of Part 1 of the Elections and Elected Bodies (Wales) Act 2024 (Welsh elections piloting and reform)) on the Commission, to be exercised by the Electoral Management Board. In particular, it is envisaged that regulations made under section 27 (Welsh Elections Information Platform) could confer functions on the	Negative or affirmative	Where the conferral of any new function requires amendments to be made to an Act of the UK Parliament, a Measure of the National Assembly for Wales or an Act of the Senedd, the regulations conferring that new function will be subject to the affirmative resolution procedure. In all other cases the negative procedure will apply (section 71(2) and (3) of the 2013 Act (as amended by paragraph 1(5)(b) of Schedule 1 to this Act refers). Where the

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			<p>Commission in relation to that platform.</p> <p>Also there may be a need in future for Welsh Ministers to confer other functions related to electoral administration on the Commission.</p>		<p>power is used to amend primary legislation, the affirmative procedure is considered to be appropriate. However, in other cases it is considered that the nature of the regulations justifies the negative procedure.</p>
New section 9ZA((6)(a)-(c) of the 1983 Act (as inserted by section 3)	Welsh Ministers	Regulations	<p>This allows Welsh Ministers to make provision about what is required on the notice of election sent to each automatically registered elector. It will allow Welsh Ministers to update the list of required information in line with piloted activity and in the future if evaluation of the</p>	Negative	<p>The substance of this power is set out on the face of the bill i.e. what is required of an ERO to be included in the notice of registration. These regulation making powers would be used to update this list following recommendations from automatic</p>

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			automatic registration scheme highlights the need for essential elector information.		registration pilots, or in the future to reflect any further recommended changes that would support the elector in understanding this process.
Section 5	Welsh Ministers	Regulations	This enables the Welsh Ministers to make regulations for the holding of electoral pilot schemes in connection with relevant electoral matters (as defined by section 5 (3)) at Welsh elections (ordinary elections of Senedd Cymru, ordinary local government elections and local government by-elections). The Welsh Ministers can also use this power to trial the amended registration provisions	Affirmative & negative	Where pilot regulations; <ul style="list-style-type: none"> i. are made without the consent of the local authority required to implement the pilot scheme ; ii. are trialling the amended registration provisions introduced by section 3; or iii. create, remove or modify

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			introduced by section 3(section 5 (4)).		<p>criminal offences,</p> <p>the regulations are subject to the affirmative resolution procedure (section 7 (3) and (4)). It is considered appropriate that in such circumstances the Senedd should be provided with the opportunity to debate the merit of such pilots.</p> <p>All other pilot regulations will be subject to the negative procedure (section 7 (5)). It is considered that this is appropriate as before any pilot regulations are made the Democracy and Boundary Commission</p>

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					Cymru (through its Electoral Management Board) will be required to report on the proposed scheme, and a copy of the report must be laid before the Senedd with the regulations.
Section 8	Welsh Ministers	Regulations	This allows Welsh Ministers to add to, remove from or amend the list of electoral matters (in section 5) in respect of which pilot schemes can be undertaken. This provides flexibility to allow Welsh Ministers to amend the list in line with government commitments. The list cannot, however, be amended to enable pilots to be undertaken in connection with the	Affirmative	This power is limited to enabling the Welsh Ministers to make amendments to the list of electoral matters in respect of which a pilot scheme could be run. If pilot schemes are subsequently taken forward they will be subject to their own regime of evaluation and scrutiny. The affirmative procedure is considered appropriate as it will ensure the Senedd is

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			voting system for returning members of Senedd Cymru, a principal council or a community council.		afforded the opportunity of debating the merits of amending that list.
Section 15 (3)	Welsh Ministers	Regulations	This power enables Welsh Ministers, by regulation, to set out what the Democracy and Boundary Commission Cymru's report on proposed pilots should contain (this function will be exercised through its Electoral Management Board). Section 15(2) prescribes the matters that the Commission must have regard to (as a minimum) when assessing pilot proposals, and the Commission can also make any recommendations they	Negative	This power is limited to enabling the Welsh Ministers to prescribe specific additional criteria that should be taken into account when pilot proposals are evaluated. The matters which must be assessed and reported on are set out on the face of the legislation. The negative procedure is therefore considered appropriate.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			deem relevant (section 15(4)). This power will provide flexibility in the future if Welsh Ministers wish to Stipulate additional criterion that should be taken into account when proposals for pilot schemes are evaluated.		
Section 17 (4)	Welsh Ministers	Regulations	This power enables Welsh Ministers, by regulation, to set out what the Democracy and Boundary Commission Cymru's guidance on undertaking a pilot scheme should contain. In addition to the requirements set out on the face on the Bill (section 17(2)), and in addition to anything the Commission deem	Negative	This power is limited to enabling the Welsh Ministers to add matters to the issues that should be addressed in the guidance issued by the Commission for the running of a pilot. The negative procedure is recommended because the Bill already contains the basic requirements of

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			relevant (section 17(3)), the Welsh Ministers can require additional issues to be included in the guidance that is issued by the Commission.		that guidance, and the Commission, through the Bill provisions, are also free to provide guidance on any additional matters they feel relevant, and this does not require Welsh Ministers agreement. This power is largely administrative.
Section 19 (3)	Welsh Ministers	Regulations	This power enables Welsh Minister to make permanent changes to electoral law following a successful pilot. Such regulations can however, only be made on the recommendation of the Electoral Commission.	Negative enhanced & Affirmative enhanced	Where reform regulations; i. modify primary legislation; ii. create or widen the scope of a criminal offence; or iii. create or amend a power to legislate, they will be subject to the affirmative procedure (section 20

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					<p>(3) and (4)), but the Senedd or a committee of the Senedd reporting on the regulations can resolve, within 30 days of the draft regulations being laid, that an enhanced affirmative should apply to such regulations (section 20(13)). This enhanced affirmative procedure requires the Welsh Ministers to have regard to any representations; any resolutions of the Senedd; and any recommendations of a committee of the Senedd charged with reporting on the draft regulations, made within 60 days of the regulations being laid.</p>

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					<p>The Welsh Ministers may only make the regulations (without material changes) if the Senedd approves them after the 60 day period expires. If after the 60 day period the Welsh Ministers wish to proceed with the draft regulations, but with material changes, the revised draft regulations must be laid before the Senedd together with a statement summarising the changes, for approval by the Senedd.</p> <p>For all other statutory instruments containing reform regulations an enhanced negative procedure will apply</p>

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					<p>(section 20 (5)). This requires the Welsh Ministers, where they consider the negative procedure to be appropriate, to make a statement to that effect and to lay a draft of the regulations before the Senedd together with a memorandum setting out their statement and the reasons for their opinion. The Welsh Ministers may only proceed to make the regulations by way of the negative procedure if a relevant Senedd Committee makes a recommendation as to the appropriate procedure, or 14 days pass from the laying of</p>

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					<p>the draft regulations and no recommendation is received from the committee.</p> <p>It is considered that both of these procedures are appropriate as they provide for additional Senedd scrutiny reflecting the nature of the reform regulations.</p>
Section 27(1)	Welsh Ministers	Regulations	This requires Welsh Ministers, through regulations, to provide for a Welsh elections information platform. Welsh Ministers may decide who is the best organisation to provide for such a platform and what information, in addition to that prescribed in primary	Affirmative and negative	The affirmative procedure is applicable where regulations made under this section relate to subsection (4)(c), that is to say where the regulations confer exemptions from civil and criminal liability in connection with the publication of

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			<p>legislation, should be provided to voters to support their participation in Senedd and principal council elections in Wales with a power to include information in relation to local government elections. The regulations must also set out a reporting regime on the running and effect of the Welsh elections information platform.</p>		<p>candidate statements and other candidate information. This is to allow Senedd Cymru additional opportunities to scrutinise the decisions made by Welsh Ministers in this area due to the political importance to the whole Senedd of limiting such liability.</p> <p>The negative procedure is to be used where regulations are made in relation to conferring functions on persons, about the publication of information on the platform, including the publication of candidate statements and other information</p>

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					in relation to candidates, and making the information on the platform available other than by electronic means. This allows the requirements around reporting on the running and effectiveness of the platform to be set out. This procedure is appropriate as it is likely to be relate to administrative issues rather than issues of policy substance.
Section 28(8)	Welsh Ministers	Regulations	Enables the Welsh Ministers to add, amend or remove services added to those that may be provided to promote diversity in persons seeking elected office.	Affirmative	This is to allow Senedd Cymru additional opportunities to scrutinise the decisions made by Welsh Ministers in this area due to the

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					<p>political importance to the whole Senedd. It is felt the affirmative procedure is appropriate for these regulations to ensure transparency and political neutrality. In addition, as this power includes the amendment of primary legislation the affirmative procedure is felt to be appropriate.</p>
Section 29(1)	Welsh Ministers	Regulations	Enables Welsh Ministers to provide for schemes of financial assistance to help candidates, who have specified characteristics or circumstances, overcome barriers to their participation in the election connected to	Affirmative	This is to allow Senedd Cymru additional opportunities to scrutinise the decisions made by Welsh Ministers in this area due to the political importance to the whole Senedd. It is felt the affirmative

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			<p>those characteristics or circumstances.</p> <p>Requires Welsh Ministers to appoint or provide for the appointment of a person to operate the scheme for which they provide.</p> <p>Enables Welsh Ministers to confer functions on a person and provide for the delegation of those functions, requires a person upon who functions are conferred to keep and make available for inspection, accounts and other records and requires another person, to publish specified information about financial assistance</p>		<p>procedure is appropriate for these regulations to ensure transparency and political neutrality.</p>

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			<p>given in accordance with the scheme (however such a duty to publish is not imposed when such would (taking the duty into account) contravene the data protection legislation within the meaning of the Data Protection Act 2018.</p> <p>Enables financial assistance to be given subject to conditions and specify the circumstance in which such assistance is to be repaid.</p>		
Section 29 (2)	Welsh Ministers	Regulations	Requires Welsh Ministers to set out in regulations arrangements to provide financial support to disabled candidates standing in	Affirmative	This is to allow Senedd Cymru additional opportunities to scrutinise the decisions made by Welsh Ministers in this

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			<p>a Welsh election overcome barriers to their full and effective participation in the election connected to their disability.</p> <p>Enables Welsh Ministers to confer functions on a person and provide for the delegation of those functions, requires a person upon who functions are conferred to keep and make available for inspection, accounts and other records and requires another person, to publish specified information about financial assistance given in accordance with the scheme (however such a duty to</p>		<p>area due to the political importance to the whole Senedd. It is felt the affirmative procedure is appropriate for these regulations to ensure transparency and political neutrality.</p>

