

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video conference via Zoom	P Gareth Williams
Meeting date: 1 July 2024	Committee Clerk
Meeting time: 13.30	0300 200 6565
	SeneddLJC@senedd.wales

Remote

Public meeting

(13.30 – 14.00)

1 Introduction, apologies, substitutions and declarations of interest

(13.30)

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

(13.30 – 13.35)

(Page 1)

Attached Documents:

LJC(6)-22-24 – Paper 1 – Draft report

Made Negative Resolution Instruments

2.1 SL(6)496 – The Housing Renewal Grants (Amendment) (Wales) Regulations 2024

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

(13.35 – 13.40)

3.1 SL(6)497 – The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (Amendments to Schedule 5) Regulations 2024

(Pages 2 – 5)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-22-24 – Paper 2 – Draft report

LJC(6)-22-24 – Paper 3 – Written Statement by the Cabinet Secretary for Finance, Constitution and the Cabinet Office, 18 June 2024

4 Instruments that raise issues to be reported to the Senedd under Standing Order 21.7

(13.40 – 13.45)

Draft Negative Resolution Instruments

4.1 SL(6)494 – Part 2 Code of Practice: General Functions

(Pages 6 – 8)

[Code of Practice](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-22-24 – Paper 4 – Draft report

4.2 SL(6)495 – The National Framework for the Commissioning of Care and Support in Wales: Code of Practice

(Pages 9 – 10)

[Code of Practice](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-22-24 – Paper 5 – Draft report

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

(13.45 – 13.50)

5.1 SL(6)493 – The Procurement (Wales) Regulations 2024

(Pages 11 – 16)

Attached Documents:

LJC(6)-22-24 – Paper 6 – Letter to the Cabinet Secretary for Finance,
Constitution and Cabinet Office, 24 June 2024

LJC(6)-22-24 – Paper 6a – Letter from the Cabinet Secretary for Finance,
Constitution and Cabinet Office, 27 June 2024

6 Inter-Institutional Relations Agreement

(13.50 – 13.55)

7 Papers to note

(13.55 – 14.00)

7.1 Correspondence from the Cabinet Secretary for Housing, Local Government and Planning: The Welsh Government's response to the Committee's report on the Welsh Government's Legislative Consent Memorandum on the Renters (Reform) Bill

(Pages 17 – 20)

Attached Documents:

LJC(6)-22-24 – Paper 7 – Letter from the Cabinet Secretary for Housing,
Local Government and Planning, 21 June 2024

7.2 Correspondence from the Welsh Government: The Victims and Prisoners Bill

(Pages 21 – 26)

Attached Documents:

LJC(6)-22-24 – Paper 8 – Letter from the Cabinet Secretary for Culture and
Social Justice, 25 June 2024

LJC(6)-22-24 – Paper 9 – Letter from the Cabinet Secretary for Culture and
Social Justice to the Equality and Social Justice Committee, 25 June 2024

7.3 Correspondence from the Counsel General: Corrections to statutory instruments subject to the draft affirmative scrutiny procedure

(Pages 27 – 32)

Attached Documents:

LJC(6)-22-24 – Paper 10 – Letter from the Counsel General, 26 June 2024

LJC(6)-22-24 – Paper 11 – Letter to the Counsel General, 4 June 2024

7.4 Correspondence from the Cabinet Secretary for Climate Change and Rural Affairs: The Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022

(Pages 33 – 36)

Attached Documents:

LJC(6)-22-24 – Paper 12 – Letter from the Cabinet Secretary for Climate Change and Rural Affairs, 27 June 2024

LJC(6)-22-24 – Paper 13 – Letter to the Cabinet Secretary for Climate Change and Rural Affairs, 5 June 2024

Private meeting

(14.00 – 14.35)

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

9 Correspondence from Adam Price MS in relation to HM Prison Parc: Further consideration

(14.00 – 14.05)

10 Themes emerging from the LJC Committee's reports on legislative consent memoranda for UK Bills

(14.05 – 14.20)

(Pages 37 – 59)

Attached Documents:

LJC(6)-22-24 – Paper 14 – Research brief

11 The legislative consent process

(14.20 – 14.30)

(Pages 60 – 65)

Attached Documents:

LJC(6)-22-24 – Paper 15 – Letter from the Business Committee, 24 June 2024

LJC(6)-22-24 – Paper 16 – Letter to the Business Committee, 5 June 2024

12 Correspondence relating to the Data Protection and Digital Information Bill

(14.30 – 14.35)

(Pages 66 – 70)

Attached Documents:

LJC(6)-22-24 – Paper 17 – Letter from the Cabinet Secretary for Economy, Energy and Welsh Language, 17 June 2024

LJC(6)-22-24 – Paper 18 – Draft letter to the Cabinet Secretary

Statutory Instruments with Clear Reports 01 July 2024

SL(6)496 – [The Housing Renewal Grants \(Amendment\) \(Wales\) Regulations 2024](#)

Procedure: Made Negative

The Tertiary Education and Research (Wales) Act 2022 (“**TERA**”) establishes the Commission for Tertiary Education and Research and provides a new statutory framework for publicly funded tertiary education and research in Wales.

The Housing Renewal Grants Regulations 1996 (the “**1996 Regulations**”) set out the means test for determining the amount of grant which may be paid by local housing authorities under Chapter 1 of Part 1 of the Housing Grants, Construction and Regeneration Act 1996.

These Regulations amend the 1996 Regulations to reflect the revised legislative position resulting from TERA. In particular, they replace references to legislation which is repealed by TERA with references to the relevant sections of TERA, along with references to the Welsh Ministers / National Assembly for Wales / Higher Education Funding Council which are replaced with updated references to the ‘Commission for Tertiary Education and Research’ or the Welsh Ministers, as appropriate. These Regulations also amend the 1996 Regulations to correct out of date references to student support legislation.

Parent Act: Housing Grants, Construction and Regeneration Act 1996

Date Made: 12 June 2024

Date Laid: 14 June 2024

Coming into force date: 01 August 2024



Agenda Item 3.1

SL(6)497 – The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (Amendments to Schedule 5) Regulations 2024

Background and Purpose

These Regulations amend Schedule 5 to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“**the LTT Act**”). Schedule 5 contains rules identifying when certain property transactions are subject to the higher residential rates of Land Transaction Tax (“**LTT**”).

These Regulations will extend the 3 year periods applying to the “replacement of main residence” exception from higher residential rates of LTT, subject to certain conditions, where:

1. following the purchase of a replacement main residence, the sale of a former main residence has been delayed due to the presence of fire-safety defects, or
2. the future sale or purchase of a main residence is delayed due to the existence of emergency restrictions.

Procedure

Affirmative.

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

Technical Scrutiny

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.

Paragraph 35 of Schedule 5 to the LTT Act containing provisions relating to where a buyer holds a major interest in a dwelling outside Wales. Sub-paragraph (4) sets out a list of provisions in the Schedule containing references to “dwellings”, which are to be interpreted as including dwellings situated outside Wales in accordance with sub-paragraph (1).

Regulation 6(4) of these Regulations amends sub-paragraph (4) to include references to provisions inserted in Schedule 5 by these Regulations. The insertions include references to paragraphs 8(4C)(b) and 17(4C)(b). However, it is not immediately clear why it is necessary to



include those particular references in sub-paragraph (4), given the associated provisions refer only to the existence of duties on certain persons to remedy fire safety defects.

The Government is therefore asked to clarify the reason for adding the above-referred references into paragraph 35(4).

