Agenda - Legislation, Justice and Constitution Committee

Meeting Venue:

Video conference via Zoom

Meeting date: 22 April 2024

Meeting time: 13.30

For further information contact:

P Gareth Williams

Committee Clerk

0300 200 6565

SeneddLJC@senedd.wales

Remote

1 Introductions, apologies, substitutions and declarations of interest

(13.30)

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

(13.30 - 13.35)

Made Negative Resolution Instruments

2.1 SL(6)474 - The Agricultural Wages (Wales) Order 2024

(Pages 1 - 9)

Order

Explanatory Memorandum

Attached Documents:

LJC(6)-12-24 - Paper 1 - Draft report

LJC(6)-12-24 - Paper 2 - Letter from the Minister for Rural Affairs and North Wales, and Trefnydd to the Llywydd, 19 March 2024

2.2 SL(6)477 - The Building Safety Act 2022 (Commencement No. 5 and Consequential Amendments) (Wales) Regulations 2024

(Pages 10 - 11)

Regulations

Senedd Cymru
Welsh Parliament

Explanatory Memorandum

Attached Documents:

LJC(6)-12-24 – Paper 3 – Draft report

2.3 SL(6)478 - The Meat Preparations (Amendment) (Wales) Regulations 2024

(Pages 12 - 16)

Regulations

Explanatory Memorandum

Attached Documents:

LJC(6)-12-24 – Paper 4 – Draft report

LJC(6)-12-24 – Paper 5 – Letter from the Cabinet Secretary for Climate Change and Rural Affairs to the Llywydd, 12 April 2024

3 Inter-Institutional Relations Agreement

(13.35 - 13.40)

3.1 Correspondence from the Cabinet Secretary for Climate Change & Rural Affairs: The Official Controls (Miscellaneous Amendments) Regulations 2024

(Pages 17 - 18)

Attached Documents:

LJC(6)12-24 – Paper 6 – Letter from the Cabinet Secretary for Climate Change & Rural Affairs, 18 April 2024

4 Papers to note

(13.40 - 13.45)

4.1 Correspondence from Sam Rowlands MS: Residential Outdoor Education (Wales) Bill

(Pages 19 - 40)

Attached Documents:

LJC(6)-12-24 – Paper 7 – Letter from Sam Rowlands MS, 15 April 2024

LJC(6)-12-24 – Paper 8 – Letter from Sam Rowlands MS to the Finance

Committee, 15 April 2024

LJC(6)-12-24 – Paper 9 – Letter from Sam Rowlands MS to the Children, Young People and Education Committee, 15 April 2024

4.2 Correspondence from the Cabinet Secretary for Health and Social Care to the Llywydd: The Tobacco and Vapes Bill

(Page 41)

Attached Documents:

LJC(6)-12-24 – Paper 10 – Letter from the Cabinet Secretary for Health and Social Care to the Llywydd, 16 April 2024

4.3 Correspondence from the Cabinet Secretary for Economy, Energy and Welsh Language: Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Data Protection and Digital Information Bill

(Pages 42 – 50)

Attached Documents:

LJC(6)-12-24 – Paper 11 – Letter from the Cabinet Secretary for Economy, Energy and Welsh Language, 16 April 2024

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

(13.45)

6 Supplementary Legislative Consent Memorandum on the Automated Vehicles Bill: Draft report

(13.45 – 13.55) (Pages 51 – 57)

Attached Documents:

LJC(6)-12-24 – Paper 12 – Draft report

7 House of Lords Constitution Committee Inquiry: The Governance of the Union: Consultation, Co-operation and Legislative Consent – Consideration of draft submission

(13.55 – 14.05) (Pages 58 – 68)

Attached Documents:

LJC(6)-12-24 – Paper 13 – Draft submission

8 Monitoring report

(14.05 – 14.15) (Pages 69 – 86)

Attached Documents:

LJC(6)-12-24 – Paper 14 – Monitoring report

9 Corrections of Welsh Statutory Instruments

(14.15 – 14.20) (Pages 87 – 89)

Attached Documents:

LJC(6)-12-24 – Paper 15 – Draft letter

10 Subordinate legislation laid in English only

(14.20 – 14.25) (Pages 90 – 91)

Attached Documents:

LJC(6)-12-24 – Paper 16 – Draft letter

SL(6)474 – The Agricultural Wages (Wales) Order 2024

Background and Purpose

The Agricultural Wages (Wales) Order 2024 makes provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers.

The Order revokes and replaces the Agricultural Wages (Wales) Order 2023 with changes which include increases to the minimum hourly rates of pay for agricultural workers.

Part 2 of the Order provides that agricultural workers are to be employed subject to terms and conditions set out in Parts 2-5 of the Order, and specifies the different grades and categories of agricultural worker.

Part 3 makes provision about:

- minimum rates of remuneration;
- accommodation offset allowance;
- allowance for a dog;
- on-call allowance;
- night work allowance; and
- birth and adoption grants.

Part 4 provides for an entitlement to agricultural sick pay in specified circumstances.

Part 5 makes provision about an agricultural workers entitlement to time off, including rest breaks, daily rest, and weekly rest period. Provision is also made about an agricultural worker's annual leave year and their entitlement to annual leave, holiday pay and payment in lieu of annual leave. This Part also makes provision for an agricultural worker's entitlement to paid bereavement leave.

Part 6 contains revocation and transitional provision.

Procedure

Negative.

The Order was made by the Welsh Ministers before it was laid before the Senedd.

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

Technical Scrutiny

The following 18 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 the Table of Contents, the entries for articles 5 to 9 (which relate to the different grades of agricultural worker) differ from the headings found above these articles in the Order.

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

In article 2(1), the following definitions are not listed in the correct place according to alphabetical order in the English and Welsh texts of this Order—

a) in the English text, "agriculture" should be listed after ""agricultural worker" and "the national minimum wage" should be listed after "hours";

b) in the Welsh text, "cyflogaeth" should be listed after "cyflog wythnosol arferol".

In this regard, the definite article is ignored for the purpose of ordering the definitions (see Writing Laws for Wales ("WLW") 4.15(1) and (2)).

Similarly, in article 22(4), the definitions of "qualifying days" and "qualifying hours" have not been listed in alphabetical order in the interpretation provision. In addition, the corresponding language definitions should be included in brackets and italics after the definitions. Finally, there should not be a conjunction "and" between the definitions in the list.

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

In article 2(1), the terms "birth and adoption grant", "night work", "normal weekly pay", "on-call", and "output work" are all defined as having a meaning for this Order. But all these terms are only used in a single article in the Order. Therefore, those terms should be defined in an interpretation provision within the same article in which they are used.

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

In article 2(1), in the definition of "child", the phrase "will" is used when appearing to make a declaratory statement about the meaning of that term – "A child will be the child of an agricultural worker if....". But the Welsh Government's drafting guidelines state that

legislation should avoid using "will" for declaratory statements and that the present indicative should be used in such statements (see WLW 3.14(5)).

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

In article 2(1), in the definition of "employment", it is not necessary to state that "employed" and "employer" should be construed accordingly due to the effect of section 9 of the Legislation (Wales) Act 2019.

Also in article 2(1) there is a definition of "the national minimum wage" for this Order. However, this term is not used in this Order other than in the title of the National Minimum Wage Act 1998. Therefore, this definition does not appear to serve any purpose.

Likewise, in article 2(1), there is a definition of "working time"—

a) this term is not used in the Order other than in the title of the Working Time Regulations 1998. Therefore, the definition does not appear to serve any purpose;

b) it is not necessary to state that "work" should be construed accordingly due to the effect of section 9 of the Legislation (Wales) Act 2019. Perhaps "work" should be defined separately if required for this Order and the definition of "working time" is omitted;

c) there is a slight difference between the English and Welsh text of this definition. At the beginning of paragraph (a), in the Welsh text, "any **time**" has been translated using the same phrase that is used for "any **period**" at the beginning of paragraph (b). It also means that in the Welsh text, the word "time" has been translated differently in the phrase "any **time**" when compared with the words "but does not include **time** spent…" that follow afterwards in paragraph (a) of that definition.

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

In article 2(1), the term "qualifying days" has been defined and given a meaning in this Order. However, this term is also defined with a different meaning in article 22(4) for the purposes of that article alone. Therefore, there should a signpost in the definition of "qualifying days" in article 2(1) stating "other than in article 22" to explain to the reader where the definition applies in the Order.

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

Article 14 refers to agricultural workers employed before 22 April 2022, which is when the Agricultural Wages (Wales) Order 2022 (S.I. 2022/417 (W. 102)) came into force. This was the

date when the first of two Agricultural Wages Orders made in 2022 came into force in relation to Wales. However, should this provision be updated to refer to the Table found in Schedule 1 to the Agricultural Wages (Wales) Order 2023 (S.I. 2023/260 (W. 37)) or is it correct? (In addition, in the English text, it should state "Schedule 1 to" rather than "of" the Agricultural Wages (Wales) Order 2022.)

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

In article 16(b), the phrase "cannot" is used when imposing a prohibition. But the phrase "must not" is the recommended phrase for use when imposing a prohibition (see WLW 3.13(4)).

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

In article 21(1), the phrase "will not" is used in the provision but the Welsh Government's drafting guidelines state that the use of "will" should be avoided when making declarations – see WLW 3.14(5). The phrase "will" is also used where the words "is to" could be more appropriate in article 38(2)(b) of this Order.

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

The circumstances in which article 22(5) might apply are unclear. This provides provision to allow calculations of amounts of agricultural sick pay "where an agricultural worker has been employed by their employed for less than 8 weeks". However, article 19(a) provides that an agricultural worker will only qualify for agricultural sick pay under this Order if, amongst other things they have been "continuously employed by their employer for a period of at least 52 weeks prior to the sickness absence".

If there are no circumstances where article 22(5) would apply, this provision is unnecessary, as there would no need to provide a mechanism for calculating this payment, as nobody would be entitled to receive it.

Article 19(a) when read alone provides a clear qualification criteria, but the presence of 22(5) in these circumstances may mislead readers into believing that workers with less than 52 weeks service may qualify for a payment, because there is a mechanism to calculate such a payment.

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

In article 25(1), in the Welsh text, the translation could be interpreted as limiting the phrase "during a period of sickness absence" to the words "an agricultural worker's contract or their apprenticeship is terminated". Therefore, the Welsh text would be clearer if the phrase "during a period of sickness absence" was repeated after the words that correspond to "or

the agricultural worker is given notice that either their contract or their apprenticeship is to be terminated".