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			<p>publish is not imposed when it would (taking the duty into account) contravene the data protection legislation within the meaning of the Data Protection Act 2018.</p> <p>Enables financial assistance to be given subject to conditions and specify the circumstance in which such assistance is to be repaid.</p>		
Section 156 of the 2000 Act (as amended by section 34(2))	Welsh Ministers	Order	Paragraph 14A of Schedule 4A to the RPA 1983 (as amended by the Bill) allows the Electoral Commission to prepare guidance for use by campaigners, setting out the legal	No procedure	Prior to the making of an order to bring any guidance into force, the Welsh Ministers must lay the draft guidance before the Senedd for a period of

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			requirements around campaign expenditure at local government elections. Welsh Ministers bring the guidance into force by order. The Bill amends section 156(3) of the RPA 1983 so that such orders are not the subject of a Senedd procedure.		40 days. If the Senedd resolve not to approve the guidance no order bringing it into force can be made by the Welsh Ministers. As the draft guidance is subject to the full scrutiny, it is considered appropriate that a subsequent order to bring that guidance into force is not subject to a further Senedd procedure,
Section 88(11) of the 2000 Act (as amended by section 37(2))	Welsh Ministers	Order	This enables the Welsh Ministers to amend the list of descriptions of third parties, provided for in section 88(2) of PPERA, who are able to register to campaign in a regulated Senedd election period, thus allowing them to incur	Affirmative	As this power allows for primary legislation to be amended it is considered appropriate that the Senedd should be afforded the opportunity of debating the merits of any such amendment

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			<p>expenditure of over £700. An order can add, remove or modify a description of those third parties. The descriptions of third parties can however, only be removed or modified on the recommendation of the Electoral Commission. This will ensure the list of eligible third parties can be maintained in the face of any developments, and avoiding unnecessarily preventing a new type of third party from being able to campaign in an election.</p>		<p>and the use of the power is therefore subjected to the affirmative procedure. In addition, where the Welsh Ministers propose removing third parties from the list, or amending the description of those third parties, in respect of the relevant campaign period, they will only be able to do so on the recommendation of the Electoral Commission.</p>
New sections 100A and 100C of the 2000 Act (as inserted by section 38(2) and (4))	Welsh Ministers	Order	Section 38 of the Act inserts new provision into PPERA requiring the Electoral Commission to prepare	No procedure	Any order bringing a relevant code of practice into force is not subject to a Senedd procedure.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			<p>a code of practice about the controls on third party expenditure during a Senedd election campaign (section 38(2)(a) inserts a new section 100A(1A) into PPERA). Section 38 (4) inserts a new section 100C into PPERA setting out the procedure for the preparation and adoption of the code of practice. Any such code of practice is brought into force by order of the Welsh Ministers (section 100C(8) of PPERA).</p>		<p>This is considered appropriate as before such an order can be made, the code of practice must be prepared and consulted upon by the Electoral Commission, which includes consultation with the Llywydd's Committee and the Legislation, Justice and Constitution Committee (or any successor committee). In addition, any draft code of practice approved by the Welsh Ministers, must be laid before the Senedd for a period of 40 days before the Welsh Ministers can make an order bringing that code into</p>

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					force. If the Senedd resolve not to approve the draft code no order bringing it into force can be made by the Welsh Ministers.
Section 41	Welsh Ministers	Regulations	Enables the Welsh Ministers to change the review period and reset the start date for the review period for reviews of electoral arrangements for a community by a principal council.	Negative	Changing the review period and re-setting the start date of a review period is a technical detail which may be needed in the event of disruption to a review programme. Examples of situations which would trigger the use of this power includes a public health emergency, a change in the date for local government election or to provide greater synergy the review periods of both county and community arrangements.

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
<p>Section 57</p> <p>Section 69R of the 2013 Act as inserted by section 57(2) of the Bill</p>	<p>Welsh Ministers</p>	<p>Regulations</p>	<p>Enables Welsh Ministers to modify Part 5A to add, vary or omit provision concerning or imposing a function on the Commission.</p>	<p>Affirmative</p>	<p>The affirmative procedure is considered appropriate as the power could be used to modify primary legislation. It replicates the power and the procedure in section 158 of the Local Government (Wales) Measure 2011.</p>
<p>Section 69</p>	<p>Welsh Ministers</p>	<p>Regulations</p>	<p>Provides the power for the Welsh Ministers to make regulations of general application to make supplementary, incidental, consequential, transitional, transitory or saving provision in respect of provisions within the Bill.</p>	<p>Negative and Affirmative</p>	<p>These will be technical and procedural in nature.</p> <p>Where regulations would amend, repeal or otherwise modify a provision of an Act of Parliament or and Act or Measure of Senedd Cymru, the instrument containing the</p>

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of Senedd Cymru.
Section 70	Welsh Ministers	Order	Power to commence certain Bill provisions by order to enable coming into force and implementation to be appropriately timed.	No procedure	This is a power to set a coming into force date for provisions already agreed in the Bill, it is considered appropriate that this does not require a procedure.
Schedule 1 Section 69K(2)(d) of the 2013 Act as inserted by section 57(2) of the Bill	Welsh Ministers	Regulations	Enables Welsh Ministers to designate a public body relevant for the purposes of the information that may be included in annual remuneration report under section 69K.	Negative	To enable full transparency of the remuneration councillors receive from public bodies as well as their own council.
Schedule 1	Welsh Ministers	Regulations	Enables Welsh Ministers to specify	Negative	This power would enable Welsh

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Section 69C(2)(e) of the 2013 Act as inserted by section 57(2) of the Bill.			bodies that fall within the definition of the term relevant authority for the purposes of Part 5A.		Ministers to add bodies within the local government family to the list of bodies which would be required to follow the determinations of the Democracy and Boundary Commission Cymru in relation to payments and pensions.
Schedule 1 Section 69D(1)(b) of the 2013 Act as inserted by section 57(2) of the Bill	Welsh Ministers	Regulations	Enables Welsh Ministers to specify in regulations a description of members to whom a resettlement payment would apply.	Negative	This is largely technical in nature and would enable Welsh Ministers to specify the description of members for which any future resettlement payments would apply. The Commission would then be responsible for setting the qualifying conditions which individuals

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					would have to meet prior to receiving payment.

Table 5.2: Summary of powers to make directions and issue guidance in the provisions of the Elections and Elected Bodies (Wales) Bill

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Section 20B(1) of the 2013 Act, as inserted by section 1(2)	Democracy and Boundary Commission Cymru	Directions	Power to issue directions to returning officers about the exercise of their functions in relation to devolved Welsh elections and referendums. Directions will not replace their existing personal responsibility to discharge their functions or duties.	No procedure	The Democracy and Boundary Commission Cymru (acting through the Electoral Management Board) will be required to consult with the Electoral Commission before issuing directions.
Section 20C(1) of the 2013 Act, as inserted by section 1(2)	Democracy and Boundary Commission Cymru	Directions	Power to issue directions to EROs about the exercise of their functions in relation to devolved Welsh elections and referendums. Directions will not replace their existing personal responsibility to discharge their functions or duties.	No procedure	The Democracy and Boundary Commission Cymru (acting through the Electoral Management Board) will be required to consult with the Electoral Commission before issuing directions.
Electoral reviews Section 50(2)	Welsh Ministers	Directions	Enables Welsh Ministers to issue a direction to pause a	No procedure	In the event of disruption such as a

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			review until a specified date or further direction		public health emergency or change in date of local government elections Welsh Ministers would be unable to mitigate the impact on the review process without this provision.
Draft report – remuneration S69H(1)	Welsh Ministers	Directions	Enables the Welsh Ministers to direct the Commission to reconsider a provision of a draft annual or draft supplementary report	No procedure	This provision already exists within the 2011 Measure. It is being replicated as a result of the functions being conferred on the Commission through this Act and the dissolution of the Independent Remuneration Panel for Wales.
Compliance – remuneration S69M(1)	Welsh Ministers	Directions	Enables Welsh Ministers to issue a direction to a local authority to comply with a	no procedure	This provision already exists within the 2011 Measure. It is being replicated as a result of the functions being

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			requirement set out by the Commission		conferred on the Commission through this Act and the dissolution of the Independent Remuneration Panel for Wales.
Withholding payments 69O(3)	Welsh Ministers	Directions	Enables Welsh Ministers to direct a local authority to withhold payments in respect of remuneration	No procedure	This provision already exists within the 2011 Measure. It is being replicated as a result of the functions being conferred on the Commission through this Act and the dissolution of the Independent Remuneration Panel for Wales.
Remuneration 69P(2)	Welsh Ministers	Guidance	Enables the Welsh Ministers to issue guidance to the Commission in relation to the exercise of its functions under the Bill.	No procedure	The power to issue guidance is intended to facilitate the application of the primary legislation. This guidance is largely concerned with process

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					and, as such, Assembly procedure is not appropriate.
Remuneration 69P(1)	Commission	Guidance	Enables the Commission to issue guidance to local authorities in relation to its functions under Part 5A.	No procedure	The power to issue guidance is intended to facilitate the application of the primary legislation. This guidance is largely concerned with process between the Commission and local authorities and, as such, Senedd procedure is not appropriate.
Section 1(3) of the Local Government (Wales) Measure 2011, as amended by section 26 (2)	Welsh Ministers	Directions	Enables Welsh Ministers to issue directions to a local authority to specify the scope and format of the survey	No procedure	This is a technical provisions to ensure consistency of the core survey questions in all county and county borough council areas.
Section 14 of the 2013 Act, as amended by	Welsh Ministers	Directions	This is an existing power in the 2013 Act which is being amended to ensure the	No procedure	There is no change to the existing procedure but the scope of the

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
paragraph 1(4) of Schedule 1			independence of the Commission in relation to the exercise of its functions in respect of the Electoral Management Board		power is being amended.

Mick Antoniw MS,
Counsel General and Minister for the Constitution,
Welsh Government

3 November 2023

Dear Mick,

Elections and Elected Bodies (Wales) Bill

Thank you for attending our meeting on 26 October in relation to the Elections and Elected Bodies (Wales) Bill. The Committee agreed that I should write to you to seek further information on some of the issues we discussed.

Electoral registration without application

The Explanatory Memorandum states, that in order to add additional safeguards for young and vulnerable electors, the open electoral register will be removed for Welsh elections. However, provision to enable this does not appear to be included in the Bill and the EM does not explain how otherwise the register will be removed. We would be grateful for clarification as to why this provision has not been included in the Bill, and what the timescales are for its removal.