Merits Scrutiny

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

- 2. Standing Order 21.3(i) - that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment.**

Section 25 of the Tax Collection and Management (Wales) Act 2016 provides that the Welsh Revenue Authority (“WRA”) must pay amounts collected in the exercise of its functions into the Welsh Consolidated Fund.

In accordance with section 2(3) of the LTT Act, the WRA is responsible for the collection and management of LTT. These Regulations revise “the replacement of main residence” exception from liability to the higher residential rates of that tax.

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

The Welsh Government undertook a public consultation on the proposals in these Regulations between 19 December 2023 and 17 March 2024.

Referring to the outcome to that consultation, the Explanatory Memorandum notes the following:

“...Responses were generally strongly supportive, or supportive, of the Welsh Government proposals.

The most significant disagreement expressed in consultation responses was with the Welsh Government’s proposed approach to transactions affected by Covid-19 restrictions. The proposal new rules will allow extensions to refund and exception periods where transactions are delayed by emergency restrictions in future. However, the new rules will not make provision for transactions affected by emergency restrictions in the past, such as the Covid-19 restrictions...

The Welsh Government considers that the approach outlined in the consultation document...is the most proportionate response.”



Welsh Government response

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

Legal Advisers

Legislation, Justice and Constitution Committee

25 June 2024



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Welsh Parliament

Pack Page 4

Legislation, Justice and Constitution Committee



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE Land Transaction Tax Higher Residential Rates: proposals to amend the refund and exception rules

DATE 18 June 2024

BY Rebecca Evans MS, Cabinet Secretary for Finance, Constitution & Cabinet Office

Today the Welsh Government has published a report summarising the responses to the public consultation on proposals to extend the land transaction tax higher residential rates 3-year exception and refund periods in specified circumstances. The consultation was launched on 19 December 2023 and closed on 17 March 2024.

The consultation set out the Welsh Government's proposals to extend the land transaction tax 3-year refund and exception periods, where relevant transactions are prevented due to emergency restrictions, and/or impeded and therefore delayed due to issues related to fire safety defects.

All responses have now been considered. The report sets out the Welsh Government's response to the consultation. The Welsh Government's intention is that the draft statutory instrument which will make the rule changes will be laid in the Senedd on 18 June 2024 and debated in July 2024.

The report can be found here: [Land Transaction Tax Higher Residential Rates: proposals to amend the refund and exception rules | GOV.WALES](#)

Agenda Item 4.1

SL(6)494 – Part 2 Code of Practice: General Functions

Background and Purpose

Section 145 of the Social Services and Well-being (Wales) Act 2014 (“the Act”) gives the Welsh Ministers the power to issue, and from time to time revise, one or more codes relating to the exercise of social services functions. A local authority must, when exercising social services functions, act in accordance with any relevant requirements contained in a code, and have regard to any relevant guidelines contained in it.

This Code sets out the requirements and guidelines which local authorities must act in accordance with when exercising their social services functions under Part 2 of the Act. It covers:

- the well-being and overarching duties;
- population needs assessments;
- integrated preventative and early intervention services;
- promoting social enterprises, co-operatives, user-led services and the third sector;
- engagement, voice and co-production;
- information, advice and assistance; and
- registers of sight-impaired, hearing, hearing impaired and other disabled people.

This Code was originally laid on 19 March 2024, but was withdrawn on 18 April 2024 following the circulation of a draft LJC report which identified a number of errors and inconsistencies in the document.

Procedure

Draft Negative.

The Welsh Ministers have laid a draft of the Code before the Senedd. If, within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the draft being laid, the Senedd resolves not to approve the draft Code then the Welsh Ministers must not issue the Code.

If no such resolution is made, the Welsh Ministers must issue the Code (in the form of the draft) and the Code comes into force on a day specified in an order made by the Welsh Ministers.

Scrutiny under Standing Order 21.7

The following points are identified for reporting under Standing Order 21.7 in respect of this code:

1. In paragraph 5 of the Code, it is stated that requirements are expressed in the Code as “must” or “must not” formatted in bold, and guidelines are expressed as “should”



or “should not” in regular format. However, the phrase “need to” is used in several places in the Code and the context suggests that there could be an intention to place a requirement or give guidelines. In which case, “must”/ “must not” in bold or “should”/ “should not” may have been the correct phrase to use rather than “need to”. For example, in paragraph 44 it states, “Support will need to be appropriate to their age and understanding” and in paragraph 351 it states “Protocols to enable this to happen need to be in place and regularly reviewed”. Is the use of “need to” in this type of context in the Code deliberate because they are not intended to be legal requirements or guidelines?

2. In the Glossary on pages 3 and 4 of the English text, the terms “area” and “region/ regional” are defined in relation to local authorities, local health boards and regional partnership boards in the Code. However, in several places, the term “locality” has also been used in the context of those authorities or boards although it has not been given a meaning in the Code. For example, in paragraph 299 it states that “Local authorities must promote and publicise the service throughout the locality”. It is not clear whether the term “area” or “region” should have been used in those places or whether there is a difference in meaning between “locality” and “area” or “region”. We note that the Welsh text has used the defined term “ardal” (“area”) in the places that correspond to “locality” in the English text.
3. In paragraph 83, there is a difference between the English and Welsh text. In the second sentence of that paragraphs, in the English text, it incorrectly refers to “Chapter 2Bb of this Code”. But in the Welsh text it correctly refers to “Pennod 2B o’r Cod hwn” so that the Chapter numbers differ in the references.
4. In paragraph 230, there is a difference between the English and Welsh text. In the English text, in the final sentence, it states “the different types of organisations and approaches that fall under section 16 of the Act”. But in the Welsh text, the words “and approaches” are missing from the meaning of the sentence.
5. In paragraph 251, there is a difference between the English and Welsh text. In the English text, it states “to reach out, and engage as many and as diverse a range of people as possible”. But, in the Welsh text, the phrase “a chynnwys y bobl hyn” has been used which suggests involving or including other people rather than engagement with them. Elsewhere in the Code, “ymgysylltu” has been used regularly to convey the meaning of “engage” such as in paragraph 253.
6. In paragraph 276, there is a difference between the English and Welsh text. In the English text, it states “(see Chapter 2 of this Code)”. But in the Welsh text the Chapter number is missing so that it only states “(gweler Pennod o’r Cod hwn)” which could be interpreted as meaning “(see a Chapter of this Code)”.



7. In paragraph 283, the phrase “information, advice and assistance service” is used in the provision. However, the defined term “the service” has been used for that phrase from paragraph 275 onwards, including in the paragraphs immediately before and after paragraph 283. Therefore, it is inconsistent with the drafting of the other provisions where the defined term has been used when referring to the same service.
Government response

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

25 June 2024



SL(6)495 – The National Framework for the Commissioning of Care and Support in Wales: Code of Practice

Background and Purpose

The National Framework for the Commissioning of Care and Support in Wales: Code of Practice (“the Code”) sets out principles and standards for the commissioning of care and support by local authorities, local health boards and NHS trusts, referred to within the Code as “statutory partners”.

The Code was originally laid before the Senedd on 19 March 2024 before being withdrawn on 18 April 2024 to address errors identified in the draft.

Procedure

Draft Negative

The Welsh Ministers have laid a draft of the Code before the Senedd. If, within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the draft being laid, the Senedd resolves not to approve the draft Code then the Welsh Ministers must not issue the Code.

If no such resolution is made, the Welsh Ministers must issue the Code (in the form of the draft) and the Code comes into force on a day specified in an order made by the Welsh Ministers.

Scrutiny under Standing Order 21.7

The following point is identified for reporting under Standing Order 21.7 in respect of this Code.