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

In article 26(1), the provision states that an employer "**can** recover the overpayment". But the use of "can" does not appear to be appropriate because the provision is conferring a discretionary legal power to do something rather than referring to a possibility. In which case, "may" should be the term used in this context- see WLW 3.13(3). There is also another provision in article 38(2)(a) where "may" rather than "can" would appear to be more appropriate in the words "worker **can** receive a payment".

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

In article 26(2), there is a slight difference between the English and Welsh text. At the end of the sentence in the English text, it refers to "payment of **the agricultural worker's** final wages" but the Welsh text has translated the meaning as "payment of **the worker's** final wages". The same difference between the English and Welsh text occurs in relation to the term "the agricultural worker" and "the worker" at the end of article 43(2). In this regard, "the agricultural worker" is a defined term in this Order. But the English text is also slightly inconsistent in its approach because in a few other articles the phrase "the worker" is used after a first reference to "the agricultural worker" (see articles 15(2), 19(c), 27(2)(b), 35(4) and 35(5)).

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

In article 41(2), the structure of the provision is incorrect because there is a sub-paragraph (a) but no subsequent sub-paragraphs. Therefore, article 41(2) should have been structured as a single sentence without any sub-paragraphs. The information found in sub-paragraph (a) should have been incorporated into that sentence.

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

In article 42(5), it states that "where **this article** applies" a formula found in that provision should be used to calculate the amount of bereavement leave. But this appears to be incorrect because it should state "where **this paragraph** applies" if it is only referring to circumstances where paragraph (5) applies? In this regard there is another formula found in paragraph (3) of article 42 and that provision does not include the words "where this article applies" in the corresponding place.

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

In article 43(1), the term "shall" is used in the words "the agricultural worker **shall** be entitled to an amount…". However, the Welsh Government's drafting guidelines state that "shall" should not be used in legislation other than when amending existing legislation as its meaning can be ambiguous - see WLW 3.14(1). It would have been more consistent with the rest of the provision to use a phrase such as "is [to be]".

Additionally, in article 43(2), there is a reference that is incorrectly described as "in accordance with **article 43(1)**". But it should be correctly described as "in accordance with **paragraph (1)**" because it is referring to another paragraph found within the same article.

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

In Schedules 1, 2 and 4, in the shoulder notes, there are other articles in this Order that refer to those respective Schedules which have not been included in those notes. Therefore, the shoulder notes appear to be incomplete for those Schedules.

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

In Schedule 4, in the Table, in the third column under the heading "Northern Ireland", in the bottom row, there is a difference between the English and Welsh text. The English text refers to a "Higher **Level** Apprenticeship" at Level 4, but the Welsh text has translated the meaning as "Higher Apprenticeship" at Level 4. We believe the English text to be correct because "Higher Level Apprenticeship" or "HLA" is a qualification in Northern Ireland that differs from a "Higher Apprenticeship".

Additionally, in Schedule 4, should the existing heading "Table" be changed to "Table 1" and another heading "Table 2" be included for the following table "Equivalent qualifications under the European Qualifications Framework ('EQF')" in that Schedule?

Merits Scrutiny

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

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

The Order came into force on 1 April 2024, less than 21 days after it was laid on 19 March 2024. In a letter to the Llywydd, dated 19 March 2024, the then Minister for Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths MS stated as follows:

> *"Finalisation of the 2024 Order took longer than anticipated due to the simplification amendments necessitating lengthy legal scrutiny to ensure the correct legal effect was maintained.*

The Panel's intention is for the 2024 Order to come into force on 1 April 2024 so as to align the Agricultural Minimum Wage increases with the National Minimum Wage increases which will also take effect on that date.

Until the 2024 Order comes into force, agricultural workers in Wales will continue to be subject to the 2023 Order. To minimise disruption and ensure workers are paid in accordance with the minimum rates agreed by the Panel, it is proposed the making of the 2024 Order will not adhere to the 21 day convention so as to enable it to come into force on 1 April.

Not adhering to the 21 day convention is considered necessary and justifiable in light of the unavoidable circumstances that have delayed the process. I also believe reducing any further delay in bringing uplifted agricultural wage rates into force is justified on the basis it will minimise the length of time agricultural workers covered by the Agricultural Minimum Wage are disadvantaged in relation to their pay awards and make compliance easier for agricultural employers."

Welsh Government response

A Welsh Government response is required.

Legal Advisers
Legislation, Justice and Constitution Committee
17 April 2024

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/LG/0189/24

Rt Hon Elin Jones MS
Llywydd
Senedd Cymru

Llywydd@senedd.wales

19 March 2024

Dear Elin

The Agricultural Wages (Wales) Order 2024

In accordance with section 11A(4) of the Statutory Instruments Act 1946, I am notifying you this Statutory Instrument will come into force on 1 April 2024, less than 21 days after it has been laid. A copy of the instrument and Explanatory Memorandum for this Order are attached for your information.

Background

At present, agricultural workers in Wales are subject to the rates specified by the Agricultural Wages (Wales) Order 2023 ("the 2023 Order") which came into force on 1 April 2023.

The Agricultural Advisory Panel for Wales ("the Panel") is an independent advisory body established under section 2(1) of the Agricultural Sector (Wales) Act 2014 by the Agricultural Advisory Panel for Wales (Establishment) Order 2016 on 1 April 2016. The Panel's remit includes reviewing wages and other employment conditions and support skills and career development in the agricultural sector.

The Panel agreed to increase the agricultural minimum wage rates and consulted on the proposals in the autumn of 2023. Consequently, the Agricultural Wages (Wales) Order 2024 ("the 2024 Order") has been prepared, which:

a) increases the minimum hourly rates for all grades and categories of agricultural worker;
b) increases all allowances;
c) amends the overtime rate payable to agricultural workers by reference to the agricultural worker's actual hourly rates of pay, rather than the minimum hourly rate of pay prescribed in Schedule 1; and
d) a number of simplification amendments to the 2023 Order by removing provisions which repeat passages of other legislation.

Finalisation of the 2024 Order took longer than anticipated due to the simplification amendments necessitating lengthy legal scrutiny to ensure the correct legal effect was maintained.

The Panel's intention is for the 2024 Order to come into force on 1 April 2024 so as to align the Agricultural Minimum Wage increases with the National Minimum Wage increases which will also take effect on that date.

Until the 2024 Order comes into force, agricultural workers in Wales will continue to be subject to the 2023 Order. To minimise disruption and ensure workers are paid in accordance with the minimum rates agreed by the Panel, it is proposed the making of the 2024 Order will not adhere to the 21 day convention so as to enable it to come into force on 1 April.

Not adhering to the 21 day convention is considered necessary and justifiable in light of the unavoidable circumstances that have delayed the process. I also believe reducing any further delay in bringing uplifted agricultural wage rates into force is justified on the basis it will minimise the length of time agricultural workers covered by the Agricultural Minimum Wage are disadvantaged in relation to their pay awards and make compliance easier for agricultural employers.

An Explanatory Memorandum has been prepared and this has been laid, together with the 2024 Order, in the Table Office.

I am copying this letter to Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Bethan Davies, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

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

SL(6)477 – The Building Safety Act 2022 (Commencement No. 5 and Consequential Amendments) (Wales) Regulations 2024

Background and Purpose

The Building Safety Act 2022 (Commencement No. 5 and Consequential Amendments) (Wales) Regulations 2024 ("these Regulations") implement changes made to the Building Act 1984 ("the 1984 Act") brought about by the Building Safety Act 2022 ("the 2022 Act").

These Regulations commence section 49(1) and (2) of the 2022 Act and amend the following legislation in relation to Wales:

- the Building (Approved Inspectors etc.) Regulations 2010 (S.I. 2010/2215);
- the Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541);
- the Energy Performance of Buildings (England and Wales) Regulations 2012 (S.I. 2012/3118).

These Regulations come into force on 25 April 2024 and are part of a suite of new legislation bringing into force provisions made by the 2022 Act which received Royal Assent in 2022. Changes to the 1984 Act have been implemented in phases in order to bring the new building control regime into place.

The Welsh Government's Explanatory Memorandum provides that the overall purpose of these amendments is to ensure that the regulatory framework continues to apply, where appropriate, as private sector building control transitions from Approved Inspectors, under the previous regime, to Registered Building Control Approvers under the new regime.

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 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.**

The Welsh Government is asked to explain the different drafting approaches taken in relation to regulation 3(j) and (k). Both regulations amend references to "approved inspector" to "approver" so that they will continue to apply to registered building control approvers. Regulation 3(j) specifically refers to "*substituted paragraph 4**(a)***", whilst regulation 3(k) simply refers to "*substituted paragraph 3*". Given the similarities between regulation 20(6) and 20(6A), as referred to in regulation 3(j) and (k), it is questioned why the drafting is different by specifying the sub-paragraph in one provision but not the other.

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
16 April 2024

SL(6)478 – The Meat Preparations (Amendment) (Wales) Regulations 2024

Background and Purpose

These Regulations amend assimilated law (formerly referred to as retained EU law) to remove the requirement for meat preparations to be deep frozen when imported into Wales. This will permit the continued import of chilled meat preparations from EEA states and allow risk-assessed imports from the rest of the world from 28 April 2024, in line with the UK Government and the Scottish Government. The Regulations also revoke defunct instruments and provisions of other instruments related to the removal of this requirement.

Procedure

Negative

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

Technical Scrutiny

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

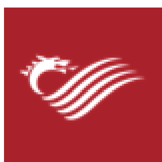
Merits Scrutiny

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

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

The Regulations come into force on 28 April 2024, only 14 days after they were laid before the Senedd and therefore in breach of the 21 day rule. In a letter to the Llywydd dated 12 April 2024, the Cabinet Secretary for Climate Change and Rural Affairs states:

> *The 2024 Regulations align with the Border Target Operating Model (BTOM) legislation being introduced by UK Government (UKG). This BTOM legislation will switch on physical controls on relevant Sanitary and Phytosanitary goods from the end of April, and also extend the Transitional Staging Period (TSP) which will further delay checks for goods arriving from Ireland. The 2024 Regulations must come into force on 28 April prior to the end of the current TSP on 29 April.*



The UKG BTOM regulations are running behind schedule. They may not be laid in the form initially intended (for example, by removing content or splitting into different instruments), and UKG will likely not adhere with the 21-day convention for at least one set of their regulations. To date, my officials remain uncertain of UKG's definitive way forward. Understandably, this has had a knock-on effect on the progress made in making the 2024 Regulations due to a general desire for a synergic approach across GB.

Given the end date of the TSP (29 April) is immovable, it is with regret that on this occasion, considering the points I have outlined, that the 2024 Regulations will come into force less than 21 days after they have been laid.