During the meeting, you indicated that the Welsh Government would bring forward a Statutory Instrument under the Representation of the People Act 1953 to remove the open register for Welsh elections, and agreed to confirm which procedure will be used to make the subordinate legislation.

We would also be grateful if you could provide details as to whether consideration has been given to the impact the removal of the open register in Wales may have on businesses, charities and other organisations.

Services to promote diversity in persons seeking elected office

Section 28 specifies that arrangements must be made for the provision of services to promote diversity in the protected characteristics and socio-economic circumstances of persons seeking to be

elected. We would be grateful if you could provide further details on the criteria which will be used to assess a person's socio-economic circumstances in order to qualify for such services.

We would be grateful for a response by 16 November in order to aid our consideration of the Bill.

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

Yours sincerely

A handwritten signature in black ink that reads "John". The letters are cursive and connected.

John Griffiths MS

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Statutory Instruments with Clear Reports 20 November 2023

SL(6)403 – The Commissioner for Older People in Wales (Appointment) (Amendment, Transitional and Revocation) Regulations 2023

Procedure: Made Negative

The Commissioner for Older People in Wales (Appointment) (Amendment, Transitional and Revocation) Regulations 2023 (“the Regulations”) make amendments to the Commissioner for Older People in Wales (Appointment) Regulations 2007 (“the 2007 Regulations”), as amended, in relation to the appointment of the Commissioner for Older People in Wales (“the Commissioner”).

These Regulations provide that a newly appointed Commissioner should be appointed on a fixed, non-extendable 7-year term of office. This replaces the current position where the Commissioner is appointed for a 4-year term of office, which may be extended by 2 years by the First Minister, or the Commissioner may re-apply for a further 4-year term of office under a competitive process but not for any additional term.

The amendments ensure that the Commissioner’s term of office is in line with the respective terms of office for which the Children’s Commissioner for Wales, the Future Generations Commissioner and Welsh Language Commissioner are appointed.

A public consultation on this proposal was conducted between 19 June and 12 September 2023.

Parent Act: Commissioner for Older People (Wales) Act 2006

Date Made: 01 November 2023

Date Laid: 03 November 2023

Coming into force date: 16 December 2023



Statutory Instruments with Clear Reports

20 November 2023

SL(6)411 – The Register of Service Providers (Prescribed Information and Miscellaneous Amendments) (Wales) Regulations 2023

Procedure: Affirmative

The Regulation and Inspection of Social Care (Wales) Act 2016 provides the statutory framework for the regulation and inspection of social care services and the regulation of the social care workforce in Wales.

These Regulations prescribe additional information (a telephone number and email address for each service) to be shown on each entry of the register of service providers maintained by the service regulator, Care Inspectorate Wales (CIW). These Regulations also provide a mechanism for CIW to collect this information from new and incumbent service providers and to be notified when this information changes.

Parent Act: Regulation and Inspection of Social Care (Wales) Act 2016

Date Made:

Date Laid:

Coming into force date: 05 December 2023



SL(6)402 – The Non-Domestic Rating Act 2023 **(Consequential Amendments to Secondary** **Legislation) (Wales) Regulations 2023**

Background and Purpose

The Non-Domestic Rating Act 2023 (“**the 2023 Act**”) implements a number of changes to the system of non-domestic rating in England and Wales.

These Regulations make technical amendments to secondary legislation in relation to Wales which are consequential on sections 1, 2, 3 and 14 of, and Part 1 of the Schedule to, the 2023 Act.

The Regulations were laid before the Senedd at 4:00 pm on 27 October 2023 and came into force at 8:00 pm on that day.

Procedure

Negative.

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

Technical Scrutiny

The following 3 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

The Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (“**the 1989 Regulations**”) make provision for the collection and enforcement of non-domestic rates under the Local Government Finance Act 1988 (“**the 1988 Act**”).

Regulation 3(1) of the 1989 Regulations includes a definition of “*the amount payable*” for the amount of non-domestic rate liability attributable to a ratepayer in a given financial year by reference to provisions in the 1988 Act.

Regulation 2(2)(a) of these Regulations amends references to the 1988 Act appearing in subparagraph (a) of the definition of “*the amount payable*.” However, regulation 2(2)(a) identifies



the existing text to be replaced in that definition as "*section 43(4) to (6) or section 45(4) to (6) of*" [*emphasis added*]. There is no "*section*" after the conjunction "*or*" in the actual text found in that definition.

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

The substituted references to provisions of the 1988 Act in the definition of "*the amount payable*" referred to above made by regulation 2(2)(a) of these Regulations include "*paragraphs 1-7 and 10 of Schedule 4ZA*".

Paragraphs 1 to 7 of Schedule 4ZA to the 1988 Act provide for the calculation of the chargeable amount of non-domestic rate liability of occupied hereditaments appearing on a local list, including the application of partial or full reliefs which apply in specified circumstances. Paragraph 10 contains interpretation provisions for the purposes of Schedule 4ZA.

Paragraph 9 of that Schedule sets out the rules to be applied when calculating the "chargeable amount" in specific circumstances where more than one relief in the Schedule applies. The Government is therefore asked to clarify why a reference to paragraph 9 is not included in the substituted text in sub-paragraph (a) of the definition of "*the amount payable*" in regulation 3(1) of the 1989 Regulations.

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

These Regulations substitute various references in secondary legislation to provisions of the 1988 Act with successor provisions in that Act, primarily found in new Schedules 4ZA, 4ZB and 5A, which were inserted into the 1988 Act by the 2023 Act. The provisions of those Schedules have effect in relation to financial years beginning on or after 1 April 2024 in accordance with section 19(2) of the 2023 Act.

The amendments made by these Regulations came into force at 8pm on 27 October 2023. The Government is therefore asked to clarify why the amendments made by these Regulations referring to those Schedules are not similarly expressed to have effect from financial years beginning on or after 1 April 2024.

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.

We note the breach of the 21-day convention (i.e. the convention that 21 days should pass between the date a "made negative" instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans



MS, Minister for Finance and Local Government, in a letter to the Llywydd dated 27 October 2023.

In particular, we note that the letter says:

“Without consequential amendments, numerous provisions within secondary legislation that make references to the 1988 Act would have their effectiveness undermined. In particular, there would be an unintended limitation on the scope of certain non-domestic rating appeals rights for some ratepayers arising from any gap between commencement of relevant sections of the 2023 Act and the coming into force of this statutory instrument. It is, therefore, considered necessary to bring this statutory instrument into force as soon as possible following commencement of the 2023 Act, to ensure the intended policy effect of the relevant secondary legislation is preserved.”

Welsh Government response

A Welsh Government response to the technical reporting points is required.

Legal Advisers

Legislation, Justice and Constitution Committee

10 November 2023



Agenda Item 4.2

SL(6)404 – The Environmental Protection (Single-use Plastic Products) (Civil Sanctions) (Wales) Regulations 2023

Background and Purpose

The Environmental Protection (Single-use Plastic Products) (Wales) Act 2023 (**the Act**) aims to address the environmental damage caused by the use and disposal of single-use plastic products (**SUPP**) in Wales. Section 5 of the Act creates an offence of supplying prohibited SUPP.

These Regulations provide that a local authority, as regulator, may impose civil sanctions in relation to section 5 offences as an alternative to criminal prosecutions. The civil sanctions are:

- fixed monetary penalties,
- variable monetary penalties,
- compliance notices,
- stop notices, and
- enforcement undertakings.

For example, if a local authority is satisfied beyond reasonable doubt that a person has committed a section 5 offence, the local authority may, where it is appropriate to do so, imposed a fixed penalty of £200 on the person instead of prosecuting the person.

The Regulations also provide for guidance relating to the use of civil sanctions, and for the publication of information on the enforcement action taken by local authorities.

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 four points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

Regulation 6 states:



The regulator may recover any fixed monetary penalty, variable monetary penalty or non-compliance penalty on the order of a court, as if payable under a court order.

We would be grateful if the Welsh Government could clarify the meaning of regulation 6, in particular why it is necessary to say that a penalty recoverable “on the order of a court” is treated as payable “under a court order”. Without an explanation, the reference to an order of the court and a court order seems circular.

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

Regulation 14 provides for the publication of information regarding civil sanctions. For example, a local authority must publish reports specifying the cases in which civil sanctions have been imposed. However, regulation 14(3) states that regulation 14 does not apply in cases where the Welsh Ministers consider that publication would be inappropriate.

We would be grateful if the Welsh Government could:

- (a) clarify the intent behind regulation 14(3),
- (b) give examples of when publication might be inappropriate, and
- (c) explain how the Welsh Government’s opinion as to what is inappropriate will be communicated to local authorities.

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

Paragraph 2 of Schedule 1 sets out the requirements of a notice of intent to impose a fixed monetary penalty. As regards paragraph 2:

- (a) Should a notice of intent also include information as to how the discharge payment may be made?
- (b) What does “requirement” mean in paragraph 2(2)(d)(iii)? Schedule 1 does not expressly refer to any “requirement” (unlike Schedule 2). Should “requirement” be changed to “penalty”?

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

Paragraph 1(4) of Schedule 2 says that before serving a variable monetary penalty notice, the regulator may require a person to provide information in order to establish the amount of any financial benefit arising as a result of a section 5 offence.

However, it is unclear what happens if the person refuses to provide information, i.e. how is this requirement enforced?



Merits Scrutiny

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

Welsh Government response

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

Legal Advisers

Legislation, Justice and Constitution Committee

15 November 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Legislation, Justice and Constitution Committee

SL(6)405 – The Waste Separation Requirements (Wales) Regulations 2023

Background and Purpose

These Regulations set out waste separation requirements in Wales (for the purposes of section 45AA of the Environmental Protection Act 1990 (c. 43) (the “1990 Act”)) with the aim of ensuring that waste is managed in a manner that promotes high quality recycling. The separation requirements apply in respect of all premises other than domestic properties and caravans. However, hospitals are not required to present waste separately for collection until 6 April 2026.

Separation requirements are specified in relation to the presentation of waste for collection (regulation 3), the collection of waste (regulation 4) and the handling of waste that has been collected (regulation 5).

“Recyclable waste streams” is defined in regulation 2 as meaning:

- (a) glass;
- (b) cartons and similar, metal and plastic;
- (c) paper and card;
- (d) food waste;
- (e) unsold small waste electrical and electronic equipment; and
- (f) unsold textiles.