1. The following referencing issues may have an impact on the accessibility of the Code:
 - a. In paragraph 1.19, there is a reference to “the Health Services (Provider Selection Regime) (Wales) Regulations”. This reference is incomplete as no year is given.
 - b. In paragraph 1.65, there is no footnote or hyperlink for the reference to the Welsh Language (Wales) Measure 2011.
 - c. In paragraph 1.94, there is no footnote or hyperlink for the reference to the self-assessment tool and introductory training.



- d. In the Glossary, the final paragraph of the entry for “Carer” refers to the Social Services and Well-being (Wales) Act 2014 as “the 2014 Act” rather than using the defined term “the Act” (which is used correctly in earlier paragraphs of this entry).

Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

26 June 2024



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

Welsh Parliament **Pack Page 10**

Legislation, Justice and Constitution Committee

Rebecca Evans MS
Cabinet Secretary for Finance, Constitution and Cabinet Office

24 June 2024

Dear Rebecca

The Procurement (Wales) Regulations 2024

At our meeting today, on Monday 24 June 2024, we considered the draft Procurement (Wales) Regulations 2024, and the Welsh Government response to the points raised in our draft report. Our final report has now been laid before the Senedd.

The Committee agreed to write to you with some urgency in advance of the scheduled debate on the draft Regulations to seek clarification from you regarding the response we have received.

When we considered the legislative consent memoranda for the Procurement Bill, a previous Chair of the Committee wrote to you jointly with the Chair of the Public Accounts and Public Administration Committee, in your previous capacity as Minister for Finance and Local Government. In a letter of response on 1 September 2022 you stated:

"My officials are currently developing a project plan which will inform the approach to the development and implementation of the secondary legislation in Wales. Officials will continue to work closely with UK government on the development of the secondary legislation to ensure consistency and coherence in the implementation of the provisions of the Bill, where appropriate. A pragmatic approach will be adopted to ensure that the Bill meets the requirements of Welsh Contracting Authorities and suppliers."

It should be acknowledged and welcomed that the Welsh Government is taking responsibility for making its own regulations for Wales under the *Procurement Act 2023*. Broadly, however, we have some concern that it would appear the Welsh Government has deferred to, and is acting in

accordance with, advice and direction from the UK Government when exercising powers in the *Procurement Act 2023* even though the Welsh Government is aware there are issues with that advice.

Our technical reporting points 10 and 11 state:

"10. In Schedule 2 to the Regulations, the final "related body" to the Welsh Ministers in the table refers to "Welsh NHS Bodies". This is preceded by an entry which refers to the Welsh National Health Service Trusts and Local Health Boards". "Welsh NHS Bodies" is not defined and no information is provided as to how they are distinct from the preceding entry. Further explanation would be welcomed in this regard as to what constitutes a Welsh NHS Body for the purpose of Schedule 2.

11. In the list of central government bodies set out in Schedule 2 to the Regulations, reference is made to the National Assembly for Wales Commission. The Senedd and Elections (Wales) Act 2020 amended section 27 of the Government of Wales Act 2006, so that this Commission is now known as the Senedd Commission. Similarly, reference is made to the Care Council for Wales. Under section 67 of the Regulation and Inspection of Social Care (Wales) Act 2016, this Council is now known as Social Care Wales."

In response, we have been told:

*"10. The Government notes the reporting point. **We are aware that some of the references to organisations are not current and were advised by UK Government (UKG) that names could not be changed.** However, as successor bodies were covered, we adopted a similar approach to previous regulations. **UKG have changed this advice and therefore, if UKG decide to amend their list to reflect machinery of government changes, Welsh Government officials will look to amend these discrepancies in future regulations.** This would then also provide the opportunity to consider changes required as Higher Education Funding Council Wales (HEFCW) will cease to exist in the summer and be replaced by the Commission for Tertiary Education and Research. **(Emphasis added.)***

11. The Government notes the reporting point. Please see the response to reporting point 10. Please also note the effect of regulation 44(2)."

We are unclear as to the appropriateness of what appears to be the UK Government giving direction to the Welsh Ministers on what they may or may not make provision for in a Welsh-made statutory instrument. We would welcome confirmation of our understanding that the Welsh Government has agreed to wait to see if the UK Government decides to correct known issues in the Procurement Regulations 2024 before you then take action to make changes to the regulations you are making.

We also ask that you share with us the advice provided by UK Government on these matters, particularly in relation to the name of the Senedd Commission.

In addition, we do not consider that the issues we have raised in reporting point 10 have been satisfactorily addressed and we would welcome the further explanation requested in our report as to the distinction between “Welsh National Health Service Trusts and Local Health Boards” and “Welsh NHS Bodies”.

We would also welcome further clarity as regards our technical reporting points 4 and 5, which state:

“4. Regulation 12(17) uses the phrase “significant influence”, but this phrase is not defined for the purpose of the Regulations. Clarification is requested as to why the meaning of this phrase is not set out in the Regulations.

5. Regulation 13(8) uses the phrase “concerted practice”, but this phrase is not defined for the purpose of the Regulations. Clarification is requested as to why the meaning of this phrase is not set out in the Regulations.”

In response, we have been told:

“The Government notes the reporting points, however these were a deliberate drafting and policy decision. Attempting to define these terms may have the effect of inadvertently narrowing their scope. Also, this would be a variation with the equivalent provision in the Procurement Regulations 2024 and potentially create issues as to legal certainty between England and Wales.”

Again, we would welcome further detail and clarity as to involvement the Welsh Government had in the drafting adopted by the UK Government in its Procurement Regulations 2024 and whether the Welsh Government agrees with that approach, given the comments in the response to our reporting points that these were “deliberate drafting and policy decision[s]”. Please can you also further explain what you mean by “inadvertently narrowing their scope” and clarify how “significant” will be determined given that its assessment may be subjective.

We would welcome a full and detailed written response to the matters raised above as soon as possible. If you are unable to provide clarity in writing by 12 noon on Friday 28 June, we hope you will address these matters during your contribution to the Plenary debate on the Regulations, which we understand will take place on Tuesday 2 July. Once received, we will consider your detailed written response at our next available Committee meeting.

Finally, we note that to address four problematic matters we have identified as part of our scrutiny (see reporting points 2, 6, 7, and 9) you intend on using a further statutory instrument to be made in the Autumn to correct the errors we have identified. While you have clarified the Welsh Government’s intent to resolve these issues, it appears that the Senedd will nonetheless be asked to approve known

defective legislation, and you will appreciate that this is a serious matter. We trust that you will also make this clear to Members of the Senedd during the debate. As per the practice the Welsh Government has agreed to adopt to improve the transparency and accessibility of the making of subordinate legislation, we welcome the fact that reference to these Regulations and our consideration of them will be referenced in the Explanatory Memorandum to this future statutory instrument.

Yours sincerely,

A handwritten signature in black ink that reads "Mike Hedges". The signature is written in a cursive style and is underlined with a single horizontal line.

Mike Hedges
Chair

Rebecca Evans AS/MS
Ysgrifennydd y Cabinet dros Gyllid, y Cyfansoddiad
a Swyddfa'r Cabinet
Cabinet Secretary for Finance, Constitution & Cabinet Office



Llywodraeth Cymru
Welsh Government

Mike Hedges MS
Chair, Legislation, Justice, and Constitution Committee

<mailto:SeneddLJC@senedd.wales>

27 June 2024

Dear Mike

The Procurement (Wales) Regulations 2024

Thank you for your letter dated 24 June in relation to the Welsh Government's response to the Legislation, Justice, and Constitution Committee's draft report on The Procurement (Wales) Regulations 2024.