Were the Regulations not to be made, the current exemption in place would expire on 29 April. This would mean that meat preparations that have not been frozen at an internal temperature of not more than – 18 °C at the production plant or plants of origin, in the EU and EEA, would be illegal to import into Wales. The requirement for these goods to be deep-frozen would be a significant impediment to the free flow of trade.

Additionally, Wales would be failing to align with a GB wide approach agreed at the Animal and Disease Policy Group and for which UKG and SG are also making provision. This would cause policy and legislative divergence and confusion to traders.

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

The Explanatory Memorandum to the Regulations states that the Welsh Ministers did not carry out consultation in relation to these Regulations. Paragraph 6 of the Explanatory Memorandum states:

No consultation requirement arises under The Trade in Animals and Related Products (Wales) Regulations 2011. The Welsh Ministers have therefore not consulted in respect of this instrument. However, there has been GB-wide extensive stakeholder engagement with the Agri-Food industry and with delivery partners with responsibilities over border controls (such as local border authorities, the Animal and Plant Health Agency and the Foods Standards Agency), since January 2021.

Additionally, there has been consultation with the other UK administrations, and the FSA on the policy effected by this instrument. This new permanent position regarding all P&R goods for imports has been trialled with the International Meat Traders Association (IMTA) in a regular stakeholder forum led by Defra, and in a stakeholder note to POAO trade associations in January 2024 (to which no responses were received). A further letter was sent by Defra in March 2024 to stakeholders regarding the wider implementation of the Borders Target Operating Model which also outlined and referenced the changes that these Regulations make.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers
Legislation, Justice and Constitution Committee
17 April 2024

Huw Irranca-Davies AS/MS
Ysgrifennydd y Cabinet dros Newid Hinsawdd a Materion Gwledig
Cabinet Secretary for Climate Change & Rural Affairs

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/HIDCC/0898/24

The Rt. Hon. Elin Jones MS
Llywydd
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

12 April 2024

Dear Elin,

In accordance with section 11A(4) of the Statutory Instruments Act 1946, I am notifying you that this statutory instrument will come into force on 28 April 2024, less than 21 days after it has been laid. A copy of the instrument and the Explanatory Memorandum that accompanies it are attached for your information.

This instrument ("the 2024 Regulations") makes amendments to assimilated law, specifically, EU Commission Decision 2000/572/EC ("the EU Regulations") to remove the requirement for imports of meat preparations to be deep frozen. This will permit the continued import of chilled meat preparations from EEA states and allow risk-assessed imports from the Rest of the World (RoW) from 28 April 2024, in line with the UK Government and the Scottish Government.

The primary purpose of the legislation is to permit the import of chilled meat preparations where the transport and temperature conditions can satisfy the same level of protection as if they were produced in the UK. The policy meets World Trade Organisation (WTO) obligations, meaning that specific measures to protect public and animal health must not discriminate unfairly between countries. The policy is based on scientific evidence and a risk assessment.

The 2024 Regulations also revoke now-defunct related domestic Sis and provisions of other instruments which previously extended the temporary suspension of the deep-freezing requirement on imported meat in line with the Transitional Staging Period (TSP).

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Huw.Irranca-Davies@llyw.cymru
Correspondence.Huw.Irranca-Davies@gov.wales

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CF99 1SN

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

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

The 2024 Regulations align with the Border Target Operating Model (BTOM) legislation being introduced by UK Government (UKG). This BTOM legislation will switch on physical controls on relevant Sanitary and Phytosanitary goods from the end of April, and also extend the Transitional Staging Period (TSP) which will further delay checks for goods arriving from Ireland. The 2024 Regulations must come into force on 28 April prior to the end of the current TSP on 29 April.

The UKG BTOM regulations are running behind schedule. They may not be laid in the form initially intended (for example, by removing content or splitting into different instruments), and UKG will likely not adhere with the 21-day convention for at least one set of their regulations. To date, my officials remain uncertain of UKG's definitive way forward. Understandably, this has had a knock-on effect on the progress made in making the 2024 Regulations due to a general desire for a synergic approach across GB.

Given the end date of the TSP (29 April) is immovable, it is with regret that on this occasion, considering the points I have outlined, that the 2024 Regulations will come into force less than 21 days after they have been laid.

Were the Regulations not to be made, the current exemption in place would expire on 29 April. This would mean that meat preparations that have not been frozen at an internal temperature of not more than – 18 °C at the production plant or plants of origin, in the EU and EEA, would be illegal to import into Wales. The requirement for these goods to be deep-frozen would be a significant impediment to the free flow of trade.

Additionally, Wales would be failing to align with a GB wide approach agreed at the Animal and Disease Policy Group and for which UKG and SG are also making provision. This would cause policy and legislative divergence and confusion to traders.

I am copying this letter to the Trefnydd and Chief Whip, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Bethan Davies, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

Huw Irranca-Davies AS/MS
Ysgrifennydd y Cabinet dros Newid Hinsawdd a Materion Gwledig
Cabinet Secretary for Climate Change & Rural Affairs

Huw Irranca-Davies AS/MS
Ysgrifennydd y Cabinet dros Newid Hinsawdd a Materion Gwledig
Cabinet Secretary for Climate Change & Rural Affairs

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/HIDCC/5010/24

Sarah Murphy MS
Chair
Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

18 April 2024

Dear Sarah,

I am writing to inform the Committee of my intention to consent to the UK Government making and laying the Official Controls (Miscellaneous Amendments) Regulations 2024 ('the 2024 regulations').

I have received a letter from the Minister of State for Biosecurity, Animal Health and Welfare, Lord Douglas-Miller, asking for consent to these Regulations. The Regulations intersect with devolved policy and will apply to Wales. The Regulations will extend to England, Scotland, and Wales and a similar request for consent has been sent to Scottish Ministers.

The Regulations will be made in exercise of the powers conferred under:

- Articles 72(3), 73(2), 76(4) and 105(6) of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants ("the Plant Health Regulation"), and

- Articles 22(2), 48(h), 54(3), 77(1), 90 and 144(6) of, and paragraph 3(2) of Annex 6 to, Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection product ("the Official Controls Regulation").

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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

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

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

The purpose of the 2024 Regulations is to implement the second milestone of the Border Target Operating Model ("BTOM"), that comes into effect by 30 April 2024, to protect biosecurity and support trade between Great Britain ("GB") and third countries. It introduces a new global risk-based import regime for goods from both the European Union ("EU") and the rest of the world ("RoW") from the end of April 2024. The changes made by the 2024 Regulations relate to controls on imports to England, Wales and Scotland for the set of commodities known collectively as sanitary and phytosanitary ("SPS") goods.

These Regulations include provisions which exempt goods arriving from the island of Ireland from the requirement for identity and physical checks.

The Regulations do not commit Welsh Ministers to adopting any future UK Government position on biosecurity. The Regulations do not diminish or undermine the powers of Welsh Ministers in any way.

Although the Welsh Government's general principle is that the law relating to devolved matters should be made and amended in Wales, on this occasion, it is considered appropriate for this instrument to apply to Wales as there is no policy divergence between the Welsh and UK Government in this matter. This ensures a coherent and consistent statute book with the regulations being accessible in a single instrument. I consider that legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes nor a prudent use of Welsh Government resources given other important priorities.

I have written similarly to Paul Davies MS, the Chair of the Economy, Trade and Rural Affairs Committee.

Yours sincerely,

Huw Irranca-Davies AS/MS
Ysgrifennydd y Cabinet dros Newid Hinsawdd a Materion Gwledig
Cabinet Secretary for Climate Change and Rural Affairs

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Huw.Irranca-Davies@llyw.cymru
Correspondence.Huw.Irranca-Davies@gov.wales

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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.

Sam Rowlands
Member of the Welsh Parliament for
North Wales
-
Aelod Senedd dros
Gogledd Cymru

North Wales Office | Swyddfa Gogledd Cymru
North Wales Business Park, Abergele LL22 8LJ
-
Cardiff Office | Swyddfa Caerdydd
Senedd Cymru, Cardiff Bay, Cardiff CF99 1SN
-
Tel | Ffôn: 0300 200 7267
Email | E-bost: sam.rowlands@senedd.wales

Chair of Legislation, Justice and Constitution Committee

15 April 2024

Dear Chair,

Residential Outdoor Education (Wales) Bill: response to the Legislation, Justice and Constitution Committee's Stage 1 report

I would like to thank the Legislation, Justice and Constitution Committee for their scrutiny of the Residential Outdoor Education (Wales) Bill during Stage 1 and for the report which was published on 21 March 2024. I have set out my response to the Committee's conclusions and recommendations at Annex A.

I will also be writing to the Chairs of the Finance Committee and the Children, Young People and Education Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

Yours sincerely

Sam Rowlands MS
Member of the Welsh Parliament for North Wales

Annex A

Response from Sam Rowlands, MS to the Legislation, Justice and Constitution Committee's Report on the Residential Outdoor Education (Wales) Bill

Recommendation 1. In order to meet the Member in charge's policy intent and to provide clarity on its face, the Bill should be amended to include a mechanism by which a pupil, or their parent, would be able to opt out from receiving a course of residential outdoor education.
Response: Accept The Bill is drafted to amend the Curriculum and Assessment (Wales) Act 2021 ("the 2021 Act") to make providing a course of residential outdoor education a mandatory part of the curriculum, however it is set out in the Explanatory Memorandum that it is not the intention to compel children to attend such a course should they not wish to do so. I have made this point throughout the Stage 1 process. The Bill does not provide for any "opt-out" or discretionary element as provision is already made in the 2021 Act, and regulations made under that Act, which enable head teachers of maintained schools to determine that provisions of the Curriculum for Wales should not apply to a child or pupil. If a child did not wish to take part in the course of residential outdoor education provided under the Bill, these existing mechanisms would enable the head teacher of the school to make a determination to this effect. The Committee notes that this would require the pupil or their parent to provide reasons to the headteacher when requesting such a determination, but I consider this to be a benefit as it would enable the headteacher to consider whether anything could be done to address the concerns before the determination is made. Similarly, the Committee notes that the determination only endures for six months, but this gives the pupil the chance to reconsider whether they wish to attend any future opportunities or whether a further determination is required for such future opportunity. The Bill reinforces that pupils must not be compelled to attend the course of residential outdoor education by providing for guidance to be issued under a new section 71A to the 2021 Act. Such guidance "must provide that residential outdoor education is not compulsory for pupils to attend". I appreciate that the guidance itself cannot change the legal effect of the Bill, which makes residential outdoor education a mandatory part of the curriculum. However, the intention is that the guidance would clearly set out that head teachers should use their power under the relevant Regulations to determine that the requirement to provide a course of

residential outdoor education under the curriculum does not apply to children who do not wish to attend.