Regulation 3 requires each recyclable waste stream to be presented separately for collection. Those collecting such waste must collect the recyclable waste streams separately (regulation 4). Those who subsequently handle the waste must not mix it with any other recyclable waste stream or with other types of waste or other substances or articles (regulation 5). Where an occupier of premises takes controlled waste to a centralised collection point (for example, a waste recycling centre) this constitutes “presenting for collection” under the Regulations.

These Regulations amend sections 46 (receptacles for household waste) and 47 (receptacles for commercial or industrial waste) of the 1990 Act to clarify the relationship between a requirement imposed by a waste collection authority in Wales by notice under those sections, and the requirements set out in section 45AA and these Regulations.

These Regulations also amend the Waste (England and Wales) Regulations 2011 (S.I. 2011/988) to restrict the application, in relation to Wales, of regulations 13 (duties in relation to collection of waste) and 14 (duty in relation to collected waste) of those Regulations to domestic properties and caravans.

The offences in respect of breaches of the separation requirements are contained in section 45AA(8) of the 1990 Act.



A civil sanctions regime is introduced to enable the regulator (the Natural Resources Body for Wales ("NRW")) to impose fixed monetary penalties, variable monetary penalties and non-compliance penalties.

These Regulations make provision for the procedure relating to the civil sanctions, including appeals. Appeals are to be made to the First-tier Tribunal.

Schedule 2 provides that guidance relating to the use of civil sanctions must be published by NRW. Guidance must also be published relating to the use of non-compliance penalties and enforcement cost recovery notices. Before any guidance is published, the regulator is required to consult. The Regulations also provide for the publication of information on enforcement action taken by the regulator. The regulator is able to recover certain costs of enforcement in the case of variable monetary penalties. The regulator is able to recover any fixed monetary penalty, variable monetary penalty or non-compliance penalty imposed by the regulator under the Regulations together with any financial penalty for late payment.

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 six points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

In regulation 2, there is a difference between the English and Welsh text. In the Welsh text, in the list of definitions, there is an additional definition that isn't found in the English text, namely "person acting in the course of a business". This definition appears correctly later in both language texts in regulation 5(2) and that is the only regulation where the term is used in these Regulations.

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

In the headings of Part 4 and of regulation 7, the title of " the Environmental Protection Act 1990" is repeated in full rather than using the defined term "the 1990 Act" which is actually used in the body of regulation 7.

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



In Schedule 1, there is a difference between the English and Welsh text. The English text refers to “Rigid **paper** containers” under the heading “Cartons and similar” but the Welsh text has translated the meaning as “Rigid **plastic** containers”.

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

In Schedule 2, in paragraph 11(1), in the Welsh text, “determine” has been translated as “ganfyddir”. The term “canfod” is noted in the Legislative Translation Unit’s Glossary as the preferred term when conveying the meaning of “determine” in the context of ascertaining, establishing or discovering something. But it does appear to be incorrect in the context of paragraph 11(1) where the determine refers to specifying the amount of the financial penalty to be paid to the regulator.

The term “pennu” is also noted in the Legislative Translation Unit’s Glossary as the preferred term when conveying the meaning of “determine” in the different context of specifying, setting or fixing an amount etc. Therefore, it would appear that “determine” should have been translated as “bennir” rather than “ganfyddir” to correctly convey the meaning of that term in the context of paragraph 11(1) of Schedule 2 to these Regulations.

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

In Schedule 2, in paragraph 25(2) and (3) there are references that are incorrectly described as “paragraph (1)(b)” but they should be described as “sub-paragraph (1)(b)”. A similar error occurs in paragraph 28(2) where there is a reference that is incorrectly described as “paragraph (1)(a)” but it should be described as “sub-paragraph (1)(a)” – see [Writing laws for Wales](#) 6.16 about composite references.

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

In Schedule 2, in paragraph 25(3)(c), in the English text, the phrase “determining the amount” has been used in relation to the amount of the penalty. However, in the following paragraph 26(c), a slightly different phrase, “establishing the amount”, has been used in relation to the non-compliance penalties and enforcement cost recovery notices.

In the Welsh text, both “determining” and “establishing” have been translated using the same word “bennu” which conveys the meaning of specifying or setting/fixing an amount to be paid in this context. It suggests to the reader of the Welsh text that both “determining the amount” and “establishing the amount” bear the same meaning in those paragraphs. If there is a difference in meaning, it would have been more appropriate to use a different term in the Welsh text of paragraph 26(c), such as “gadarnhau” which is already used in paragraph 11(4) for “establishing the amount”. This would have conveyed the meaning of “establishing” in the sense of ascertaining or discovering the amount involved.



Therefore, the translation of paragraphs 25(3)(c) and 26(c) in the Welsh text of Schedule 2 does not convey the potential different meanings of the English text (if there is an intended difference) in the context of those paragraphs. In addition, it means that the translation of paragraphs 25(3)(c) and 26(c) in the Welsh text of Schedule 2 to these Regulations is different from that found in the corresponding paragraphs in the Schedule to the Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023, although the English text is identical. But it is also unclear whether the difference in the drafting of the English text by using “determining” and “establishing” is deliberate due to an intended difference in their meaning or an inconsistency in the drafting.

Merits Scrutiny

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

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

15 November 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Legislation, Justice and Constitution Committee



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Laying the Workplace Recycling Regulations**

DATE **07 November 2023**

BY **Julie James MS, Minister for Climate Change**

Today, I have laid the subordinate legislation required to implement the Workplace Recycling reforms. These regulations will require all business, public and third sector workplaces to separate key recyclable materials the way households already do across the majority of Wales. This action is critical to tackling the climate and nature emergency declared by the Senedd, and represents significant progress towards a stronger, greener economy as committed to within our Programme for Government.

The three Statutory Instruments (SIs) which make up the Workplace Recycling reforms are scheduled for plenary debate on 28 November, and subject to the approval of the Senedd, they will come into force on 6 April 2024. They are:

The Waste Separation Requirements (Wales) Regulations 2023

This SI sets out the requirement for non-domestic premises (including businesses, charities and public sector bodies) to present specified recyclable materials for collection separately; requires those that collect the specified recyclable materials from non-domestic premises to collect them separately from other recyclable materials and residual waste; and requires those separately collected recyclable materials to be kept separate and not mixed. This will increase the quality and quantity of recyclable materials we collect from workplaces, which will in turn capture important materials to be fed back into the Welsh the economy, whilst also improving the consistency of how we collect and manage recycling in Wales.

The Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023

This SI extends existing bans to include additional specified separately collected recyclable materials from non-domestic and domestic premises to be banned from incineration and landfill. It also bans all wood waste from landfill. This will ensure that the specified

recyclable materials collected from non-domestic premises in accordance with the Waste Separation Regulations are recycled as intended, so they do not end up being wasted by being incinerated or placed in landfill.

The Prohibition on Disposal of Food Waste to Sewer (Civil Sanctions) (Wales) Order 2023

This Order contains provisions that complement the ban on the disposal of food waste to sewer from non-domestic premises. The ban will ensure that workplaces do not install technologies to facilitate the disposal of food waste to sewer as a way to circumvent the new requirement to separate out food waste for recycling. It will also prohibit workplaces currently disposing of their food waste in this way from doing so, as disposing of food waste to sewer can overload the sewerage system and cause blockages. Not treating the food waste appropriately also leads to greenhouse gas emissions and the loss of valuable energy recovery and nutrients.

All three of the SIs also provide for civil sanctions to be available in relation to criminal offences associated with these requirements.

The Workplace Recycling Regulations build on our successful household recycling reforms, where our high rate of recycling in Wales already saves us around 400,000 tonnes of carbon per annum. Alongside the environmental imperatives, importantly rolling out this approach to our workplaces will provide benefits to the economy by capturing a resilient supply of high-quality recycled materials, creating job opportunities and stimulating investment. With the cost of materials contributing to the rising cost-of-living, more effectively keeping high quality recycled materials in the Welsh economy will improve resource efficiency and reduce our reliance on the extraction of primary resources.

A national communications campaign has also been launched to ensure awareness and support workplaces to be ready. This includes a national campaign, the publication of sector-specific guidance, direct mail to all workplaces, case studies and other resources to support workplaces to be ready to comply with the new legislation.

The statutory instruments and associated Explanatory Memorandum and Integrated Impact Assessments can be accessed [here](#). Alongside this I am also publishing the Regulatory Impact Assessment that can be accessed [here](#).

The final *Separate Collection of Waste Materials for Recycling: a Code of Practice for Wales* which sets out practical guidance on how to comply with the separation requirements will also be published shortly, subject to the Senedd's approval of the Waste Separation Requirements (Wales) Regulations 2023. The full details of the consultation on the code can be accessed [here](#). I will publish a further written statement to alert Members when the final Code is published.

The guidance, and other resources for workplaces and waste collectors, is available online here: <https://www.gov.wales/workplace-recycling>

I look forward to engaging with Members of the Senedd during the consideration of the SIs in the coming month.

Agenda Item 4.4

SL(6)406 – The Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023

Background and Purpose

These Regulations prohibit the incineration, or the deposit in landfill, of specified types of separately collected recyclable waste. The Welsh Government explains in the Explanatory Memorandum that *“this will ensure that waste that is presented and collected separately in accordance with the [Waste Separation Requirements (Wales) Regulations 2023] is recycled as intended.”*

The types of waste are:

- Food;
- Small waste electrical and electronic equipment;
- Card;
- Cartons; and
- Certain textiles (unsold textiles will be prohibited from incineration, whilst all textiles will be prohibited from landfill).

In addition, these Regulations prohibit the deposit in landfill of any wood waste, whether or not separately collected.

These Regulations expand on the changes implemented by the Waste (Circular Economy) (Amendment) Regulations 2020, which amended the Environmental Permitting (England and Wales) Regulations 2016 (“the Environmental Permitting Regulations”), to ban certain separately collected materials from incineration and landfill (glass; plastic; metal; and paper).

This new prohibition is achieved by adding the additional specified types of waste to provisions in the Environmental Permitting Regulations under which conditions are deemed to be contained in every environmental permit, which authorises a landfill, small waste incineration plant, waste co-incineration plant or waste incineration plant.

The relevant condition is that the operator of such a facility must not accept specified types of waste for incineration or landfill if that waste has been separately collected for the purpose of preparing for re-use or recycling.

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 7 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

In the preamble to these Regulations, section 55a of the Regulatory Enforcement and Sanctions Act 2008 is cited, along with a number of other provisions, as an enabling power for the making of these Regulations. However, the 2008 Act does not contain a section 55a. An explanation is required as to the inclusion of section 55a of the 2008 Act as an enabling power.