As you point out, Welsh Government is developing and implementing a procurement regime for Wales. However we cannot do this in isolation from England due to the significant cross-border procurement activity that occurs between the two nations, and the need for alignment to ensure a procurement regime that is fit for purpose. Contracting authorities, suppliers and other impacted stakeholders need certainty, both legal and practical. That need for certainty has been balanced against developing a new procurement regime for Wales, that will operate alongside equivalent regimes in England and in the rest of the UK.

It is not the case that the Welsh Government has deferred to UK Government during the development of these Regulations. Indeed, our continued close collaboration on the development of our respective procurement regimes has ensured that the Welsh Government played a meaningful, and influential role in the development of the Procurement Act, was actively engaged by the UK Government during the development of their own Procurement Regulations 2024. This has allowed Welsh Government to secure maximum alignment between the new procurement regimes, for the benefit of consumers and suppliers. A better depiction of the relationship would be one of constructive partnership, characterised by a shared focus on the wider long-term opportunities for buyers and suppliers.

In respect of technical reporting points 10 and 11, it is not the case that the UK Government is "giving direction to the Welsh Ministers on what they may or may not make provision for in a Welsh-made statutory instrument". The list of central government bodies in Schedule 2 of the Regulations mirrors the existing list of central government bodies in Schedule 1 of the

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

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

Public Contracts Regulations 2015 (as amended). This was a deliberate decision to ensure that bodies covered by existing legislation continued to be covered by the new legislation.

Historically, the Welsh Government has been unable to amend the names for central government bodies because of the absence of relevant powers in trade legislation to make these amendments. We are actively exploring the feasibility of utilising the powers contained within the Procurement Act to update the list set out at Schedule 2 of the Regulations, whilst simultaneously considering potential risks regarding compliance with international trade obligations. We continue to engage in ongoing discussions with the UK Government in this regard in relation to compliance with our obligations under international agreements. If it is deemed that amendments are legally possible, these will be made via a further Welsh Statutory Instrument at the earliest opportunity.

In relation to the distinction between “Welsh National Health Service Trusts and Local Health Boards” (LHBs) and “Welsh NHS Bodies”, whilst the Procurement Act does not define Welsh NHS Bodies, the term is used elsewhere. Furthermore, the list of central government bodies in Schedule 1 of the Public Contracts Regulations 2015 (as amended) refers to both “Welsh National Health Service Trusts and Local Health Boards” and “Welsh NHS Bodies”, and as noted above, we took a deliberate decision to mirror the existing list in the Procurement (Wales) Regulations to ensure that bodies covered by existing legislation continued to be covered by the new legislation, and to ensure that there is no ambiguity as we move to the new regime.

In respect of technical reporting points 4 and 5, the decisions in each case not to define the terms ‘significant influence’ in regulation 12(7) and ‘concerted practice’ in regulation 13(8) were based on the intended operation of the Procurement (Wales) Regulations. This rightly included consideration of the equivalent drafting adopted by the UK Government in their Procurement Regulations 2024.

Ensuring consistency of approach in the operation of legislation between England and Wales, where that is the intention, is a legitimate consideration. Whilst it would be open to the Welsh Government to define each term in question, the decision was taken that each term should bear its ordinary meaning in the context in which it is to be considered, which WG consider to be clear. In each case the policy decision to align with the UK Government rather than deviate for the sake of deviation was taken. If there was a legitimate and pressing need for each term to bear some other meaning other than their ordinary one, then they could be defined. That was not the determination made.

Should the need arise then further context can be given to stakeholders via guidance and advice, decisions around defining terms, or not doing so, are legitimate questions of policy and legal drafting and do not necessarily impact ‘form or meaning’.

I trust the responses provided are helpful.

Yours sincerely,



Rebecca Evans AS/MS

Ysgrifennydd y Cabinet dros Gyllid, y Cyfansoddiad a Swyddfa'r Cabinet
Cabinet Secretary for Finance, Constitution & Cabinet Office

Julie James AS/MS
Ysgrifennydd y Cabinet dros Lywodraeth Leol, Tai a Chynllunio
Cabinet Secretary for Housing, Local Government and Planning



Llywodraeth Cymru
Welsh Government

Mike Hedges MS
Chair of the Legislation, Justice and Constitution Committee
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21 June 2024

Dear Mike

Thank you to the Committee for providing the report on the Legislative Consent Memorandum on the Renters (Reform) Bill.

As I confirmed in my Written Statement on 6 June ([Written Statement: Leasehold and Freehold Reform Act and the Renters \(Reform\) Bill \(6 June 2024\) | GOV.WALES](#)), the Renters (Reform) Bill fell at the dissolution of Parliament on 30 May. This, therefore, ended any requirement to seek the legislative consent of the Senedd.

I have provided a response to the recommendations contained within the report in the attached annex.

Yours sincerely

A handwritten signature in blue ink that reads 'Julie James'. The signature is written in a cursive, flowing style.

Julie James AS/MS
Ysgrifennydd y Cabinet dros Lywodraeth Leol, Tai a Chynllunio
Cabinet Secretary for Housing, Local Government and Planning

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

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

Annex – Response to recommendations

Recommendation 1. When laying a legislative consent memorandum, the relevant Cabinet Secretary should include a timeline of relevant intergovernmental discussions and engagement that have taken place at official and Ministerial level.

Welsh Government is committed to ensuring that legislative consent memoranda comply with the requirements of Standing Order 29 and enable effective scrutiny by Senedd Committees. Whilst legislative consent memoranda will frequently include summaries of inter-governmental engagement, the provision of such information will be impacted by the timing of memoranda, and the importance of respecting principles for intergovernmental relations including any necessary confidentiality.

Recommendation 2. The Cabinet Secretary should clarify her comments about the Equality Act 2010 and accordingly, explain if, and how, provisions in that Act could be used to take action against discriminatory practices in the rented home sector (specifically against contract holders discriminated on the grounds that they have children or are claiming benefits) if the Bill had not been used to amend the Renting Homes (Wales) Act 2016 and the Renting Homes (Fees etc) (Wales) Act 2019.

Recent court cases have held that policies such as ‘no DSS’ is unlawful indirect discrimination on the grounds of sex and disability, contrary to the Equality Act 2010 and are relevant in the context of residential lettings. The cases did not test age discrimination however age discrimination may be relevant if there is a restriction based on the age of a member of the household. Whether ‘no children’ policies may amount to prohibited conduct under the 2010 Act has not been tested in the courts and success would depend on whether a landlord can justify this as a proportionate means of achieving a legitimate aim.

The purpose of the provisions is to create offences where a landlord or their agent discriminates in relation to occupation contracts against persons who would have children live with or visit them or who are benefits claimants, and makes other provision about discrimination of that kind.

The amendments to the 2019 Act create offences (similar to what are in the 2019 Act for the prohibition of fees) and creates new fundamental terms in the 2016 Act and is the most appropriate way to achieve the policy aim and accords with existing housing legislation in Wales.

Recommendation 3. The Cabinet Secretary should explain why equivalent or similar provisions included in the Bill could not have been included in the renting homes Bills that were scrutinised by the Senedd and subsequently passed as the Renting Homes (Wales) Act 2016, the Renting Homes (Fees etc) (Wales) Act 2019 and the Renting Homes (Amendment) (Wales) Act 2021.