Given the existing mechanisms that are already in place as set out above, it is not necessary to make any amendment to the Bill to allow the disapplication of the requirement to provide a course of residential outdoor education. However, I would be happy to explore whether such an amendment could be brought forward at Stage 2 if that would make the intention clearer, and its effect easier to manage in practice.

Recommendation 2. The Bill should be amended to include a definition of residential outdoor education.

Response: Reject

During the development of the Bill and the evidence that was gathered during the course of Stage 1, there have been varying views on whether residential outdoor education should be defined on the face of the Bill and, if so, what should be encompassed in such a definition.

Given the varying views on this, I consider that to fix a definition on the face of the Bill would be potentially limiting on its future operation, as any amendment to that definition to reflect changes in practice or demand for certain elements of outdoor education would require further primary legislation or the use of a Henry VIII power (which, in the latter case, would of course enable primary legislation to be changed by the Welsh Government with limited opportunity for scrutiny by the Senedd).

I consider that the concept of residential outdoor education is adequately set out in the Explanatory Memorandum to the Bill. The Bill also provides for a residential outdoor education Code, which could set out in much more detail what a course of residential outdoor education should look like in practice. Taking this approach would provide more flexibility for any definition to react to changes in practice and give schools more flexibility to determine the type of experience that is appropriate for its pupils.

Recommendation 3. The Bill should be amended to: ▪ remove the references to prescribed requirements that must be set out in guidance from new section 71A of the Curriculum and Assessment (Wales) Act 2021, to be inserted by section 1(3); and ▪ insert those prescribed requirements, in an appropriate form, into new section 64A of the Curriculum and Assessment (Wales) Act 2021, to be inserted by section 1(2).
Response: Accept in principle The references in the new section 71A to prescribed requirements that must be set out in guidance are: - providing that residential outdoor education is not compulsory for pupils to attend; - providing that residential outdoor education is suitable to a pupil's age, ability, aptitude and any additional learning needs; - providing that residential outdoor education be provided in Welsh, subject to availability, where requested by a school; and - making provision in respect of the costs that it would be reasonable to incur in connection with residential outdoor education, including, but not limited to, the cost of board and lodging and transport. I note the Committee's concerns regarding the manner in which these requirements are addressed by the Bill however, in some instances, for example, in relation to making provision regarding reasonable costs, it may be too prescriptive to set this detail out on the face of the Bill. I am, however, able to accept the recommendation in principle. Should the Bill proceed to Stage 2, I am willing to consider each of the requirements set out above to determine whether they can be prescribed or dealt with in a different way in order to address the Committee's concerns.

Recommendation 4. In light of recommendation 3, the Member in charge should consider whether it is necessary for new section 71A(1) of the 2021 Act to impose a duty on the Welsh Ministers to issue guidance on residential outdoor education. If a duty to issue guidance is deemed to be necessary, such a duty should be included as a standalone provision within the 2021 Act which is not connected to section 71, and the Bill amended accordingly.
Response: Accept Notwithstanding any changes that are made to the Bill at Stage 2 to reflect recommendation 3, I still consider that the Welsh Ministers should be under a duty to issue guidance to address the other matters set out in the proposed section 71A of the 2021 Act. However, I would be willing to bring forward an amendment to include this duty as a standalone provision which is not connected to section 71 of the 2021 Act.
Recommendation 5. In order to ensure the effectiveness of the Bill's provisions, the Member in charge should consider whether the Bill should be amended to remove the references to "subject to availability" and "where requested" from new section 71A(3)(d) of the Curriculum and Assessment (Wales) Act 2021, as inserted by section 1(3) of the Bill.
Response: Reject If amended as suggested above, section 71A(3)(d) of the 2021 Act would state that guidance must provide that residential outdoor education be provided in Welsh. This would have the effect that whenever a school is seeking to offer a course of residential outdoor education under the 2021 Act, they would have to have due regard to the requirement in guidance that it be provided in Welsh. This could have the unintended consequence that schools that do not wish for the course to be provided in Welsh will be deterred from considering providers who offer Welsh language provision, on the basis they may then need to take up that offer even if it is not appropriate for their pupils who are not Welsh speakers. It may also result in providers who are not able to offer an experience through the medium of Welsh declining to make any offer at all, which would in turn limit opportunities for children to experience residential outdoor education. The purpose of this provision being subject to availability and demand is to ensure that it is the schools that will determine what is the best experience to offer their pupils, having regard to the requirements in relation to Welsh language and culture set out in the guidance. It is also intended to ensure that providers who are able to offer Welsh language provision are not overwhelmed by demand or, conversely, that schools do not consider they are unable to offer an opportunity

that complies with the guidance due to the unavailability of the Welsh language provision.
Recommendation 6. In light of the Minister's comments, the Member in charge should consider whether the Bill should be amended to extend the date by which the first Residential Outdoor Education Code and guidance must be issued
Response: Accept My aim in this Bill is to ensure that the Welsh Government provides a course of residential outdoor education free of charge, once, to pupils at maintained schools. If the Minister is of the opinion that more time would be required to ensure that a full and useful Code and guidance are available to support this provision, I would be willing to consider tabling amendments to give effect to this at Stage 2. However, I would caveat this by saying that I would expect the Minister to give a specific time frame which I would want to be reflected on the face of the Bill.

Sam Rowlands
Member of the Welsh Parliament for
North Wales
-
Aelod Senedd dros
Gogledd Cymru

North Wales Office | Swyddfa Gogledd Cymru
North Wales Business Park, Abergele LL22 8LJ
-
Cardiff Office | Swyddfa Caerdydd
Senedd Cymru, Cardiff Bay, Cardiff CF99 1SN
-
Tel | Ffôn: 0300 200 7267
Email | E-bost: sam.rowlands@senedd.wales

Peredur Griffiths MS,
Chair of Finance Committee

15 April 2024

Dear Peredur,

Residential Outdoor Education (Wales) Bill: response to the Finance Committee's Stage 1 report

I would like to thank the Finance Committee for their scrutiny of the Residential Outdoor Education (Wales) Bill ("the Bill") during Stage 1 and for the report which was published on 21 March 2024. I have set out my response to the Committee's conclusions and recommendations at Annex A.

I note that the Committee was broadly content with the financial implications of the Bill as set out in the Regulatory Impact Assessment. I also very much welcome, and appreciate, the Committee's Conclusion 3 regarding the level of detail provided on the cost estimates. In developing the RIA, a significant amount of work was undertaken, including with providers of residential outdoor education, and I truly believe that the costs set out in the RIA are as robust and as complete as I could have possibly made them.

With that in mind, it has not been possible for me to accept all of the Committee's recommendations, as noted in Annex A. However, I would like to make the general point that should the Bill progress through the legislative process, I will continue to develop the RIA and will, of course, publish a revised RIA as appropriate.

Lastly, I wanted to make you aware that I will also be writing to the Chairs of the Children, Young People and Education Committee and the Legislation, Justice and Constitution Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

Yours sincerely

Sam Rowlands MS
Member of the Welsh Parliament for North Wales

Annex A

Response from Sam Rowlands, MS to the Finance Committee's Report on the Residential Outdoor Education (Wales) Bill

Conclusion 1. The Committee is broadly content with the financial implications of the Bill as set out in the Regulatory Impact Assessment, subject to the comments and recommendations in this report. Should there be significant changes to the Regulatory Impact Assessment as a result of the recommendations made in this report, the Committee may consider those changes in more detail. **Conclusion 2** The Committee notes the budgetary pressure that is currently being experienced by the Welsh Government and also notes the significant level of funding required for this Bill. **Conclusion 3** The Committee was impressed with the level of detail provided on the cost estimates included in the Regulatory Impact Assessment, and believes this approach represents a good example for the Welsh Government and others to follow in terms of the level of detail that should be included in relation to the costs of legislation. **Conclusion 4** The Committee notes that the five-year appraisal period for this Bill is appropriate and is in line with the timescales applied by the Welsh Government in assessing the impact of the Bills it introduces. We expect all Bills to be treated and scrutinised on an equal basis and to the same standard.
Response: Noted I am happy that the Committee was broadly content with the financial implications of the Bill as set out in the Regulatory Impact Assessment. I also very much welcome, and appreciate, the Committee's Conclusion 3 regarding the level of detail provided on the cost estimates. In developing the RIA, a significant amount of work was undertaken, including with providers of residential outdoor education, and I truly believe that the costs set out in the RIA are as robust and as complete as I could have possibly made them.

Recommendation 1. Although the Committee is content with the approach adopted in removing inflation when costing the Bill, the Committee recommends that the Member in Charge undertakes further analysis on its potential impact given the current level of inflation and the significant cost of the Bill.
Response: Accept If the General Principles of the Bill are agreed, further analysis regarding the impact of inflation will be undertaken and included in a revised RIA.
Recommendation 2. The Committee recommends that the Member in Charge undertakes further work on the potential increase in demand for residential stays at outdoor activity centres as a result of the Bill being passed.
Response: Accept In developing the Bill and the RIA, a substantial amount of work was undertaken to establish current levels of participation in residential outdoor education. This included examining the EVOLVE data and working with the Outdoor Education Advisers' Panel (OEAP) who undertook a survey with schools. Details on the findings are included in Chapter 3 of the EM – 'Purpose and intended effect of the Bill'. The aim of the Bill is to make an offer of residential outdoor education compulsory under the curriculum, and costs are therefore based on the assumption of 100% take up of the offer. A reasonable assumption of the increase in demand can therefore be made by comparing the data we established on current take up to the assumption of 100% take up. Moving forward, the potential increase in demand could be analysed further once the Bill has completed the legislative process, and has been passed. There are elements of the Bill as introduced that will be for the Welsh Ministers to deliver, and which could have an impact on demand. All of this will be taken into account as the Bill continues through the legislative process. I note that part of the Committee's concern is that an increase in demand could potentially lead to increases in costs for those areas. I do not envisage this to be the case. However, if costs were to increase as a result, it would be impossible to predict what those costs would be and where any increase might occur.