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

In regulation 3, the Environmental Permitting (England and Wales) Regulations 2016 are defined as “*the 2016 Regulations*”. But in the headings of Part 3 and of regulation 4, and also in the body of the text of regulation 4(1), those Regulations are referred to by their full title rather than by that defined term.

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

In the Schedule, in paragraphs 6(c), 16(c), 19(4)(c) and 22(3)(c), in the English text, the phrase “*how payment **may** be made*” occurs in a similar context. But in the Welsh text, the translation has used a different term to convey the meaning of “*may*” in paragraphs 6(c) and 16(c), when compared with paragraphs 19(4)(c) and 22(3)(c) of the Schedule.

In paragraphs 6(c) and 16(c), the translation has used “*gellir*” which is normally used for “*may*” when conveying possibility or “*can*”, so that the phrase would be understood as meaning “*how payment **can** be made*”. In paragraphs 19(4)(c) and 22(3)(c), the translation has used “*caniateir*” which is the standardised term found in the Legislative Translative Unit’s Drafting Guidance for “*may*” when conveying being given discretionary power to do something, “*permitted*” or “*is allowed*”, so that the phrase would be understood as meaning “*how payment **is permitted/ allowed** to be made*”.

The difference in the choice of terms in the translation suggests to the reader of the Welsh text that there is a difference in meaning when the phrase “*how payment may be made*” is used in paragraphs 6(c) and 16(c) compared with paragraphs 19(4)(c) and 22(3)(c) although no such difference of meaning is found in the English text.

In addition, in the corresponding paragraphs of the Schedule to the Prohibition on Disposal of Food Waste to Sewer (Civil Sanctions) (Wales) Order 2023, the Welsh text has consistently used “*caniateir*” on each occasion in the same phrase.



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

In paragraph 11(1) of the Schedule to these Regulations, in the Welsh text, two alternative words are used next to each other in the relevant sentence to convey the word “determine” (which is used in the English text), namely “ganfyddir bennir”. As a result, the sentence in the Welsh text does not make sense. The use of “bennir” would appear to be correct in this context.

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

In the opening words of paragraph 25(1) of the Schedule to these Regulations, the translation is ambiguous and could suggest to the reader of the Welsh text that it means “Where power is conferred on the regulator **in these Regulations** to impose a civil sanction”, rather than “Where **these Regulations** confer power on the regulator to impose a civil sanction”. The meaning of the Welsh text would be clearer if it had followed the syntax used in the translation of paragraph 25(1) of the Schedule to the Prohibition on Disposal of Food Waste to Sewer (Civil Sanctions) (Wales) Order 2023. It would then be translated as “Pan fo’r **Rheoliadau hyn** yn rhoi pŵer i’r rheoleiddiwr i osod sancsiwn sifil” rather than “Pan fo pŵer yn cael ei roi i’r rheoleiddiwr **yn y Rheoliadau hyn** i osod sancsiwn sifil”.

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

In the opening words to paragraph 25(2) and (3) of the Schedule to these Regulations, the references to “**paragraph** (1)(b)” should instead be described as “**sub-paragraph** (1)(b)” (emphasis added). A similar issue occurs in paragraph 28(2) of the Schedule, where the reference to “**paragraph** (1)(a)” should be described as “**sub-paragraph** (1)(a)” (emphasis added). See Writing Laws for Wales 6.16 about composite references.

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

In paragraph 25(3)(c) of the Schedule to these Regulations, in the English text, the phrase “**determining** the amount” (emphasis added) has been used in relation to the amount of the relevant penalty. However, in paragraph 26(c) of the Schedule, “**establishing** the amount” (emphasis added) has been used in relation to non-compliance penalties and enforcement cost recovery notices.

In the Welsh text, different words have been used in the corresponding places to maintain a difference of meaning. However, neither of the words used in the Welsh text appear to convey the different meanings of the English text (assuming there is an intended difference between “determining” and “establishing” in the relevant paragraphs) in the context of those paragraphs.

In paragraph 25(3)(c) of the Schedule, “ganfod” has been used. However, the context would suggest that “bennu” may be the more appropriate choice if “determining” is being used as



meaning to specify or set/fix the amount of penalty to be paid. It is noted that *"bennu"* has been used in the corresponding paragraph 25(3)(c) of the Schedule to the Prohibition on Disposal of Food Waste to Sewer (Civil Sanctions) (Wales) Order 2023.

In paragraph 26(c) of the Schedule to these Regulations, *"nodi'r"* has been used. However, the context would suggest that *"gadarnhau"* may be the more appropriate choice of word if *"establishing"* is being used as meaning ascertaining or discovering the amount. However, if the intention of the English text is to convey the same meaning as *"determine"* in paragraph 25(3)(c), then *"bennu'r"* would be the more appropriate choice of word in the Welsh text. It is noted that in the corresponding paragraph 26(c) of the Schedule to the Prohibition on Disposal of Food Waste to Sewer (Civil Sanctions) (Wales) Order 2023, and of Schedule 2 to the Waste Separation Requirements (Wales) Regulations 2023, the Welsh text has used *"bennu'r"* where the English text uses *"establishing"* in this context.

These inconsistencies between the Welsh and English texts leave it unclear as to whether there is a deliberate difference in the drafting between paragraphs 25(3)(c) and 26(c) of the Schedule to these Regulations, in terms of using *"determining"* and *"establishing"* respectively.

Merits Scrutiny

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

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

These Regulations operate by deeming that all environmental permits issued under the Environmental Permitting Regulations, which authorise a landfill or incineration plant, contain a condition prohibiting the landfill or incineration (as applicable) of the specified separately collected waste materials. This condition will apply to all environmental permits including those issued prior to the making of these Regulations.

As a result, these Regulations will have retrospective effect to the extent that they affect past events or transactions. That is, they modify the terms of environmental permits issued before these Regulations come into force, albeit offences associated with the new permit conditions can only be committed after these Regulations have come into force.

Welsh Government response

A Welsh Government response is required except in relation to reporting point 8.

Legal Advisers

Legislation, Justice and Constitution Committee

16 November 2023





Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Laying the Workplace Recycling Regulations**

DATE **07 November 2023**

BY **Julie James MS, Minister for Climate Change**

Today, I have laid the subordinate legislation required to implement the Workplace Recycling reforms. These regulations will require all business, public and third sector workplaces to separate key recyclable materials the way households already do across the majority of Wales. This action is critical to tackling the climate and nature emergency declared by the Senedd, and represents significant progress towards a stronger, greener economy as committed to within our Programme for Government.

The three Statutory Instruments (SIs) which make up the Workplace Recycling reforms are scheduled for plenary debate on 28 November, and subject to the approval of the Senedd, they will come into force on 6 April 2024. They are:

The Waste Separation Requirements (Wales) Regulations 2023

This SI sets out the requirement for non-domestic premises (including businesses, charities and public sector bodies) to present specified recyclable materials for collection separately; requires those that collect the specified recyclable materials from non-domestic premises to collect them separately from other recyclable materials and residual waste; and requires those separately collected recyclable materials to be kept separate and not mixed. This will increase the quality and quantity of recyclable materials we collect from workplaces, which will in turn capture important materials to be fed back into the Welsh the economy, whilst also improving the consistency of how we collect and manage recycling in Wales.

The Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023

This SI extends existing bans to include additional specified separately collected recyclable materials from non-domestic and domestic premises to be banned from incineration and landfill. It also bans all wood waste from landfill. This will ensure that the specified

recyclable materials collected from non-domestic premises in accordance with the Waste Separation Regulations are recycled as intended, so they do not end up being wasted by being incinerated or placed in landfill.

The Prohibition on Disposal of Food Waste to Sewer (Civil Sanctions) (Wales) Order 2023

This Order contains provisions that complement the ban on the disposal of food waste to sewer from non-domestic premises. The ban will ensure that workplaces do not install technologies to facilitate the disposal of food waste to sewer as a way to circumvent the new requirement to separate out food waste for recycling. It will also prohibit workplaces currently disposing of their food waste in this way from doing so, as disposing of food waste to sewer can overload the sewerage system and cause blockages. Not treating the food waste appropriately also leads to greenhouse gas emissions and the loss of valuable energy recovery and nutrients.

All three of the SIs also provide for civil sanctions to be available in relation to criminal offences associated with these requirements.

The Workplace Recycling Regulations build on our successful household recycling reforms, where our high rate of recycling in Wales already saves us around 400,000 tonnes of carbon per annum. Alongside the environmental imperatives, importantly rolling out this approach to our workplaces will provide benefits to the economy by capturing a resilient supply of high-quality recycled materials, creating job opportunities and stimulating investment. With the cost of materials contributing to the rising cost-of-living, more effectively keeping high quality recycled materials in the Welsh economy will improve resource efficiency and reduce our reliance on the extraction of primary resources.

A national communications campaign has also been launched to ensure awareness and support workplaces to be ready. This includes a national campaign, the publication of sector-specific guidance, direct mail to all workplaces, case studies and other resources to support workplaces to be ready to comply with the new legislation.

The statutory instruments and associated Explanatory Memorandum and Integrated Impact Assessments can be accessed [here](#). Alongside this I am also publishing the Regulatory Impact Assessment that can be accessed [here](#).

The final *Separate Collection of Waste Materials for Recycling: a Code of Practice for Wales* which sets out practical guidance on how to comply with the separation requirements will also be published shortly, subject to the Senedd's approval of the Waste Separation Requirements (Wales) Regulations 2023. The full details of the consultation on the code can be accessed [here](#). I will publish a further written statement to alert Members when the final Code is published.

The guidance, and other resources for workplaces and waste collectors, is available online here: <https://www.gov.wales/workplace-recycling>

I look forward to engaging with Members of the Senedd during the consideration of the SIs in the coming month.

Agenda Item 4.5

SL(6)407 – The Prohibition on Disposal of Food Waste to Sewer) (Civil Sanctions) (Wales) Order 2023

Background and Purpose

This Order makes provision in relation to the prohibition on the disposal of food waste to sewer under section 34D of the Environmental Protection Act 1990 (as inserted by section 66 of the Environment (Wales) Act 2016). Breach of this prohibition is an offence under section 34D of the Environmental Protection Act 1990.

A civil sanctions regime is introduced to enable the regulator to impose fixed monetary penalties, variable monetary penalties and non-compliance penalties. The regulator, for the purposes of this Order, is the local authority for the area in which the premises are situated.

This Order makes provision for the procedure relating to the civil sanctions, including appeals. Appeals under this Order are to the First-tier Tribunal.