The 2016 Act did improve the position for contract-holders, in that it provided for the Welsh Ministers to make secondary legislation regarding what shall be supplementary terms of occupation contracts (with supplementary terms of standard contracts only being capable of being varied by agreement between the landlord and contract-holder). The subsequently made Renting Homes (Supplementary Provisions) (Wales) Regulations 2022 included a term permitting the contract-holder to determine who lives in the dwelling.

However, in view of the increasing pressure on housing generally, particularly following the Covid-19 pandemic, it was judged reasonable to further strengthen the degree of protection in the manner proposed in the Renters (Reform) Bill by making the provision regarding children and benefit claimants a fundamental term that could not be varied any by creating criminal offences if there is discrimination in relation to children or benefits status.

Recommendation 4. The Cabinet Secretary should identify the relevant section of the Welsh Government's legislation handbook which she used to help make her decision that an expedited legislative scrutiny process in the Senedd could not be used for a Welsh Government Bill on renting homes policy.

Chapter 16 of the Legislation Handbook on Senedd Bills was considered in the decision-making process.

Recommendation 5. The Cabinet Secretary should explain why the use of a UK Bill would appear to have taken priority over pursuing an expedited legislative scrutiny process for a Welsh Government proposed Bill.

We did not consider these proposals to be suitable for an expedited Senedd Bill.

Recommendation 6. When laying a legislative consent memorandum, the relevant Cabinet Secretary should explain in detail in that memorandum why the use of an expedited legislative scrutiny process for a Welsh Government proposed Bill is not being pursued instead of the use of a UK Government Bill to make provision in a devolved area.

Legislative consent memoranda must explain whether it is appropriate for provision to be made, and for it to be made in a UK Bill. Whilst in certain situations that may include reference to alternative Senedd legislative solutions, that would depend upon the timing, the content, and the Welsh Government's positions on consent.

Recommendation 7. For the provisions identified in the Memorandum, the Cabinet Secretary should lay before the Senedd a regulatory impact assessment akin to an assessment that would have been provided if the provisions had been included within a standalone Welsh Government proposed Bill.

A supplementary legislative consent memorandum was required for amendments made at Report Stage. However, the Bill fell prior to completing its final stages in Parliament at 'wash up' before the general election was announced and the subsequent dissolution of Parliament..

Recommendation 8. If a UK Bill is to be used to legislate in a devolved area, the Welsh Government must comply with Standing Order 29 and in accordance with that Standing Order must produce legislative consent memoranda normally within 2 weeks.

I can confirm our commitment to complying with Standing Orders.

Recommendation 9. The Welsh Government should explain how it will reduce its reliance on UK Bills in future and to ensure the Senedd's integrity as a legislature is retained.

I do not agree with the premise that Welsh Government have a reliance on UK Bills. There have been instances, including this Bill, whereby we have recommended the Senedd consent to provision on the basis that it is both sensible and advantageous for Wales. However, there have also been numerous instances whereby we have opposed UK Bills making devolved provision for Wales, and for which the Senedd have refused consent. We will continue to work with Governments across the UK in ensuring that the Sewel Convention is strengthened.

Recommendation 10. The Welsh Government should undertake a comprehensive review of how it uses its resources, with a view to ensuring that it has the capacity to legislate fully by introducing Bills to the Senedd and to reduce its reliance on UK Bills, such that the integrity of the devolution settlement is retained. It should report on the outcome of that review before the end of the Sixth Senedd.

For the reasons set out in recommendation 9, I do not agree with the premise that Welsh Government have a reliance on UK Bills.

Lesley Griffiths AS/MS
Ysgrifennydd y Cabinet dros Ddiwylliant a Chyfiawnder
Cymdeithasol
Cabinet Secretary for Culture and Social Justice

Mike Hedges, MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru

seneddljc@senedd.wales

25 June 2024

Dear Mike,

I wish to provide members of the Legislation, Justice and Constitution Committee with an update on the Victims and Prisoners Act, following the announcement of the UK General Election and in relation to the Committee's report on the Legislative Consent Memorandum (LCM) which I published on 15 April 2024.

On Friday 24 May 2024, both Houses agreed the text of the Bill and it received Royal Assent and is now an Act of Parliament.

The UK Government acknowledged during the Third Reading of the Bill, the Senedd had withheld its consent to Clause 18 (Clause 15 on introduction of the Bil) and Part 2 of the Act. In the consent debate on 17 May, the Senedd also withheld consent for clauses 1 to 4, 11, 26 and 27 of the Bill related to the Victims Code. However, the UK Government disagreed with the competence assessment for the clauses and therefore did not make reference to them during the Third Reading. I am extremely disappointed with the UK Government's decision to progress the Act without the consent of the Senedd.

The UK Government did, during the Third Reading, make one amendment which respects the Senedd consent process. Clause 18 (15 on introduction), which provides that the Secretary of State (SoS) must issue guidance about victim support roles (such as independent domestic violence advisors and independent sexual violence advisors); and that any bodies having functions relating to victims, or to the criminal justice system, must have regard to it, will not apply in Wales. I welcome this amendment, which was taken on the advice of my officials. I want to be clear we will continue to engage and support collaboration across Governments in this area, however, not at the expense of our existing frameworks and true, meaningful engagement with the Welsh specialist sector.

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

An additional clause (Clause 22) was added to the Act which allows victim's impact statement in the mental health tribunals to be considered in relation to discharge conditions. We do not consider this to be within the competence of the Senedd as, overarchingly, it is a criminal justice matter relating to the management of offenders. A commencement order will be required to bring the clause into force. Welsh Government officials are working with UK Government to ensure the Welsh landscape is properly represented prior to commencement of the provisions.

Additionally, implementation of the revised Victims Code will need to be considered by an incoming UK Government. My officials will continue to work with UK Government officials to ensure the devolution settlement is properly respected and Welsh devolved public services are recognised for their differences.

Until the very end of March 2024, and following extensive and constructive engagement at official level, we understood it would be likely the UK Government would offer, in view of the Senedd's competence in this area, a consent provision for the Welsh Ministers regarding the declaration of a major incident and the appointment of an Advocate for victims of major incidents arising in Wales. This position was suddenly reversed to one in which the UK Government undertook to only provide consult provisions which we had been clear did not respect the Senedd's competence and would be unacceptable. They gave no credible rationale for this position and we were surprised and disappointed that what we had worked to achieve was not possible.

During the consent debate, the Senedd gave its consent to clause 16, 17 and Part 3 of the Act which concern infected blood compensation. We will continue to work with the UK Government to progress the implementation of these parts of the Act.

I would like to take this opportunity to thank the Committee for their valuable scrutiny during this process.

I note your recommendation and conclusions and have responded to them below.

Conclusion 1. We consider that the amendments to the Bill as set out in Memorandum No. 2 fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29, and therefore require the consent of the Senedd.

I welcome the Committee's views on the amendments. The rationale for our position on which amendments engage the LCM process is set out in the LCM laid on the 19 May 2023 and the SLCMs laid on 15 April 2024 and 30 April 2024.

Conclusion 2. The Senedd would have been afforded more time for scrutiny had the Welsh Government laid a supplementary legislative consent memorandum earlier and in respect of the amendments tabled at Commons' Report Stage, and followed that with a further memorandum relating to amendments tabled at Lords' Committee Stage. Instead, the Senedd's opportunity for scrutiny of new provisions in the Bill, as well as amendments to previously known clauses, has been severely hampered.

Conclusion 3. The delay in laying the required supplementary legislative consent memoranda in relation to the Bill is not acceptable and has severely undermined the ability of the Senedd and its Members to effectively scrutinise the Bill and its impact in Wales.