Recommendation 3. The Committee recommends that the Member in Charge undertakes further work analysing and estimating the benefits of the Bill, and for this information to be included in a revised Regulatory Impact Assessment.
Response: Reject In developing the Bill, the Explanatory Memorandum and Regulatory Impact Assessment, a substantial amount of work has been undertaken to analyse and capture the potential benefits of residential outdoor education. Significant detail on the potential benefits of the Bill is included throughout the Explanatory Memorandum, not just within the RIA. The information on the benefits contained in the EM has been drawn together following lengthy and detailed discussion with a wide range of individuals and organisations. This includes discussion with providers of outdoor education across the UK and elsewhere, as well as drawing on evidence from experts such as the Outdoor Education Advisers' Panel, and the Institute for Outdoor Learning. I refer the Committee in particular to: • Chapter 3 – paragraph 18; paragraphs 23 to 25; paragraphs 60 to 69; paragraphs 79 to 101. • RIA – paragraphs 212 to 224. While I reject the Committee's recommendation, I note and agree with the Committee's view that "The Committee expects RIAs to contain the best estimate possible for benefits as well as costs to enable it to fully scrutinise the overall financial implications of a Bill". I am satisfied that the RIA I have prepared does contain the best estimate possible. If the Bill is passed, and enacted, I would fully support any 'post-legislative' work to analyse whether the Bill has had the impact and the benefits that are expected.
Recommendation 4. The Committee recommends that the Member in Charge updates the Regulatory Impact Assessment to include an analysis and costs of items other than specialist equipment that pupils may need when attending a residential outdoor education experience, such as suitable clothing and footwear.
Response: Reject This is an issue to which I gave a great deal of consideration while developing the Bill and the Explanatory Memorandum, and on balance, I did not believe that the cost of non-essential clothing and footwear should form part of the costings for the Bill. As the Committee will be aware, the purpose of the Bill is to enable all pupils in maintained schools to experience residential outdoor education. To achieve that,

the Welsh Ministers will have a duty to take all reasonable steps to ensure a course of residential outdoor education is provided once to all pupils in maintained schools, free of charge.

I fully understand that when attending a course of residential outdoor education, pupils would be expected to take suitable clothing, such as coats and footwear. However, these can be seen as non-essential for the specific activities they may undertake as part of the experience and are therefore not unique to the purposes of the Bill.

When organising residential visits away, schools provide pupils with a list of things they would need to take with them. In my discussions with providers, it was often the case that what schools were telling pupils they 'needed' was over and above what the centres themselves actually required pupils to bring.

In paying for any non-essential items of clothing, there is also the challenge of distinguishing between what pupils might 'need' and what they might 'want'. Social pressures will inevitably lead to certain demands from pupils. The clothing that some (if not most) pupils choose to wear may be branded goods that would not offer value for money if the cost is being met through the Bill.

It is also a reasonable assumption that most pupils would already require those non-essential items of clothing for purposes out with the Bill. As such the cost is not included as it is not something directly attributable to the Bill. It would be impossible to know with any sense of certainty what would need to be paid for in this regard. It was therefore decided that the costs to be included as part of the Bill should be those costs that would need to be met by ALL pupils attending a course of residential outdoor education.

Where there are items of clothing that pupils may not have, and which might prevent a child attending, the School Essentials Grant could be used to help meet those costs. I am aware that the Committee has heard evidence in this regard during its evidence gathering.

Recommendation 5. The Committee recommends that the Member in Charge provides further information about how guidance around the Bill will ensure that value for money is a key consideration when schools make choices about residential outdoor education.

Response: Accept

Ensuring value for money depends on a range of factors. It is essentially a balance between what is on offer and the aims of the school. There needs to be a clear picture in place of what a school requires from a visit, and what the provider will deliver.

The most important thing in assessing value for money is whether the aims of the visit have been met. This could be achieved through an evaluation of the visit by the teacher leading it. Such an evaluation would also enable staff to identify strengths and weaknesses, potential improvements and plan for future residentials. The evaluation can be used to demonstrate effective use of the funding.

To achieve this there is a need for accompanying school staff to recognise what value for money might look like. One way to help this is through training around what the LOtC Quality Badge involves, as it incorporates aspects of provision that encourage the conditions leading to successful outcomes.

The Bill already requires the Welsh Ministers to issue guidance in respect of Residential Outdoor Education, and that the guidance "(g) must make provision in respect of the costs that it would be reasonable to incur in connection with residential outdoor education, including, but not limited to, the cost of board and lodging and transport". This should provide some safeguard that the costs of visits must be reasonable. However I would be happy to explore if the guidance provisions in the Bill could be strengthened to further promote the need to ensure value for money.

Recommendation 6. Given the varied needs and requirements of pupils, the Committee recommends that the Member in Charge provides further analysis on the estimated costs for pupils with complex needs and Additional Learning Needs, and for this information to be included in a revised Regulatory Impact Assessment.

Response: Reject

The RIA already contains what I consider to be an accurate estimate of the costs for pupils with complex needs to attend a residential outdoor education experience.

In developing the estimate, I have worked directly with the Exmoor Calvert Trust and the Bendrigg Trust, two of the leading providers in the UK of activity breaks for people with disabilities and special needs.

The costs provided directly from those centres equated to approximately double the average cost provided by centres responding to the survey sent out to support data collection related to the Bill. These costs are set out in the RIA.

Recommendation 7. The Committee recommends that the Member in Charge provides further analysis on supply teaching costs, and for this information to be included in a revised Regulatory Impact Assessment.
Response: Reject In rejecting this recommendation, I acknowledge that there are often challenges in finding suitable supply teacher cover – as outlined in evidence to the Committee. However, in developing the costs for the Bill in this respect, I have based the estimate on the assumption that supply cover would be available whenever needed, and as such this should provide for the maximum costs associated with this aspect of the Bill. I note the Committee has based the recommendation on its concerns over the availability of supply teacher cover. However, the availability of cover should not change the actual costs of providing that cover based on the assumption already outlined. Therefore, I do not believe there to be any underestimation as I have based the estimate on that cover being available.
Recommendation 8. The Committee recommends that the Member in Charge undertakes further work on cost implications in relation to potential changes for the School Teachers Pay and Conditions Document as a result of the Bill being passed.
Response: Reject It would not be appropriate for me, as an individual Member of the Senedd to undertake work to consider possible changes to the School Teachers Pay and Conditions Document. If, as a result of the Bill being passed, a change to that document is required, it would be for Welsh Ministers to work with teachers, and unions, to establish the extent to which any changes are required.

Recommendation 9. The Committee recommends that the Member in Charge provides further information on the costs associated with the tracking and monitoring of pupils' attendance at a residential outdoor education experience in a revised Regulatory Impact Assessment.
Response: Reject The RIA already contains the best estimate for the costs of tracking pupils – based on discussions with stakeholders on the likely way on which that tracking could work in practice. These discussions noted that tracking could be integrated into each pupil record entered into the appropriate information management system, which would require an additional field to be inputted into the pupil record database. These costs are currently unknown as local authorities would need to approach the software developers to obtain a cost. However, as local authorities already utilise information management systems it is believed the transition costs to implement an additional field would be negligible.
Recommendation 10. The Committee recommends that the Member in Charge provides clarification on any potential inspection requirements associated with the Bill, including any role for Estyn, and further detail on how effective monitoring of the Bill will be achieved.
Response: Accept The Bill will require that public money is to be used to fund a course of residential outdoor education as part of education, and I acknowledge there may arguably be a need for some form of quality control and assessment that it is meeting desired educational outcomes. As it will be the school itself that sets the aims of the visit, it should also follow that the school has responsibility for assessing whether these aims have been met. Estyn itself confirmed in evidence that if the Bill progresses and outdoor education residentials become a statutory requirement, that would be taken into account when Estyn inspects a school's teaching and learning. However, through its routine inspections, Estyn wouldn't look at the actual visits schools undertake and form a judgement on these. If this was desired, the Welsh Government would need to remit Estyn to carry out a thematic review, which it could do as part of its annual remit letter. There will therefore not be any additional role for Estyn as a matter of course. Current, voluntary quality frameworks that providers of outdoor education can access include assessments of teaching and learning processes, as well as a range

of other ‘components of provision’, including safety, admin, etc. Statutory and non-statutory inspection systems exist already and are carried out at the expense of the provider.
Recommendation 11. The Committee recommends that the Member in Charge includes a post-implementation review in a revised Regulatory Impact Assessment, which should include information as to how the overall costs and benefits of the Bill will be monitored.
Response: Accept As outlined in my response to Recommendation 3, if the Bill is passed, and enacted, there would be a substantial piece of work needed to analyse whether the Bill has the impact, and the benefits, that are expected. If the Bill progresses to Stage 2, I will explore the possibility of including a post-implementation review, which may be better placed set out on the face of the Bill rather than in the RIA.

Sam Rowlands
Member of the Welsh Parliament for
North Wales
-
Aelod Senedd dros
Gogledd Cymru

North Wales Office | Swyddfa Gogledd Cymru
North Wales Business Park, Abergele LL22 8LJ
-
Cardiff Office | Swyddfa Caerdydd
Senedd Cymru, Cardiff Bay, Cardiff CF99 1SN
-
Tel | Ffôn: 0300 200 7267
Email | E-bost: sam.rowlands@senedd.wales

Chair of Children, Young People and Education Committee

15 April 2024

Dear Chair,

Residential Outdoor Education (Wales) Bill: response to the Children, Young People and Education Committee's Stage 1 report

I would like to thank the Children, Young People and Education Committee for their scrutiny of the Residential Outdoor Education (Wales) Bill during Stage 1 and for the report which was published on 21 March 2024. I have set out my response to the Committee's conclusions and recommendations at Annex A.

I will also be writing to the Chairs of the Finance Committee and the Legislation, Justice and Constitution Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

Yours sincerely

Sam Rowlands MS
Member of the Welsh Parliament for North Wales

Annex A

Response from Sam Rowlands, MS to the Children, Young People and Education Committee's Report on the Residential Outdoor Education (Wales) Bill

Recommendation 1. If the Bill is passed, the Welsh Government should commission a review of capacity within the residential outdoor education sector, which must include assessment of capacity for accessible and inclusive provision; and Welsh medium provision. This review should be published, and information about provision made available to schools to help inform their planning and design of residential outdoor education experiences.
Response: Noted As this recommendation is for the Wesh Government rather than me as Member in Charge of the Bill, it would not be appropriate for me to accept or reject this recommendation. Whilst I undertook a lot of work to during the development of the Bill to analyse and understand the current capacity of the residential outdoor education sector, I would support the Committee's view that having a better understanding of capacity in Wales will help support the implementation of the Bill if it is passed. As such I would welcome such a review.
Recommendation 2. The Member in Charge should bring forward amendments at Stage 2 to widen the eligibility criteria to include pupils in education other than at school.
Response: Accept in principle As the Committee will be aware, this is an issue to which I have given a great deal of consideration throughout the development of the Bill. At the very start of the process, the proposal I submitted, and to which I was given leave to proceed, looked to establish a statutory duty to ensure that all young people receiving maintained education were provided with the opportunity to experience residential outdoor education. In developing the Bill, the way in which this could be best delivered was through making ROE a part of the curriculum, by making relevant amendments to the Curriculum and Assessment (Wales) Act 2021 (the 2021 Act). As I moved through the process, and undertook consultations on the policy objectives and the draft Bill, it became clear that there were strong views that the Bill should be widened to include pupils educated other than at school (i.e. those outside the maintained education settings to which my original proposal related).