The Schedule to this Order provides that guidance relating to the use of civil sanctions must be published. Guidance must also be published relating to the use of non-compliance penalties and enforcement cost recovery notices. Before any guidance is published, the regulator is required to consult. This Order also provides for the publication of information on enforcement action taken by the regulator. The regulator is able to recover certain costs of enforcement in the case of variable monetary penalties.

The regulator is able to recover any fixed monetary penalty, variable monetary penalty or non-compliance penalty imposed by the regulator under this Order together with any financial penalty for late payment.

Article 6 gives enforcement officers powers of investigation in relation to potential offences, including powers of entry and seizure.

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

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



In article 3, the provision refers to an “offence under section **34D** of the 1990 Act”. But on every other occasion in this Order the provisions always refer to an offence under “section **34D(3)**” of the 1990 Act (see articles 5, 6(1) and (3), and paragraphs 1(1) and 11(1) of the Schedule). In this regard, section 34D(3) is the specific provision that creates an offence under section 34D of the 1990 Act. Therefore, it would have been more precise to cite “section **34D(3)**” of the 1990 Act in article 3 of this Order, and also more consistent with the other provisions of the Order.

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

In the Schedule, in paragraph 11(1), in the Welsh text, “determine” has been translated as “ganfyddir”. The term “canfod” is noted in the Legislative Translation Unit’s Glossary as the preferred term when conveying the meaning of “determine” in the context of ascertaining, establishing or discovering something. But it does appear to be incorrect in the context of paragraph 11(1) where the determine refers to specifying the amount of the financial penalty to be paid to the regulator, and hasn’t been used elsewhere in this Order.

The term “pennu” is also noted in the Legislative Translation Unit’s Glossary as the preferred term when conveying the meaning of “determine” in the different context of specifying, setting or fixing an amount etc. In this regard, “pennu” is the term that has been used as the translation of “determine” elsewhere in this Order in the same context as paragraph 11(1) – see paragraphs 19(2) and (3), and 25(3)(c) of the Schedule. In addition, “determine” has been translated as “pennu” in similar provisions that are found in other Welsh SIs such as paragraphs 1(1)(a) and 24(2) and (3) of the Schedule to SI 2018/760 (W. 151).

Therefore, it would appear that “determine” should have been translated as “bennir” rather than “ganfyddir” to correctly convey the meaning of that term in the context of paragraph 11(1) of the Schedule to this Order.

There is also some confusion in relation to the translation of this term in the corresponding numbered paragraph of the Schedule to the Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023 where “ganfyddir bennir” has been used in the Welsh text.

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

In the Schedule, in paragraph 25(2) and (3), there are references that are incorrectly described as “**paragraph** (1)(b)” but they should be described as “**sub-paragraph** (1)(b)” – see Writing LW 6.16(2) about composite references. In addition, in paragraph 28(2) of the Schedule, there is a similar reference which is incorrectly described as “**paragraph** (1)(a)” which should be described as “**sub-paragraph** (1)(a)”.

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



In the Schedule, in paragraph 25(3)(c), in the English text, the phrase “**determining** the amount” has been used in relation to the amount of the penalty. However, in the following paragraph 26(c), a slightly different phrase, “**establishing** the amount”, has been used in relation to the non-compliance penalties and enforcement cost recovery notices.

In the Welsh text, both “determining” and “establishing” have been translated using the same word “bennu” which conveys the meaning of specifying or setting/fixing an amount to be paid in this context. It suggests to the reader of the Welsh text that both “determining the amount” and “establishing the amount” bear the same meaning in those paragraphs. If there is a difference in meaning, it would have been more appropriate to use a different term in the Welsh text of paragraph 26(c), such as “**gadarnhau**”. This would have conveyed the meaning of “establishing” in the sense of ascertaining or discovering the amount involved.

Therefore, the translation of paragraphs 25(3)(c) and 26(c) in the Welsh text of the Schedule does not convey the potential different meanings of the English text (if there is an intended difference) in the context of those paragraphs. In addition, it means that the translation of paragraphs 25(3)(c) and 26(c) in the Welsh text of the Schedule to this Order is different from that found in the corresponding paragraphs in the Schedule to the Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023, although the English text is identical. But it is also unclear whether the difference in the drafting of the English text by using “determining” and “establishing” is deliberate due to an intended difference in their meaning or an inconsistency in the drafting.

Merits Scrutiny

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

Welsh Government response

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

Legal Advisers

Legislation, Justice and Constitution Committee

15 November 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament **Pack Page 96**

Legislation, Justice and Constitution Committee



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Laying the Workplace Recycling Regulations**

DATE **07 November 2023**

BY **Julie James MS, Minister for Climate Change**

Today, I have laid the subordinate legislation required to implement the Workplace Recycling reforms. These regulations will require all business, public and third sector workplaces to separate key recyclable materials the way households already do across the majority of Wales. This action is critical to tackling the climate and nature emergency declared by the Senedd, and represents significant progress towards a stronger, greener economy as committed to within our Programme for Government.

The three Statutory Instruments (SIs) which make up the Workplace Recycling reforms are scheduled for plenary debate on 28 November, and subject to the approval of the Senedd, they will come into force on 6 April 2024. They are:

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This SI sets out the requirement for non-domestic premises (including businesses, charities and public sector bodies) to present specified recyclable materials for collection separately; requires those that collect the specified recyclable materials from non-domestic premises to collect them separately from other recyclable materials and residual waste; and requires those separately collected recyclable materials to be kept separate and not mixed. This will increase the quality and quantity of recyclable materials we collect from workplaces, which will in turn capture important materials to be fed back into the Welsh the economy, whilst also improving the consistency of how we collect and manage recycling in Wales.

The Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023

This SI extends existing bans to include additional specified separately collected recyclable materials from non-domestic and domestic premises to be banned from incineration and landfill. It also bans all wood waste from landfill. This will ensure that the specified

recyclable materials collected from non-domestic premises in accordance with the Waste Separation Regulations are recycled as intended, so they do not end up being wasted by being incinerated or placed in landfill.

The Prohibition on Disposal of Food Waste to Sewer (Civil Sanctions) (Wales) Order 2023

This Order contains provisions that complement the ban on the disposal of food waste to sewer from non-domestic premises. The ban will ensure that workplaces do not install technologies to facilitate the disposal of food waste to sewer as a way to circumvent the new requirement to separate out food waste for recycling. It will also prohibit workplaces currently disposing of their food waste in this way from doing so, as disposing of food waste to sewer can overload the sewerage system and cause blockages. Not treating the food waste appropriately also leads to greenhouse gas emissions and the loss of valuable energy recovery and nutrients.

All three of the SIs also provide for civil sanctions to be available in relation to criminal offences associated with these requirements.

The Workplace Recycling Regulations build on our successful household recycling reforms, where our high rate of recycling in Wales already saves us around 400,000 tonnes of carbon per annum. Alongside the environmental imperatives, importantly rolling out this approach to our workplaces will provide benefits to the economy by capturing a resilient supply of high-quality recycled materials, creating job opportunities and stimulating investment. With the cost of materials contributing to the rising cost-of-living, more effectively keeping high quality recycled materials in the Welsh economy will improve resource efficiency and reduce our reliance on the extraction of primary resources.

A national communications campaign has also been launched to ensure awareness and support workplaces to be ready. This includes a national campaign, the publication of sector-specific guidance, direct mail to all workplaces, case studies and other resources to support workplaces to be ready to comply with the new legislation.

The statutory instruments and associated Explanatory Memorandum and Integrated Impact Assessments can be accessed [here](#). Alongside this I am also publishing the Regulatory Impact Assessment that can be accessed [here](#).

The final *Separate Collection of Waste Materials for Recycling: a Code of Practice for Wales* which sets out practical guidance on how to comply with the separation requirements will also be published shortly, subject to the Senedd's approval of the Waste Separation Requirements (Wales) Regulations 2023. The full details of the consultation on the code can be accessed [here](#). I will publish a further written statement to alert Members when the final Code is published.

The guidance, and other resources for workplaces and waste collectors, is available online here: <https://www.gov.wales/workplace-recycling>

I look forward to engaging with Members of the Senedd during the consideration of the SIs in the coming month.

Agenda Item 4.6

SL(6)408 – The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Wales) Regulations 2023

Background and Purpose

Section 5 of the Retained EU Law (Revocation and Reform) Act 2023 (“the REUL Act”) provides that “retained EU law” will be known as “assimilated law” after the end of 2023. Related terms are similarly renamed by section 5, for example “retained direct EU legislation” will be known as “assimilated direct legislation”.

The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Wales) Regulations 2023 (“the Regulations”) amend Welsh-made primary and subordinate legislation in consequence of this change in terminology. For example, the Regulations replace a reference to “retained EU law” with a reference to “assimilated law”, and a reference to “retained direct EU legislation” with a reference to “assimilated direct legislation”, in the Waste (Wales) Measure 2010.

According to the Explanatory Memorandum, the Regulations do not result in any change in policy. Rather, the amendments are being made for reasons of legal certainty and accessibility.

Procedure

Affirmative

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

Technical Scrutiny

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

Merits Scrutiny

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

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

As noted in the Explanatory Memorandum, this is the first time that the Welsh Ministers are seeking to exercise powers under the REUL Act.



It is also noted that the Senedd twice refused to give its consent to the Bill that became the REUL Act. Legislative Consent Motions for the Bill were debated, and not agreed, in Plenary on [28 March 2023](#) and [6 June 2023](#).

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

15 November 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee

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Agenda Item 4.7

SL(6)409 – The Plant Health etc. (Miscellaneous Fees) (Amendment) (Wales) Regulations 2023

Background and Purpose

These Regulations amend the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 (“the 2019 Regulations”) and the Plant Health etc. (Fees) (Wales) Regulations 2018 (“the 2018 Regulations”). The amendments extend the exemption from payment of certain fees payable to the Welsh Ministers under the 2018 Regulations and the 2019 Regulations. These Regulations are made in exercise of the powers conferred on the Welsh Ministers by the European Union (Withdrawal) Act 2018.

The purpose of these regulations is to extend the exemption from the payment of fees for pre-export and export certification services relating to regulated material which is moving from Wales to a business or private individual in Northern Ireland. This is known as the Movement Assistance Scheme.

Regulation 2 amends the 2018 Regulations by providing that the exemption ceases to have effect at the end of 30 June 2025.

Regulation 3 amends the 2019 Regulations by providing that the exemption ceases to have effect at the end of 30 June 2025.