Recommendation 1. The Cabinet Secretary should, no later than during the relevant consent debate for the Bill, provide full details to explain the delays in laying before the Senedd the required supplementary legislative consent memoranda for the Bill, and clarify why she considers the delays in laying the supplementary memoranda to be acceptable.

In December 2023, the UK Government wrote to us with constructive offers on some clauses, which we expected to see reflected in amendments scheduled for January 2024. It was our intent to lay a SLCM confirming what we had hoped would be a positive and final position on the Bill. However, the amendments were rescinded and instead we had to wait until April 2024 for confirmation of their approach. We have had to reconsider our position which delayed the production of our SLCMs. Therefore, it was not possible to lay a SLCM at Lords' Committee Stage. We recognise the impact the uncertain UK Government position has had on the Senedd's ability to scrutinise the Bill. This underlines the need for improved UK practice in this area to support the Sewell convention and the constitutional role of the Senedd.

During the consent debate on 7 May 2024, I set out in my opening remarks the reasons for the delay in laying the SLCM. My officials have worked hard to lay Legislative Consent Memoranda at pace across the Bill process. This was regrettably difficult because of the turbulent passage of the Bill and the uncertainty around the UK Government position. I accept this has meant the Senedd have not had adequate time to scrutinise a Bill with far-reaching implications for Wales. However, we moved as fast as we could at each stage in the Bill process, in the face of issues outside our control.

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

Yours sincerely

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive, flowing style.

Lesley Griffiths AS/MS
Ysgrifennydd y Cabinet dros Ddiwylliant a Chyfiawnder Cymdeithasol
Cabinet Secretary for Culture and Social Justice

Lesley Griffiths AS/MS
Ysgrifennydd y Cabinet dros Ddiwylliant a Chyfiawnder
Cymdeithasol
Cabinet Secretary for Culture and Social Justice



Llywodraeth Cymru
Welsh Government

Jenny Rathbone, MS
Chair
Equality and Social Justice Committee
Senedd Cymru

seneddequality@senedd.wales

25 June 2024

Dear Jenny

I wish to provide Members of the Equality and Social Justice Committee with an update on the Victims and Prisoners Act following the announcement of the UK General Election and in relation to the Committee's report on the Legislative Consent Memorandum (LCM) which I published on 15 April 2024.

On Friday 24 May 2024, both Houses agreed the text of the Bill and it received Royal Assent and is now an Act of Parliament.

The UK Government acknowledged during the Third Reading of the Bill, the Senedd had withheld its consent to Clause 18 (Clause 15 on introduction of the Bil) and Part 2 of the Act. In the consent debate on 17 May, the Senedd also withheld consent for clauses 1 to 4, 11, 26 and 27 of the Bill related to the Victims Code. However, the UK Government disagreed with the competence assessment for the clauses and, therefore, did not make reference to them during the Third Reading. I am extremely disappointed with the UK Government's decision to progress the Act without the consent of the Senedd.

The UK Government did, during the Third Reading make one amendment which respects the Senedd consent process. Clause 18 (15 on introduction), which provides that the Secretary of State (SoS) must issue guidance about victim support roles (such as independent domestic violence advisors and independent sexual violence advisors); and that any bodies having functions relating to victims, or to the criminal justice system, must have regard to it, will not apply in Wales. I welcome this amendment, which was taken on the advice of my officials. I want to be clear we will continue to engage and support collaboration across Governments in this area, however, not at the expense of our existing frameworks and true, meaningful engagement with the Welsh specialist sector.

Additional clause (Clause 22) was added to the Act which allows victim's impact statement in the mental health tribunals to be considered in relation to discharge conditions. We do not

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consider this to be within the competence of the Senedd as, overarchingly, it is a criminal justice matter relating to the management of offenders. A commencement order will be required to bring the clause into force. Welsh Government officials are working with UK Government to ensure the Welsh landscape is properly represented prior to commencement of the provisions.

Additionally, implementation of the revised Victims Code will need to be considered by an incoming UK Government. My officials will continue to work with UK Government officials to ensure the devolution settlement is properly respected and Welsh devolved public services are recognised for their differences.

Until the very end of March 2024, and following extensive and constructive engagement at official level, we understood it would be likely the UK Government would offer, in view of the Senedd's competence in this area, a consent provision for the Welsh Ministers regarding the declaration of a major incident and the appointment of an Advocate for victims of major incidents arising in Wales. This position was suddenly reversed to one in which the UK Government undertook to only provide consult provisions which we had been clear did not respect the Senedd's competence and would be unacceptable. They gave no credible rationale for this position and we were surprised and disappointed that what we had worked to achieve was not possible.

During the consent debate, the Senedd gave its consent to clause 16, 17 and Part 3 of the Act which concern infected blood compensation. We will continue to work with the UK Government to progress the implementation of these parts of the Act.

I would like to take this opportunity to thank the Committee for their valuable scrutiny during this process.

I note your recommendations and conclusions and have responded to them below.

Conclusion 1. We agree that all the clauses identified by the Welsh Government in the Supplementary LCM (No.2) require the consent of the Senedd.

Conclusion 2. It is extremely disappointing that the Welsh Government has offered no reason or explanation for the delay in tabling this SLCM, which has resulted in less than 2 weeks for us to undertake scrutiny.

I welcome the Committee's views on these clauses. The rationale for our position on which amendments engage the LCM process is set out in the LCM laid on the 19 May 2023 and the SLCMs laid on 15 April 2024 and 30 April 2024.

The previous Minister for Social Justice and Chief Whip wrote to the Llywydd, 22 December 2023, explaining it had not been possible to lay a supplementary legislative consent memorandum (SLCM). I set out in my opening remarks during the consent debate on 7 May 2024, the reasons for the delay in laying the SLCM. My officials have worked hard to lay Legislative Consent Memoranda at pace across the Bill process, but this has been regrettably difficult because of the turbulent passage of the Bill and the uncertainty around the UK Government position. I accept that this has meant the Senedd has not had adequate time to scrutinise a Bill with far-reaching implications for Wales. We recognise the impact the uncertain UK Government position has had on the Senedd's ability to scrutinise the Bill, and this underlines the need for improved UK practice in this area to support the Sewell convention and the constitutional role of the Senedd. We have moved as fast as we could at each stage in the Bill process, in the face of issues outside our control.

Recommendation 1. The Welsh Government should explain in its response to this report why so little progress has been made as a result of discussions with the Ministry of Justice and set out the date and duration of meetings between both parties at ministerial and officials level since July 2023.

In December 2023, the UK Government wrote to us with constructive offers on some clauses, which we expected to see reflected in amendments scheduled for January 2024. It was our intent to lay a SLCM confirming what we had hoped would be a positive and final position on the Bill. However, the amendments were rescinded and instead we had to wait until April 2024 for confirmation of their approach. We have had to reconsider our position which delayed the production of our SLCMs. Therefore, it was not possible to lay a SLCM at Lords' Committee Stage.

Engagement with the Ministry of Justice at official level has been constructive, with regular meetings taking place during the passage of the Bill. Engagement took place through a mix of formal and informal meetings and contact, including ad hoc communications. Despite this repeated engagement, we were only informed of the UK Government's position on key proposals on 8 April 2024.

Recommendation 2. We recommend that the Senedd grants consent to new clause 20 (Domestic Homicide Reviews); new clause 37 (Prohibited Steps Review) and new clause 40 (Compensation for Infected Blood Victims). However the Committee would like clarification from the Cabinet Secretary, that payments made in regard to the new clause 40 will be from central government funds.

I welcome this recommendation from the Committee. I can confirm compensation payments for the victims of the infected blood scandal will come from central UK Government funds.