I absolutely acknowledged that children EOTAS, such as those in Pupil Referral Units (PRUs), may particularly benefit from a residential outdoor experience provided under the Bill. However, in bringing the Bill before the Senedd I believed that to best meet the original objectives I had to consider how the Bill would work best, and decided to proceed with the Bill as relating to maintained education, through the changes proposed to the 2021 Act. In doing so, I was mindful that the 2021 Act places different curriculum requirements in PRUs to those in schools, whereby only some aspects of the Curriculum for Wales are mandatory. I was therefore seeking to be cognisant of the approach of the 2021 Act.

I do, however, recognise that this is an area of the Bill that could be strengthened. Hearing evidence presented during the Stage 1 process has highlighted this further. There are, however, some substantial considerations needed to establish how this could be delivered, and whether that would be best delivered through the Bill or through other means led by the Welsh Government.

If the Bill does progress, I commit to reviewing this issue, and to work with the Welsh Government to establish the feasibility of extending the provision to pupils EOTAS, and whether this would be best placed within the Bill or ensured by other means. However, given the time restraints, that work may not be completed in time to bring forward amendments at Stage 2.

Recommendation 3. The Member in Charge should bring forward amendments at Stage 2 to remove the provision that residential outdoor education should consist of four nights and five days to ensure that there is greater flexibility on the length of a residential outdoor education experience which is linked to children and school's individual needs.

Response: Reject

I fully appreciate the Committee's concerns in this respect, and agree that it should be for schools to make decisions that best suit their individual school needs. However, I believe the Bill as drafted already allows for this flexibility.

The Bill proposes that a new Section 64A is inserted into the Curriculum and Assessment (Wales) Act 2021 (the 2021 Act) which relates to the provision of a course of residential outdoor education.

That proposed new section provides that a course of residential outdoor education must be comprised of at least four nights and five days. The proposed new section goes on to state that the course of residential outdoor education can take place on one visit or can be spread over more than one visit.

This would allow schools to decide, as part of the course of residential outdoor education, the length of the visit it wanted to arrange, and this could range from one night to four nights. Schools could also decide to arrange more than one ROE

experience as part of the 'course of residential outdoor education' required under the 2021 Act, as long as the total duration across all experiences is at least four nights and five days.

I note that the Committee believes references to the length of experiences should be left to the guidance and not on the face of the Bill. My original proposal, to which the Senedd gave leave to proceed in October 2022, was for an entitlement to "at least one week" of residential outdoor education. This is part of the reason I have included this on the face of the Bill, although there is flexibility for this total duration to be made up of more than one shorter experience, as explained above. It should also be noted that the Bill provides for a course of residential outdoor education once. To say on the face of the Bill that the course is only available once, but then to say in guidance that it can be split, may lead to a lack of clarity. Explicitly stating on the face of the Bill that it is a course of residential outdoor education that must be provided once, but that it can be split, makes the policy intention clearer.

Recommendation 4. The Member in Charge should bring forward amendments at Stage 2 to specify that the guidance must provide that all children's dietary requirements are catered for.

Response: Accept

I note that this recommendation seems to be in response to a single occasion that was reported to the Committee, and I would hope and expect that this is not more widespread a problem.

People booking courses have a duty of care to their students and should be checking that dietary requirements will be met. Most (if not all) providers who offer food ask for information about dietary requirements and allergies before any visit takes place.

Therefore, while this may not be necessary, I would be happy to accept this recommendation and bring forward the suggested amendment(s).

Recommendation 5. The Member in Charge should bring forward amendments at Stage 2 to put on the face of the Bill that it is not mandatory for children to take part in residential outdoor education provision offered under this Bill.

Response: Accept

The Bill makes providing a course of residential outdoor education a mandatory part of the curriculum. It would therefore be mandatory for schools to provide this course of residential outdoor education but the intention is that children should

not be compelled to do it. This is set out in the Explanatory Memorandum and I have made this point throughout the Stage 1 process.

There is already provision in the Curriculum and Assessment Act 2021 (the 2021 Act) and regulations made under that Act which enable head teachers of maintained schools to determine that provisions of the Curriculum for Wales should not apply to a child or pupil, so if a child did not wish to take part in the course of residential outdoor education provided under the Bill, the head teacher of the school could make a determination to this effect.

Coupled with this, the Bill makes provision for guidance to be issued under a new Section 71A to the 2021 Act that "must provide that residential outdoor education is not compulsory for pupils to attend". I appreciate that the guidance itself cannot change the legal effect of the Bill that makes this a mandatory part of the curriculum. The intention is that the guidance would clearly set out that head teachers should use their power under the relevant Regulations to make such a determination to exclude a child or pupil from the course of residential outdoor education provided under the curriculum.

While I am not sure an amendment to the Bill is required given the existing mechanisms that are already in place, I would be happy to explore whether such an amendment could be brought forward at Stage 2 if that would make the intention clearer, and its effect easier to manage in practice.

Recommendation 6. The Member in Charge should bring forward amendments at Stage 2 to give effect to the proposed amendments of the Welsh Language Commissioner, in order to ensure:

▪ that there is sufficient Welsh language provision;

▪ that residential outdoor education provision offers opportunities for all children to learn and have experiences through the Welsh language; and

▪ that residential outdoor education must promote an understanding of

Welsh language and culture

Response: Accept in part

The Welsh Language Commissioner has proposed three specific amendments to provisions in the Bill relating to the guidance that must be issued by Welsh Ministers. Those provisions are set out in the Bill through the insertion of a new Section 71A into the Curriculum and Assessment (Wales) Act 2021 (the 2021 Act). The call from the Commissioner is to amend the proposed Section 71A(3)(d) and (3)(e), and insert a new 71A(3)(f) – so the provisions would read as follows:

> "(3)(d) must provide that all residential outdoor education providers be able to provide through the medium of Welsh"

“(3)(e) in line with the requirements of the curriculum for Wales, must provide that residential outdoor education offers opportunities for all pupils to learn and have experiences through the medium of Welsh”

“(3)(f) must provide that residential outdoor education promotes an understanding of Welsh language and culture”

Over the course of Stage 1 of the Bill, I have given a commitment to strengthening the Bill wherever possible, and where appropriate, and I gave a specific commitment to the CYPE Committee in that regard in relation to Welsh language provision. With that in mind, I would be happy to accept the recommendation in relation to the proposed amendments to (3)(e) and (3)(f) as set out above.

However, I cannot accept the proposed amendment as set out in (3)(d) above.

The purpose of the new section 71A is for guidance to be issued in respect of residential outdoor education provided in pursuance of a duty imposed under the Act. The Bill does not impose any duties on providers of residential outdoor education, and as such the guidance does not apply to providers. Furthermore, I do not consider it would ever be appropriate for guidance to specify that providers must ‘be able to provide through the medium of Welsh’. The ability of providers to meet this requirement would, in my view, go way beyond the purpose of guidance. It may also impact on the intention of the Bill, as it could result in providers who are not able to offer an experience through the medium of Welsh declining to make any offer at all, which would in turn limit opportunities for children to experience residential outdoor education.

Recommendation 7. The Member in Charge ahead of the Stage 1 debate provides details on how he envisages the tracking of provision to work in practice.

Response: Accept

In developing the Explanatory Memorandum, we undertook work to assess what may be required in terms of tracking pupils’ attendance at residential outdoor education visits.

As part of that we held discussions with stakeholders including the Outdoor Education Advisers’ Panel (OEAP) and WLGA who advised that in its simplest form tracking could be integrated into each pupil record entered on the appropriate information management system. This would require an additional field to be inputted into the pupil record database. This is already outlined in the Explanatory Memorandum.

As I understand it, that pupil record follows a pupil through their school life, and would therefore follow them if they changed schools. That pupil record – through the inclusion of the new field – would state whether that pupil had taken up their ‘free’ residential outdoor education experience.

So based on those discussions, that is how I envisage the tracking of pupils working in practice, based on the Bill as introduced. Should the Bill progress, and should it be amended to change the way residential outdoor education is provided, there may be a need to revisit the tracking mechanism, and I would be happy to undertake further work to analyse alternative methods of tracking if that is the case.
Recommendation 8. The Member in Charge ahead of the Stage 1 debate should provide examples where legislation has placed a requirement on Ministers to fund a very specific type of activity.
Response: Reject I note the difficulty the Committee has had in identifying comparable examples in legislation to Section 2 of the Bill 'Funding for residential outdoor education'. In developing the Bill, I was aware that this was a highly unusual use of legislation. As the whole premise of the Bill (and of my proposal from the very start of the process) was to ensure that residential outdoor education would be provided at least once **free of charge**, such a provision was required to ensure that the Bill met that objective. I am also acutely aware of the financial pressures on schools and local authorities and do not intend for the costs of the Bill to be met from education providers' existing budgets. Section 2 also reflects this objective. I did not base the drafting of Section 2 of the Bill on any existing legislation, and as such do not have examples of equivalent legislation to provide to the Committee.

Eluned Morgan AS/MS
Ysgrifennydd y Cabinet dros Iechyd a Gofal Cymdeithasol
Cabinet Secretary for Health and Social Care

Llywodraeth Cymru
Welsh Government

Rt. Hon. Elin Jones MS
Llywydd

Llywydd@senedd.wales

16 April 2024

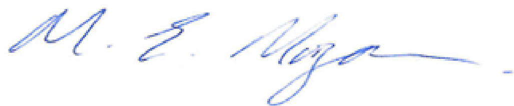
Dear Llywydd

The UK Government introduced the Tobacco and Vapes Bill (the Bill) to the House of Commons on 20 March 2024.

The Bill is jointly supported by the four UK Governments and deals with matters of public health in relation to tobacco and vape devices control. It is expected the Bill is largely to be within the Senedd's legislative competence. The rapid development of the Bill, and the complexity and breadth of the provisions has meant that it has not been possible for my officials to complete the detailed analysis required within the normal two week deadline set out in Standing Orders. I am committed to ensuring that the Senedd is able to fully consider this important public health legislation and I intend to lay a Legislative Consent Memorandum in early May.

I am copying this letter to the Counsel General designate, the Cabinet Secretary for Climate Change and Rural Affairs, the Minister for Mental Health and Early Years, the Chair of the Legislation, Justice and Constitution Committee and the Chair of the Health and Social Care Committee.