Regulation 3(5D) of the 2019 Regulations erroneously provided that the exemption would end on 31 December 2022. Regulation 3 now extends this exemption.

Procedure

Draft Affirmative.

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

Technical Scrutiny

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

1. Standing Order 21.2 (iv) – that it appears to have retrospective effect where the authorising enactment does not give express authority for this.

Regulation 3 of the 2019 Regulations provided an exemption, in certain circumstances, from the payment of fees in respect of applications to the Forestry Commission for a phytosanitary certificate for export (or re-export) to Northern Ireland for consignments containing wood, wood products, isolated bark or used forestry machinery. This exemption



erroneously ended on 31 December 2022.

Regulation 3 of these Regulations extend the exemption to 30 June 2025. There is therefore a retrospective period between 31 December 2022 and the date on which these Regulations come into force, 30 December 2023.

The Explanatory Memorandum provides the following information on page 2, under 'Matters of special interest to the Legislation, Justice and Constitution Committee':

Regulation 3(5D) of the Plant Health (Fees)(Forestry) (Wales) Regulations 2019 was extended in line with other plant health fees in Wales and in other governments but erroneously ended on 31st December 2022.

Regulation 3 now extends this exemption until 30th June 2025. There is a retrospective period between 31st December 2022 and the 30th December 2023 when this instrument comes into force. No fees were applied to exports regulated under regulation 3(5C) in 2023 and, therefore, no one has been, or will be, placed at a disadvantage because of the retrospective provision.

Whilst the Explanatory Memorandum explains the practical implications of the retrospectivity, it is noted that the enabling provisions cited do not appear to provide express authority for the Regulations to have retrospective effect.

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

Regulation 3(5C) of the 2019 Regulations ceased to have effect on 31 December 2022, by virtue of regulation 3(5D).

The Welsh Government is asked how it considers that substituting the date in regulation 3(5D) revives regulation 3(5C) of the 2019 Regulations?

Merits Scrutiny

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

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

There appear to be inconsistencies between the Explanatory Note and the effect of the amendments made by these Regulations.

The Explanatory Note states:

Regulation 2 amends the Plant Health etc. (Fees) (Wales) Regulations 2018 by providing that the relevant date for fees to become payable under regulation 5A(4A) is 30 June 2025.



Regulation 3 amends the Plant Health (Fees) (Forestry) (Wales) Regulations 2019 by providing that the relevant date for fees to become payable under regulation 3(5C) is 30 June 2025.

Regulation 5A(4A) of the 2018 Regulations and regulation 3(5C) of the 2019 Regulations provide for the exemption from the payment of fees, the fees are not payable under these particular paragraphs. Once the fees become payable, these paragraphs cease to have effect.

Further, the effect of the amendments is that regulation 5A(4A) of the 2018 Regulations and regulation 3(5C) of the 2019 Regulations cease to have effect at the end of 30 June 2025, therefore the fees will become payable on 1 July 2025.

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

No consultation has been undertaken, however the Explanatory Memorandum states, on page 5, that:

The amendments introduced by this instrument do not include any policy changes.

and

Feedback from informal stakeholder engagement conducted by the UK Government was strongly supportive of the proposed extension, given its benefits to trade.

Welsh Government response

A Welsh Government response is required to reporting points 1, 2 and 3.

Legal Advisers

Legislation, Justice and Constitution Committee

15 November 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament **Pack Page 104**

Legislation, Justice and Constitution Committee

SL(6)410 – The Regulated Services (Special School Residential Services) (Wales) Regulations 2023

Background and Purpose

These Regulations prescribe the provision of accommodation and care or nursing to a pupil of a special school as a “regulated service” for the purposes of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) and will require a person providing such a service to register under the Act.

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

Regulation 2(3) provides for a definition of “hospital” and refers to three different terms that are defined in other legislation. Unlike other definitions in regulation 2(3), no reference is made to the sections of the other legislation that the three terms can be found in. For example, “health service hospital” is defined as having the meaning given in the National Health Service (Wales) Act 2006 but does not refer to the specific section which gives the meaning. This is not helpful as the reader is then required to review large pieces of legislation to find the meanings of the relevant terms. An explanation is therefore requested as to why a consistent approach is not taken to defining terms in regulation 2(3).

Merits Scrutiny

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

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

14 November 2023



Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy

Agenda Item 6.1



Llywodraeth Cymru
Welsh Government

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

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

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SeneddLJC@assembly.wales

Ein cyf/Our ref: VG-PO-0381-23

16 November 2023

Dear Paul, Huw

I am writing to inform you, in line with the inter-institutional relations agreement, that a meeting of the Inter-Ministerial Group for Trade is scheduled for Monday 20 November 2023.

The agenda will cover the ongoing negotiations with India, UK-United States memorandum of understandings, the upcoming WTO 13th Ministerial Conference (MC-13) and engagement between Wales and the UK Government around negotiations.

I will update you further following the meeting.

Yours sincerely,

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy

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

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



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	Research to prepare for the devolution of policing in Wales
DATE	14 November 2023
BY	Mick Antoniw MS, Counsel General and Minister for the Constitution Jane Hutt MS, Minister for Social Justice and Chief Whip

Pursuing the devolution of justice and policing is a commitment in the Welsh Government's [Programme for Government 2021-26](#). As Members are aware, this commitment follows the unanimous recommendation of the Commission on Justice in Wales (the [Thomas Commission](#)), which reported in 2019 following the largest ever examination of the operation of the justice system in Wales. Devolution of policing specifically was also a recommendation from the Commission on Devolution in Wales (the [Silk Commission](#)) established by the UK Government, which reported in 2014.

Our ultimate objective remains to pursue the devolution of justice and policing in its entirety. However, we believe that a phased approach is preferable. Policing is one of the areas we have consistently identified as suitable for early devolution, as well as youth justice and probation - in both of these areas, work is already underway to prepare for potential devolution, as was set out in our statement on 27 June.

In pursuing the case for policing devolution, it is important that we understand the challenges involved, as well as how those could be addressed. This includes, among other things, understanding the impacts on other areas of the justice system, on cross-border working, and on the additional capacity needed within Wales.

Devolution is also not an end in itself; the Welsh Government advocates it because it offers opportunities to improve the delivery of public services and to better serve the people of Wales. It is therefore also important to understand fully the potential benefits, including how we could deliver services in a more integrated, more tailored or more effective way. The four police forces in Wales have already chosen to work together and with Welsh Government and other bodies, not least through the Policing Partnership Board for Wales which works to improve the policing service to the public in the devolved environment.

We have therefore commissioned an independent team to work with key stakeholders to understand the benefits, opportunities, challenges and risks of a devolved policing model for Wales. The review is intended to propose a long-term vision for a devolved policing service in Wales, including its underpinning principles and values and the overall outcomes we might expect to see for people and communities. It is also being asked to report on the practical considerations associated with implementing policing devolution in Wales. The review will be led by Carl Foulkes, previously the Chief Constable of North Wales, and will liaise with Dame Vera Baird in her capacity as Independent Expert Adviser to the Welsh Government on Justice Devolution.

The review is supported by all four of the elected Police and Crime Commissioners in Wales. We also hope and expect that, as with the Thomas and Silk Commissions, the review will see strong participation from all of the principal bodies involved in the delivery of policing in Wales, including all of Wales's police forces themselves. Finally, the review will also engage with groups and communities whose experience of dealing with the police is in a personal rather than a professional capacity – such as victims of crime, or ethnic minority communities with historically low levels of trust in policing.

Agenda Item 7.2

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

Our ref: CG/PO/385/2023



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
SeneddLJC@Senedd.Wales

15th November 2023

Dear Huw,

Thank you for your letter of 1st November 2023 seeking responses to questions in relation to the Retained EU Law (Revocation and Reform) Act. My answers are set out in the following Annex.

Mick Antoniw AS/MS

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

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

Annex

1. It remains the case that no mechanism has been agreed between the UK Government and the Welsh Government in relation to consent for UK Ministers making regulations using powers in the REUL Act.

I am not aware of any localised agreements or arrangements. There are good official-level technical discussions and information flows between Welsh Government and a number of UK Departments, including Defra, on a range of aspects of the implementation of the REUL Act.

We continue to make clear to UK Ministers our disappointment at their refusal to include statutory requirements on the face of the REUL Act for UK Government Ministers to obtain consent from Welsh Ministers on instruments covering devolved matters.

During the progress of the REUL Bill, UK Government Ministers indicated they do not intend normally to use the powers in the Bill in devolved areas without agreement of the relevant devolved government (albeit our requests for this to be on a statutory basis were refused).

Since the passing of the REUL Act, we have engaged constructively with the UK Government on proposals to use powers under the REUL Act. In the absence of a statutory mechanism we are pressing for a formal mechanism for dealing with consent matters under the REUL Act, including guidance to apply across the UK Government to ensure that the devolution settlement is properly and fully respected in implementing the Act.

In this context, the approach Ministers in Defra have taken as set out in your letter are consistent with the UK Government's non-statutory commitment to seek agreement from devolved governments. In turn, it also demonstrates Welsh Ministers' pragmatic approach to engage constructively on these matters given the potential impacts in devolved areas.

Should any formal agreements be reached, I will keep the Committee informed.

2. It is not my interpretation what the Minister described amounts to a veto. The process followed by Defra appears to be a standard request for agreement where a proposal for a Westminster SI includes Wales in scope in relation to a matter of devolved competence. We would expect that should Welsh Ministers not consent to the inclusion of Wales in the instrument, that Defra would not do so.

3. The absence of a statutory consent mechanism in the Act is highly regrettable, especially when we made clear to UK Ministers our preference for this on a number of occasions. However, given that absence, it is not a requirement under the Act for UK Ministers to obtain the consent of the Welsh Ministers to Westminster SIs made under the Act in devolved areas. Nevertheless, to respect the integrity of the devolution settlement our view still stands that they should do so, as in this instance and many others in the case of Defra.

In this instance the UK Government appears to be acting in accordance with the non-statutory commitments they made in the absence of a statutory requirement or formal agreement with the Devolved Governments. We continue to communicate with the UK Government on devolution aspects of the implementation of the REUL Act and will keep the Committee informed of meaningful developments.

4. My statements that you quote are in line with each other, with each applying at a different time period. I explained on 2 June that there had not been substantive engagement by UK Government with Welsh Government on the contents of Schedule 1 prior to its inclusion in the Bill at Lords Report stage on 17 May. Following the inclusion of Schedule 1 in the Bill (but not prior to it), Welsh Government officials considered its contents and held discussions with UK Government officials on relevant matters. This latter process took place as the Bill completed its passage through Westminster, prior to Royal Assent on 26 June.