Recommendation 3. On the basis of the information before us we recommend that the Senedd withholds consent to clauses 1 to 4, 11, 22 and 23 (relating to the Victims Code), 15 (relating to guidance about IDVAs); and 24 to 27 and 29 to 31 (relating to victims of major incidents).

I welcome this recommendation from the Committee on the above clauses.

I am copying this letter to all Members of the Senedd and Mike Hedges MS, Chair of the Legislation, Justice and Constitutional Committee.

Yours sincerely

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive, flowing style.

**Lesley Griffiths AS/MS
Ysgrifennydd y Cabinet dros Ddiwylliant a Chyfiawnder Cymdeithasol
Cabinet Secretary for Culture and Social Justice**

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Ein cyf/Our ref CG/PO/171/2024

Llywodraeth Cymru
Welsh Government

Mike Hedges MS, Chair
Legislation, Justice & Constitution Committee
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26th June 2024

Dear Mike,

Corrections to statutory instruments subject to the draft affirmative scrutiny procedure

Thank you for your letter of 4 June.

You have sought further clarification on the criteria applied by the Government when considering whether corrections could or should be made on the making of a draft affirmative instrument.

By way of context our starting point has always been guided by striking the right balance between two competing principles.

The first is to avoid taking a disproportionate approach to correcting errors. This is an issue illustrated by *Craies on Legislation* under a heading “sleeping dogs” in which it is said:

In the case of a minor error where what is intended is clear beyond doubt and there is no room for misunderstanding or for serious confusion, it is best simply to allow sleeping dogs to lie. Corrective legislation involves large expenditure of public money, and even the administrative costs associated with the issue of a correction clip are considerable. There are therefore a number of instances in which trivial errors have simply been allowed to remain.

This is set against the second (fundamental and obvious) principle that making incorrect legislation should be avoided where practicable. There is a certain deference given to the written law in most users’ minds, a natural assumption that there will not be an error in the legislation. As a result, errors are not as obvious to the users of legislation as they may be to the makers of the legislation.

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So where we can correct an error and do so without significant difficulty this is always our preference. However we only do this when the error in question is very minor and, to be clear, this our 'test' rather than whether it is 'substantive' as your letter seems to suggest.

I think this distinction is very important as it illustrates the viewpoint we start from.

Through my engagement with the Committee over the past 18 months on the matter of correcting statutory instruments, I believe we have developed a finer appreciation within Government of the criteria that underpin correction slips, and how equivalent corrections can be made to those instruments to which a correction slip cannot apply as it has not yet been made.

The test we use is essentially the same as that applied by the SI Registrar, which is to consider whether the error is very minor and whether its remedy is clear and obvious. (I hesitate to adopt the words "small scale" here, as the UK Parliament's Joint Committee on Statutory Instruments has done as I do not want to conflate the size and number of corrections with their impact.)

I should be clear, however, that like nearly all tests, much depends on context and there is an element of subjectivity. This is unavoidable.

In the situation in which we are considering whether a correction can be made before a instrument is made, we have the benefit, unlike the SI Registrar, of firstly being aware of the full context in which the instrument is being made and will operate, and secondly of knowing that the decision is made subject to the constraints of the checks and balances that arise from: (a) being transparent about what has been done in advance of the Instrument being approved, and (b) the Senedd being able to refuse to approve the Instrument.

By contrast, the SI Registrar is an individual who simply has the legislation which has been made in front of him, and no ability to test the correction with the Minister who will make the legislation if approved, and indeed the legislature's approval of the instrument with the information about the proposed correction before them.

This is why we may, very occasionally, correct matters that the SI Registrar may not be willing to correct.

The usual process for corrections made by the Government is that the error is considered by the drafting lawyer(s), discussed with policy officials and sometimes also the Legislative Codes Office (who manage requests for correction slips to the SI Registrar). Advice is prepared and cleared through a range of officials before being put to the Minister in charge of the instrument, and if the Minister is content the intended correction is put before the Senedd.

Please note also that there can be instances that are finely balanced, and when we are faced with a very minor matter but also other matters that clearly do need to be dealt with by way of a subsequent amending instrument, then we are likely to prefer dealing with *all* of those issues in that amending instrument

To summarise:

- we are guided by both proportionality in taking any action and a desire to avoid making incorrect legislation, because of the risk the end user will not understand an error exists;

- we adopt a equivalent test to the SI Registrar to determine if a matter is very minor, but (unavoidably) whether a correction is very minor can be open to interpretation;
- if we believe it is anything other than very minor, no further action can be taken and an alternate remedy will need to be found (for example, withdrawing and re-laying the instrument);
- if we believe it is a very minor matter, the Minister must agree the correction can be made if the instrument is ultimately approved by the Senedd and the proposed correction must be set out to the Committee and to Members;
- there is the further safeguard that the instrument can only be made if it is approved (in the knowledge of the proposed correction) by the Senedd.

You have also sought to further understand the (then) Minister for Climate Change's remarks during the debate on the Packaging Waste (Data Collection and Reporting) (Wales) (Amendment) Regulations 2024. I am sure you will understand I cannot speak for the Minister but I was sat next to her in the Chamber during that debate and I did not understand her remarks to indicate (as you put in your letter) that *"any correction will not be substantive as long as it does not alter the policy intent of the instrument."*

To be clear, the Government's view is that a correction that substantively changes an instrument in any way (let alone changes the underpinning policy intention of that instrument), is *not* one which can be dealt with on making. We would not propose such a correction be dealt with in that way.

I am copying this letter to the Cabinet Secretary for Climate Change and Rural Affairs.

Yours sincerely,

A handwritten signature in blue ink that reads "Mick Antoniw". The signature is written in a cursive style and is underlined with a single horizontal line.

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol
Counsel General

Mick Antoniw MS
Counsel General

4 June 2024

Dear Mick

Corrections to statutory instruments subject to the draft affirmative scrutiny procedure

As a Committee we welcome your ongoing positive engagement with us as attempts are made on all sides to improve the quality of Welsh-made subordinate legislation and to improve the transparency and accessibility of the legislation-making process.

At our [meeting on 13 May 2024](#) we considered your [letter dated 3 May 2024](#) which responded to some further matters we [wrote to you about on 23 April 2024](#) on the subject of the Welsh Ministers making corrections to statutory instruments subject to the draft affirmative scrutiny procedure prior to their making.

First, we do welcome your statement that the Welsh Government would not seek to make substantive changes as part of the correction prior to making process.

We acknowledge the points you raise in your letter dated 3 May 2024, and the attention you have drawn to statements you have made in previous correspondence to the Committee (specifically on [18 January 2023](#)). We recognise that, in that earlier correspondence from 2023, you suggested that various things could come into play when a Welsh Minister is considering correcting a draft instrument prior to making, including that the correction is considered to be of the type which could be dealt with by correction slip or is a correction which the Minister has committed to remedy before making the statutory instrument.

However, as you highlight in your recent letter, you also told the Committee in January 2023 that corrections prior to making could also include ones which would not be suitable for a correction slip.

As such, we hope you will appreciate our view that more clarity is still required on the specific criteria the Welsh Government applies when deciding whether a particular correction is not substantive and

thus appropriate to make prior to making a statutory instrument. We would therefore be grateful if you could provide us with those criteria and/or explain how the Welsh Government assesses whether or not a proposed correction amounts to a “substantive” change.