Yours sincerely,



Eluned Morgan AS/MS
Cabinet Secretary for Health and Social Care
Ysgrifennydd y Cabinet dros Iechyd a Gofal Cymdeithasol

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Eluned.Morgan@llyw.cymru
Correspondence.Eluned.Morgan@gov.wales

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

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

Jeremy Miles AS/MS
Ysgrifennydd y Cabinet dros yr Economi, Ynni a'r Gymraeg
Cabinet Secretary for Economy, Energy and Welsh Language

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/FM/0609/24

Chair of the Legislation, Justice and Constitution Committee

16 April 2024

Dear Chair

I am responding to the 15 March letter from the Committee to the former First Minister relating to his response to the Legislation, Justice and Constitution Committee's (LJCC) report on the Supplementary Legislative Consent Memorandum (Memorandum No.3), laid in respect of the Data Protection and Digital Information Bill ('the Bill').

I have considered the questions posed and my response to these are at Annex 1.

As the Committee is already aware, since the Bill's introduction the Welsh Government has been in discussions with the UK Government, at both Ministerial and Official level, regarding the devolved implications of a number of provisions within the Bill. Through these discussions, the Welsh Government sought powers for Welsh Ministers, as well as an exemption, across four separate parts of the Bill as follows:

- Part 1, Data Protection – clause 41 Interview Notices;
- Part 2, Digital Verification Services (DVS) Information Gateway - clause 78 Code of practice about the disclosure of information;
- Part 3, Customer Data and Business Data - clauses 85-107;
- Part 4, Other provision about Digital Information - clause 126 Implementation of law enforcement information sharing agreements, clause 127 Meaning of "appropriate national authority", and clause 151 Regulations; and,
- Part 4, Other provision about Digital Information - clauses 138-141 National Underground Asset Register.

Our position, as set out in the Legislative Consent Memoranda laid on the Bill to date, has been that consent could not be recommended for several of the Bill's provisions whilst these discussions were ongoing.

Our discussions have now concluded. We received a 'final package' of proposed amendments from the UK Government which it states it would be willing to make should Welsh Ministers deem them sufficient to recommend consent to the Bill in the Senedd. Following careful consideration of the package, we informed the UK Government on 9 April

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Jeremy.Miles@llyw.cymru
Correspondence.Jeremy.Miles@gov.wales

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

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

that the proposed package of amendments was not sufficient and, therefore, the Welsh Government would not be recommending consent for the Bill.

Whilst the Welsh Government is supportive of the policy intent behind much of the Bill, the proposed amendments represent a significant lack of movement from the UK Government beyond the offer of consultation provisions. This was despite the Welsh Government being clear throughout the Bill's passage that the inclusion of any form of consultation provision in areas we consider to be devolved, or the creation of concurrent powers without a consent mechanism, is contrary to both our principles on UK Bills, as well as the Senedd's consistent opposition to similar approaches.

In respect of the new National Underground Asset Register (NUAR) provisions, we reiterated that the removal of a devolved executive function from the Welsh Ministers is completely inappropriate. Furthermore, we emphasised that the amendment proposed by the UK Government, which would ensure Welsh Ministers retain their existing regulation making powers under section 79 of the New Roads and Street Works Act 1991, should not be conditional upon us agreeing to any of the other amendments proposed and therefore should be tabled.

Annex 2 sets out more details of the provisions in question, detailing the requests we made to the UK Government and the amendments it proposed in response.

We have asked the UK Government to reconsider its position on the concerns we have raised on the Bill in order for us to reach a satisfactory resolution which would enable a recommendation to the Senedd for consent to the Bill. For the purposes of clarity though, the Welsh Government will not be recommending the Senedd consent to this Bill as it is currently drafted.

We will be laying a further Supplementary Legislative Consent Memorandum (Memorandum No.4) in respect of amendments tabled on the Bill by the UK Government on 13 March. This Memorandum will also state that Welsh Government will not be recommending the Senedd consent to this Bill as it is currently drafted.

I am copying this letter to the Chair of the Culture, Communications, Welsh Language, Sport, and International Relations Committee.

Yours sincerely

Jeremy Miles AS/MS
Ysgrifennydd y Cabinet dros yr Economi, Ynni a'r Gymraeg
Cabinet Secretary for Economy, Energy and Welsh Language

Annex 1

Question 1 a) Please would you share with us the correspondence received on 6 February 2024 from Julia Lopez MP, the Minister of State for Data and Digital Infrastructure.

Response:
We have sought agreement from UKG to share a copy of this correspondence and are awaiting a reply.

Question 1 b) We would welcome your views on the different criteria and approaches that appear to be applied by the UK Government, the Welsh Government and the Senedd's Standing Orders when assessing whether a Bill's provisions require the Senedd's legislative consent.

Response: The Welsh Government is committed to the Sewel convention as reflected in s107(6) of the Government of Wales Act 2006. In securing the legislative consent of the Senedd, we will continue to comply with the Senedd's Standing Orders.

Question 2) Please would you provide details of any devolved implications of the regulation-making powers given to the Secretary of State and the Treasury in Part 3 of the Bill.

Response:
A summary of the devolved implications of Part 3 of the Bill can be found in Annex 2.

Question 3 a) Please would you share with us the correspondence sent on 23 January 2024 to the Minister of State for Data and Digital Infrastructure.

Response:
We have sought agreement from UKG to share a copy of this correspondence and are awaiting a reply.

Question 3 b) In her letter on 6 February 2024, did the Minister of State address the Welsh Government's concerns regarding the NUAR provisions? If not, have the concerns been addressed in subsequent correspondence (i.e. the 1 March 2024 letter referred to in the responses to recommendations 8 and 10) or is the Welsh Government still awaiting a response on this matter?

Response:
The Minister of State did not address our concerns regarding the NUAR provisions in her correspondence of 6 February or 1 March.

A number of suggested amendments to the NUAR provisions were included within the package of proposed amendments received from the UK Government in February. Please see Annex 2 for further detail.

Question 4) In response to recommendation 8 and recommendation 10 in our report on Memorandum No. 3, you refer to correspondence received from the Minister of State on 1 March 2024 in respect of the UK Government declining to share with the Welsh Government a copy of its risk assessment on the potential impact of the Bill on the UK's EU data adequacy decision, and in respect of the UK Government's engagement with the European Commission on the Bill. Please would you share with us the correspondence received on 1 March 2024.

Response:
We have sought agreement from UKG to share a copy of this correspondence and are awaiting a reply.

Annex 2

Part 1, Data Protection – clause 41 Interview Notices
In Part 1 of the Bill, clause 41 Interview Notices (clause 38 as introduced) inserts new provisions into the Data Protection Act (DPA) 2018 which confer powers on the Information Commissioner to require certain persons to attend an interview, where non-compliance with particular requirements of the DPA 2018 are suspected. This provision currently includes an exemption for the Office for Standards in Education, Children's Services and Skills (OfSTED), in so far as it is a controller or processor in respect of information processed for the purposes of functions exercisable by His Majesty's Chief Inspector of Education, Children's Services and Skills by virtue of section 5(1)(a) of the Care Standards Act 2000.

A*mendments sought by Welsh Government*
Welsh Government requested that a similar exemption be granted to Welsh Ministers as the Regulator for the equivalent services in Wales.

Amendments proposed by UK Government
UK Government proposed to remove OfSTED's exemption to the Information Commissioner's interview notice powers under clause 41. Further, that OfSTED's existing exemption to the Information Commissioner's assessment notices powers under section 147(6) of the DPA 2018 would also be removed. The Information Commissioner's Office, the Department for Education and OfSTED are understood to be in agreement that the exemption is not needed and are content for it be removed.

Welsh Government position
Welsh Government are content with this proposed amendment as it addresses our concerns around ensuring parity in our policy for Wales.

Part 2, Digital Verification Services: Information Gateway - clause 78 Code of practice about the disclosure of information
Part 2 of the Bill makes provision for Digital Verification Services (DVS). Together these clauses make provision about the sharing of information for the purpose of providing DVS, conferring a permissive power on public authorities to provide personal information about individuals (subject to consent) to organisations providing DVS. This includes:

- a 'DVS trust framework' of rules concerning the provision of DVS (clause 53),
- a register of organisations providing DVS (clauses 63-73);
- a trust mark for use by registered organisations (clause 79); and,
- an information gateway to enable public authorities to disclose personal information to registered organisations (clause 74) and associated statutory Code of Practice (clause 78).

Clause 74 (clause 54 as introduced), which establishes a new information gateway, confers a permissive power on public authorities to provide personal information about individuals (subject to consent) to identity service providers providing trust-marked DVS. This permissive power would be applicable to Public Authorities in Wales.

Clause 78 (clause 56 as introduced) gives powers to the Secretary of State to publish a Code of Practice regarding the disclosure of information under clause 74. The clause sets out that the Code must be consistent with, and issued under, section 125(4) of the DPA 2018 and that Public Authorities sharing data for DVS must have regard to the Code. Public Authorities in Wales would have to have regard to this Code of Practice when sharing data using the permissive power under clause 74.

Welsh Government are of the view that the purpose of Part 2 is to facilitate the provision of DVS and improve the service offered to the user and that these clauses relate to devolved matters of public services, economy and business and therefore fall within the legislative competence of the Senedd.

UK Government's updated devolution analysis on Part 2 is that they consider consent should be sought for clause 74 and clause 78(3).

Amendments sought by Welsh Government

Welsh Government sought concurrent plus powers with a carve out in relation to clause 78. This would place a requirement on UK Ministers to obtain consent from Welsh Ministers for any UK wide Code of Practice to apply to Wales, while also giving Welsh Ministers the power to prepare and publish a Wales specific Code of Practice, should we wish to do so in the future.

This approach was adopted in line with our constitutional principles, and recognising the merits of UK alignment.

Welsh Government is supportive of UKG policy in this area and it is highly likely that the UK Code of Practice would align with Welsh policy in this area. However, concurrent plus powers with a carve out would enable Welsh Ministers to prepare and publish a Wales specific Code of Practice, if this was considered to be necessary in the future.

Amendments proposed by UK Government

UK Government proposed to amend Clause 78 of the Bill to require the Secretary of State to consult Welsh Ministers whilst preparing or revising the Code of Practice.

Welsh Government position

Welsh Government do not consider the above approach to suitably reflect the principles of devolution, and remain of the view that our request for concurrent plus powers is appropriate.

Part 3, Customer Data and Business Data - clauses 85-107

Part 3, clauses 85-107 (clauses 61-77 as introduced) makes provision about sharing customer and business information to improve data portability (Smart Data). These clauses allow for the secure sharing of data, upon the customer's request, with authorised third-party providers (ATPs), who would then use the data to provide services to the customer, including automatic account switching, personalised market comparisons and account management services. The customer can be a consumer or a business.