Mick Antoniw MS
Counsel General and Minister for the Constitution

1 November 2023

Dear Mick,

Retained EU Law (Revocation and Reform) Act 2023

Thank you for your letter of 12 October 2023 which we considered at our meeting on 16 October 2023. We welcome the responses you provided to the questions we asked in our letter on 22 September 2023.

In my previous letter I highlighted to you correspondence from other Welsh Ministers that relates to the *Retained EU Law (Revocation and Reform) Act 2023* (the REUL Act) and which we have considered in recent weeks. We have now received responses from Julie James MS, the Minister for Climate Change, and Lesley Griffiths MS, the Minister for Rural Affairs and North Wales, and Trefnydd.

We discussed the information we have received from yourself and the other Welsh Ministers at our meeting on 23 October 2023 and we agreed to write again to you given your overall responsibility in the Welsh Government for constitutional affairs. We would welcome additional clarity on a number of important matters; not least what appears to be a working consent-seeking process between UK Ministers in the Department for Environment, Food and Rural Affairs (DEFRA) and relevant Welsh Ministers.

We have agreed to also write to Ministers in DEFRA to seek information about the consent they have sought for making regulations in devolved areas under the REUL Act.

I would be grateful if you could provide a response to our further questions, which are included in the annex to this letter, by 16 November 2023.

I am copying this letter to the Minister for Climate Change and the Minister for Rural Affairs and North Wales, and Trefnydd.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair



1. In your letter to us on 12 October 2023 you told us “No mechanism has been agreed between UK Government and the Devolved Governments about how consent should be obtained in relation to UK Ministers making regulations using powers in the REUL Act”. The letters from the Minister for Climate Change and the Minister for Rural Affairs and North Wales, and Trefnydd are examples of Ministers in DEFRA seeking the consent of the Welsh Government before regulations are to be made under the REUL Act. Given you state that a mechanism for seeking such consent has not been agreed:
 - a. Are you aware of specific UK Government departments, such as DEFRA, making localised agreements and/or arrangements with relevant departments in the Welsh Government about when and how UK Ministers will engage with and seek the informal consent of Welsh Ministers before making regulations in devolved areas under the REUL Act?
 - b. What is your view on such localised agreements and/or arrangements, if they are in place, and what role do you consider they will play in you seeking a mechanism that applies across the whole UK Government?
 - c. If departmental agreements and/or agreements are in place, please would you provide us with the specific details.
2. In her letter to us on 27 September 2023, in relation to the Fluorinated Greenhouse Gases (Amendment) Regulations 2023, the Minister for Climate Change said “If Welsh Ministers had refused consent, or not confirmed their decision in the requested timescales, the Regulations would not have been laid before the UK Parliament.” This could be interpreted as the Welsh Ministers having a power of veto over whether UK Ministers proceed with their regulatory intentions. What is your view on this matter and, in particular, is this your understanding of the terms under which Lord Benyon sought consent for the making of these Regulations?
3. In her letter to us on 3 October 2023, in relation to the Plant Protection Products (Miscellaneous Amendments) Regulations 2023, the Minister for Rural Affairs and North Wales, and Trefnydd said “Whilst there is not a legal requirement to seek consent, the UK Government have sought the Welsh Ministers consent in accordance with the convention on legislating in devolved areas.” This appears to apply the terms of the Sewel Convention to the making of subordinate legislation. What is your view on this matter and, in particular, is this your understanding of the terms under which Rebecca Pow MP, Minister for Environmental Quality and Resilience, sought consent for the making of these Regulations?

4. In your letter to us on 12 October 2023, and in response to our question 2 on Welsh Government departments undertaking work to ensure the retained EU law listed in the Schedule to the REUL Act is no longer needed, you said “Welsh Government officials in the central team dealing with post-Brexit matters worked with individual policy teams to ensure that the contents of the Schedule for revocation were fit for purpose **when it was constructed in the latter Parliamentary stages** at Westminster”. (Emphasis added.) This statement is not in line with information you have previously provided to us. On 2 June 2023 you told us “The Welsh Government was not engaged by the UK Government on the formulation of the list of REUL in the new schedule. (...) While there was some official level engagement before the UK Government amendments were tabled this was not sufficiently meaningful or detailed for the Welsh Government to know what form those amendments would take nor what instruments would be included in the new Schedule of REUL to be revoked. (...) The Welsh Government was only able to review the full list at the same time as the LJC Committee...”. Please would you confirm and provide the necessary clarity on whether Welsh Government officials were involved in the construction of the Schedule to the REUL Act, as described in your most recent letter, or if the statements you made in June are accurate and the UK Government did not engage the Welsh Government in the formulation of the list of retained EU law in that Schedule.



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Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref: RE/384/2023

Huw Irranca-Davies MS
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15 November 2023

Dear Huw,

Thank you for your letter on behalf of the Committee in relation to the Legislative Consent Memorandum (LCM) on the Economic Activity of Public Bodies (Overseas Matters) Bill.

My previous letter used clause references from a Procurement Bill print available at the time of writing. Due to amendments being made to the Procurement 'Bill' this shifted the clause numbers forward. This means, 'Disapplication of duty in section 17 of the Local Government Act 1988' has become section 116 in the Procurement Act. Therefore, please refer to [section 116, and consequently section 116\(3\)\(d\)](#), in relation to your question on the Welsh Minister's powers for the disapplication of S17 of the Local Government Act 1988 and not section 115.

Apologies for the confusion caused.

Yours sincerely,

Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

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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.

Rebecca Evans MS

Minister for Finance and Local Government

9 November 2023

Dear Rebecca,

Legislative Consent Memorandum on the Economic Activity of Public Bodies (Overseas Matters) Bill

At our meeting on 6 November 2023 we considered the above legislative consent memorandum. As part of that consideration we noted your response of 1 November to correspondence sent by the Chair of the Public Accounts and Public Administration (PAPA) Committee in respect of the memorandum.

The Chair of the PAPA Committee requested clarity on your view, as stated in the memorandum, that clause 15 of the Economic Activity of Public Bodies (Overseas Matters) Bill modifies the ability of the Welsh Ministers to exercise the power in section 115 of the Procurement Bill (now the Procurement Act 2023). In response, you stated:

"... Clause 15(3)(a) provides the Secretary of State with a regulation making power to be able to disapply s.17(5)(f) of the Local Government Act 1988 (the 1988 Act). Clause 115(2) of the Procurement Act provides a power for Welsh Ministers (or a Minister of the Crown) to disapply the duty under section 17(1) of the 1988 Act so far as it relates to a relevant authority. Such regulations can include disapplying the duty in s.17(1) of the 1988 Act as it relates to "all non-commercial matters (see section 17(5) of the 1988 Act) or those that are specified" (clause 115(3)(d) applies). The Senedd has legislative competence in relation to any provision of the Procurement Act which confers functions on contracting authorities which are devolved Welsh authorities or which confers a power to make regulations or issue guidance in relation to contracting authorities which are devolved Welsh

authorities. Therefore, clause 15(3)(a) of the Bill arguably modifies the ability of the Welsh Ministers to exercise the power in clause 115(2) of the Procurement Act. However, the modified power will continue to allow Welsh Ministers to make regulations to disapply provisions of section 17(1) of the 1988 Act for relevant Welsh contracting authorities as they see fit."

It would be helpful for my Committee's consideration of the memorandum to receive further clarity as to how section 115(2) of the Procurement Act 2023 provides a power to the Welsh Ministers to disapply the duty under section 17(1) of the 1988 Act, and whether the reference should instead be to section 111 of the Procurement Act 2023. Also, you refer to "clause 115(3)(d)" of the Procurement Act 2023; however, there does not appear to be a subsection (3)(d).

I am copying this letter to the Chair of the Public Accounts and Public Administration Committee.

As we are required to report on the memorandum by Friday 24 November, I would be grateful to receive your response by 16 November 2023.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair



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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: CG/PO/379/2023

Huw Irranca-Davies MS
Chair – Legislation, Justice and Constitution Committee
Welsh Parliament
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13 November 2023

Dear Huw,

As you will be aware, the King's Speech took place on 7 November. I issued a written statement on 10 November in response.

I look forward to engaging with your Committee on the UK Government's new legislative programme as it applies in Wales, including through legislative consent processes. I will provide further information throughout the new Parliamentary session once available.

Yours sincerely,

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

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The UK Government’s Legislative Programme**

DATE **10 November 2023**

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

On 7 November 2023, His Majesty the King formally opened the new session of the UK Parliament and outlined the UK Government’s proposed legislation for the new session.

Further information on the content of the King’s Speech was subsequently made available in a [publication](#) from the Prime Minister’s Office. The Secretary of State for Wales issued a [written statement](#) on 8 November setting out the Bills intended to extend and apply to Wales.

Prior to the King’s Speech, the UK Government provided Welsh Government with a list of indicative topics likely be legislated on in the new Parliamentary Session, and varying forms of engagement have taken place at official level on a range of the potential areas of legislation.

The last Parliamentary session resulted in several Acts of Parliament being passed on devolved matters without the consent of the Senedd, showing a lack of respect for the will of the Senedd and the Sewel Convention as reflected in section 107(6) of the Government of Wales Act 2006. I have made clear to UK Government Ministers that that approach must not continue, and I take some encouragement from the improved engagement we have seen on this new legislative programme to date.

Our fundamental position remains that primary legislation in devolved areas should be enacted by the Senedd. However, the Welsh Government also remains of the view that there can be circumstances when it is sensible for provision, which is in the Senedd’s legislative competence, to be included in UK Parliamentary Bills, with the explicit consent of the Senedd. The Minister for Climate Change has recently written to the Legislation, Justice and Constitution Committee and the Local Government and Housing Committee to outline our work with UK Government to outlaw blanket “no DSS” and “no Children” practices in

residential lettings in Wales. The First Minister also confirmed in Plenary our engagement with UK Government on proposals for leasehold reform. We will continue to work with UK Government where doing so is consistent with our principles.

Six of the Bills mentioned in the King's Speech and supporting documentation are carried over from the last session. We have already laid legislative consent memoranda in relation to three of those — the Data Protection and Digital Information (No.2) Bill, the Economic Activity of Public Bodies (Overseas Matters) Bill and the Victims and Prisoners Bill. We will continue to engage with UK Government to ensure the devolved interests and concerns in relation to each of those Bills are addressed.

I look forward to sharing further information about relevant Bills when it is possible to do so, and to working with the Senedd on legislative consent processes throughout this new Parliamentary session.