The clauses in Part 3 contain regulation-making powers which will enable the Secretary of State or Treasury to require suppliers (as specified in the regulations), and other relevant persons to share customer data and business data, to introduce Smart Data schemes in markets across the economy.

We remain of the view that the clauses within Part 3 of the Bill make provision about the sharing of information to improve data portability to improve the quality of service provided to the customer and to businesses. The purpose therefore relates to business and economy and so falls within the legislative competence of the Senedd, with none of the reserved matters in Schedule 7A to the Government of Wales Act 2006 (GoWA) engaged.

UK Government's view is that whilst legislative consent is required for these clauses, these clauses are devolved in so far as the customer is a business and not an individual, and therefore legislative consent is required but limited in this respect. In UKG's view, the reserved matter of regulation of the sale and supply of goods and services to consumers applies (paragraph 72(a) of Schedule 7A to GoWA).

Amendments sought by Welsh Government
Concurrent plus powers have been sought in relation to Part 3 to provide Welsh Ministers with regulation making powers in order to enable them to establish sector specific Smart Data Schemes here in Wales.

Welsh Government see practical benefit to a UK-wide regulatory alignment in this area and are of the view that access to UK-wide schemes would be of benefit to both individuals living in Wales and also Wales based businesses. UK Government's initial focus is understood to be on large sectors including cross-sector ideas covering financial services, energy, retail, transport and home buying.

Having concurrent regulation making powers would enable Welsh Government to influence how Smart Data schemes are delivered in Wales. It would also enable Welsh Ministers to introduce schemes in sectors where UK Government have no plans, or in sectors which are being considered by UK Government but which are of low priority.

Amendments proposed by UK Government
The amendments proposed by UK Government are to provide Welsh Ministers with concurrent powers to create regulations in relation to business customers only, with sectors considered reserved and Consumer Data (as defined in clause 85(2)) being out of scope.

As part of this, an amendment would be introduced which would provide UK Ministers with powers to prevent Welsh regulations in an area or sector where UK Government has already introduced Smart Data regulations and also powers to amend or repeal Welsh regulations that have been created using these powers. This would mean that where a Welsh scheme is in place and UK Government plans to implement a similar scheme UK-wide, UK Government would have the power to amend the Welsh regulations to reflect the UK-wide regulations. Further, where a UK scheme is in place, UK Government regulations may set restrictions on the Welsh Government's ability to introduce a similar scheme.

A consult mechanism would also be placed on both Welsh Ministers and UK Ministers, requiring them to consult with their Ministerial counterparts before implementing Smart Data regulations.

Welsh Government position
Whilst there is the potential for Welsh Government to establish meaningful Smart Data schemes within the parameters set out within the proposed amendments, to realise the full benefits such schemes can bring, Welsh Ministers should be provided powers to establish schemes which cover the sharing of both business data and consumer data.

The creation of concurrent powers (without consent mechanisms) is contrary to our principles and fails to respect devolution .

The ability for UKG to amend or repeal WG regulations created using the Smart Data powers could be problematic, as this could in effect 'shut down' a scheme that has been established by WG. However, it is considered likely that any Wales regulations would closely align with those of the UKG, lowering the risk that a complete shut down would occur.

Part 4, Other provision about Digital Information - clause 126 Implementation of law enforcement information sharing agreements, clause 127 Meaning of "appropriate national authority", and clause 151 Regulations

Clause 126 confers powers on the ‘appropriate national authority’ to make regulations for the purpose of implementing an international agreement relating to sharing information for law enforcement purposes (I-LEAP). New international law enforcement information-sharing agreements are subject to usual treaty ratification procedures and would be made by way of the negative resolution procedure.

Clause 127 defines the “appropriate national authority” by which regulations may be made under clause 126 of this Bill as the Secretary of State or, where a provision falls within devolved competence, Scottish Ministers or Welsh Ministers. It also sets out that Regulations made by Welsh Ministers must contain only provision which would be within the legislative competence of the Senedd.

Clause 151 defines the regulation-making power conferred by clause 126.

The Senedd has legislative competence to make provision for the prosecution of criminal offences and execution of criminal penalties on a wide range of devolved matters, for example, environmental or wildlife crime.

UK Government agree that legislative consent is required for these clauses.

Amendments sought by Welsh Government
Concurrent plus powers were originally sought in relation to clause 126 Implementation of law enforcement information-sharing agreements (clause 93 as introduced). As a result, the Bill was amended to enable Welsh Ministers and Scottish Ministers to make regulations where a provision falls within devolved competence. This also included a ‘carve out’ to amend Schedule 7B to GoWA, enabling the Senedd to amend the provision in the future.

However, the amendment made only provides Welsh Ministers with a concurrent power, not concurrent plus power. This means there is no requirement for Welsh Ministers to give consent before the Secretary of State can exercise their regulation making power under clause 151, even in areas where Welsh Ministers could exercise it.

Welsh Government requested that a consent mechanism also be included in order to ensure the provision respected devolution.

Amendments proposed by UK Government
The amendment proposed by UK Government would provide a consult mechanism. This would require the Secretary of State to consult Welsh Ministers prior to making regulations under clause 126, so far as those regulations included provision within the legislative competence of the Senedd.

Welsh Government position
Welsh Government is supportive of the policy intention behind clause 126 as engaging in international data sharing agreements plays an important role in preventing criminality, especially in terms of organised crime. However, law enforcement also includes the prosecution of criminal offences and execution of criminal penalties in which the Senedd has legislative competence in a variety of devolved areas.

The use of concurrent powers without a consent mechanism has been consistently opposed by both Welsh Government and the Senedd.

Part 4, Other provision about Digital Information - clauses 138-141 National Underground Asset Register
Amendments tabled at Report Stage introduce new clauses in the Bill which make amendments to, and insert a new Part and Schedule into, the New Roads and Street Works Act 1991 (NRSWA 1991). These require, and make provision in connection with, the keeping of a register of information relating to apparatus in streets, to be called the National Underground Asset Register.

The National Underground Asset Register (NUAR), developed by the Geospatial Commission (part of the Department for Science, Innovation and Technology), is a digital map of underground pipes and cables that will significantly improve the way bodies across the UK and industry install, maintain, operate and repair the buried infrastructure.

The relevant provisions are:

- *clause 138: National Underground Asset Register* - introduces a new Part 3A of the NRSWA 1991 which deals with the details of the proposed register. It includes the making available of information contained in it, the form of the register, fees and the provision of information by undertakers. The regulations to be made under Part 3A are to be made by the Secretary of State, who before making them must consult the Welsh Ministers.
- *Schedule 13: National Underground Asset Register: monetary penalties* - inserts a new Schedule 5A into the NRSWA 1991 which makes provision about the imposition of monetary penalties in relation to requirements contained in new Part 3A of that Act.
- *Clause 139: Information in relation to apparatus* - amends the NRSWA 1991 to impose new duties on undertakers to keep records of, and share information relating to, apparatus in streets; and makes amendments consequential on those changes. This also provides the Secretary of State with regulation making powers under amended sections 79 and 80 of the NRSWA 1991 and sets out that Welsh Ministers must be consulted before such regulations are made.
- *Clause 140: Pre-commencement consultation* – establishes that the requirement for the Secretary of State to consult under a provision inserted into the NRSWA 1991 (by the new clauses above) can be satisfied by consultation undertaken before or after the provision comes into force.
- *Clause 141: Transfer of certain functions to Secretary of State* – provides that certain powers to make regulations under section 79 of the NRSWA 1991, so far as exercisable in relation to Wales, are transferred from the Welsh Ministers to the Secretary of State; and makes provision in relation to regulations already made under those powers.

The Welsh Ministers have executive competence in relation to the NRSWA 1991 (except section 167(3)) by virtue of article 2 and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999/672.

No relevant reserved matters in Schedule 7A to GoWA have been identified, and Welsh Government view's is that the UK Government is legislating with regard to devolved matters. UKG agree that legislative consent is required.

Amendments sought by Welsh Government
Welsh Government has raised a number of concerns around the new NUAR provisions, at both a Ministerial and official level, since their introduction in November.

In particular, concerns were highlighted around the impact upon existing powers of the Senedd whereby, under clause 141, certain powers to make regulations under section 79 of the NRSWA 1991 would be transferred from the Welsh Ministers to the Secretary of State. Welsh Ministers have exercised their powers under section 79 of the NRSWA 1991 and the form of records prescribed, and the exceptions prescribed for the recording of location, are consistent with those set out in the regulations applicable to England.

In addition, the amendments to section 79 of the NRSWA 1991 within the Bill do not set out that the 'record of information' is to be used or recorded solely for the purposes of the NUAR. Nor is there anything to indicate that these records cannot be used for other purposes beyond the remit of the NUAR. This means that whilst the record of information is crucial for the NUAR, any regulations made by Welsh Ministers under their existing powers could have a purpose beyond that of the NUAR. This, again, suggests that the removal of Welsh Ministers' powers would be a disproportionate approach.

Whilst a 'consult' mechanism is included within the NUAR provisions, this places no binding commitment on the UK Government to take our views into account following consultation and does not suitably reflect devolution. This is not considered to be constitutionally acceptable and cannot compensate for the removal of powers which Welsh Ministers already hold.

Concerns were also raised around whether the ability to control our own data in Wales would be negatively impacted by these provisions, where they provide for the Secretary of State to hold the data contained within the register of information. Bodies in Wales currently have access to such data and it is important that the right to access the data and make changes to it, as and when required, is retained.

Amendments proposed by UK Government
UK Government proposed an amendment to clause 141 to allow regulation making powers under section 79 and the non-NUAR aspects of section 80 of the NRSWA 1991 to be concurrently exercisable by Welsh Ministers and UK Ministers. This would mean Welsh Ministers retain their existing powers under NRSWA 1991 and would be able to make regulations under the existing provisions should they wish to do so. Additionally, should Welsh Ministers wish to replace the NUAR service in the future by establishing a funded service of their own, they would be able to do so if the Senedd were to pass primary legislation.

Under the proposed amendments the new regulation making powers relating to the NUAR service would (still) only be exercisable by the Secretary of State as they relate solely to the NUAR service. The Secretary of State would be required to consult Welsh Minsters and Northern Ireland Ministers prior to regulations being laid.

Welsh Government view
The removal of a devolved executive function from the Welsh Ministers represents a completely inappropriate reversal of devolution. There should be no question that the amendment which would ensure Welsh Ministers retain their existing regulation powers should be tabled.

The proposed consult mechanism in respect of the specific NUAR service regulation making powers does not afford the same constitutional or legislative safeguards as consent mechanisms. The issues with concurrent powers apply equally in this area.

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

Agenda Item 6

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Agenda Item 7

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Agenda Item 8

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Agenda Item 10

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

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