Sharing this information would greatly assist us in our consideration of Welsh Government responses to our reports on Statutory Instruments, not least because having the criteria would mean we would likely only seek further input from the relevant Welsh Minister in the unlikely event that a correction appeared out of scope of those criteria. We believe it would also further increase transparency and accountability in relation to the correction prior to making process, alongside the Welsh Government’s previous commitment to inform the Committee of any such corrections.

In a letter to you on 23 April 2024, my predecessor highlighted concerns the Committee had with comments made by the then Minister for Climate Change during the debate on The Packaging Waste (Data Collection and Reporting) (Wales) (Amendment) Regulations 2024 (the Packaging Waste Regulations). We said we were unclear why the Welsh Government may be of the view, as suggested by the Minister, that a ‘technical’ change would automatically be minor, particularly when perceived ‘technical’ changes (such as the addition of a comma) can change the meaning of text. We were also concerned by the implication within the Minister’s remarks that *any* correction will not be substantive as long as it does not alter the policy intent of the instrument.

We recognise that the Welsh Minister responsible for the Packaging Waste Regulations has now changed, and the Cabinet Secretary for Climate Change and Rural Affairs has been made aware of our exchange of correspondence. Nonetheless we would welcome your views, given your responsibilities in overseeing the work of the Legal Services Department, on whether the then Minister for Climate Change’s comments reflect the Welsh Government’s policy on correction prior to making and, if so, the basis on which the Welsh Government considers this to be appropriate and *intra vires*.

I will again re-iterate a point made in previous correspondence that the Committee’s scrutiny of statutory instruments is genuinely undertaken in the spirit of trying to be a constructive critical partner in the legislation-making process.

I am copying this letter to the Cabinet Secretary for Climate Change and Rural Affairs.

Yours sincerely,



Mike Hedges
Chair

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

Mike Hedges MS, Chair
Legislation, Justice & Constitution Committee
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27 June 2024

Dear Mike

Thank you for your letter of 5 June requesting an update on commitments made by my predecessor relating to the Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022 (“the 2022 Regulations”). You have sought an update on points 8, 25 and 30 of the Committee’s original report on the 2022 Regulations.

In respect of reporting point 8 (which identified an error in the equivalence between the English and Welsh texts of regulation 4(2)(a)(viii) of the 2022 Regulations) this was corrected on making rather than by amending instrument. My officials have reviewed the circumstances of the correction, and I am content that the error and correction were both very minor and would have fallen within the circumstances which the Counsel General has subsequently described in his correspondence with the Committee on the correction on making process. It is unfortunate that when the (then) Minister wrote with an update to the Committee in January 2023, this was not picked up as it should have been nor has it subsequently been drawn to the Committee’s attention in the way we would have wished.

The omission to reference article 5(5)(a) in the Schedule to the 2022 Regulations (reporting point 25) still requires correction by an amending instrument. Although it was originally anticipated this would be brought forward in January 2023, for reasons of other higher priority matters it has not yet been possible to deal with this. It does remain our intention to resolve this, and when this happens I will ensure the Committee’s attention is drawn to this in line with the recent commitments given by the Counsel General.

With regard to reporting point 30 the Government has committed, on the assumption that a suitable power can be identified, to amend the scrutiny procedure applicable to one of the delegated powers in the Regulations from the negative to the affirmative procedure. My officials have yet to establish a suitable vires to enable this change to be made but this remains under review and when I am in a position to provide further information I will of course update the Committee.

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

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

I am copying this letter to the Counsel General.

Yours sincerely,

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name 'Huw Irranca-Davies'.

Huw Irranca-Davies AS/MS

Ysgrifennydd y Cabinet dros Newid Hinsawdd a Materion Gwledig
Cabinet Secretary for Climate Change & Rural Affairs

Huw Irranca-Davies MS
Cabinet Secretary for Climate Change and Rural Affairs

5 June 2024

Dear Huw

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

You will be aware that the Legislation, Justice and Constitution Committee considered carefully the Welsh Government's handling of the Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022 (the Regulations), following the Welsh Government's decision, in December 2022, to ask the Senedd to approve the Regulations despite a number of errors within the Regulations. You will know that the Welsh Government's approach was, in part, due to the imminent expiry of powers in the *European Union (Withdrawal) Act 2018*.

In correspondence following the Plenary debate, the then Minister for Rural Affairs and North Wales, and Trefnydd, said that the Welsh Government intended to bring forward a bespoke statutory instrument to correct the errors.

We are unsure if an amending instrument was ever made. We acknowledge that, some 18 months on from the Senedd's approval of the Regulations, it may be the case that the need for such an instrument has been superseded by other changes to the trade in animals and related products regime.

We would be grateful to receive an update on the Welsh Government's plans to bring forward a bespoke statutory instrument to correct the errors identified by the Committee in December 2022, or confirmation of when and how the need for a correction instrument was superseded.

In the correspondence referred to above, the then Minister also undertook to update the Committee by letter on the Welsh Government's progress in identifying a power to enable the Minister to meet

her commitment, made during the debate on the Regulations, to amend the scrutiny procedure applicable to one of the delegated powers in the Regulations from the negative to the affirmative procedure. We do not appear to have received such an update and would be grateful if you could clarify the current position.

I would be grateful to receive a response by 24 June 2024.

Yours sincerely,

A handwritten signature in black ink that reads "Mike Hedges". The signature is written in a cursive style and is underlined with a single horizontal line.

Mike Hedges
Chair

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Mike Hedges MS

Chair of the Legislation, Justice and Constitution Committee

24 June 2024

The legislative consent process

Dear Mike,

Thank you for your letter dated 5 June outlining your Committee's further concerns and recommendations regarding Standing Order 29 and the legislative consent process. We discussed the letter at our meeting on 11 June and acknowledged the significant amount of work that your Committee has undertaken in this area during the current Senedd.

I have previously confirmed that the Business Committee's current work on legislative consent includes specific consideration of Standing Order 29.1 and the tests currently being applied by the Senedd, the Welsh Government and the UK Government when determining whether a Bill's provisions require the Senedd's consent.

We agreed to continue with our current work on Standing Order 29.1 given the opportunity it presents to potentially harmonise the understanding of whether a Bill's provisions require the Senedd's consent, and to do so in a shorter timescale than a full procedural review of the process would allow. It remains our intention to consider this matter prior to the summer recess.

We are grateful to you for drawing our attention to your Committee's recent reports on the Renters (Reform) Bill and the Supplementary Legislative Consent Memorandum (Memorandum No. 4) on the Data Protection and Digital Information (DPDI) Bill. We acknowledge that the issues raised in your recommendations highlight a potential need for a full review of the legislative consent process and Standing Order 29.

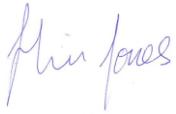
Given your Committee's expertise and detailed involvement in this area, as well as the need to engage with a range of stakeholders both inside of and external to the Senedd,



we consider that you would be well-placed to lead any detailed consideration of the way in which the legislative consent process and Standing Order 29 currently operate. It would then be the role of the Business Committee to consider and take forward any changes to Standing Orders which might be proposed as a result of that work. We agreed that I should respond to ask you to consider whether your Committee would have the capacity to undertake that work.

Thank you once again for your diligence and collaboration in considering these important matters.

Kind regards



The Rt Hon. Elin Jones MS

Y Llywydd and Chair of the Business Committee

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

Rt Hon Elin Jones MS

Y Llywydd and Chair of the Business Committee

5 June 2024

Annwyl Lywydd,

Our recent reports on Welsh Government legislative consent memoranda, and comments on the legislative consent process

The Business Committee will be aware that my Committee considers all legislative consent memoranda laid before the Senedd under Standing Order 29, and to date have laid almost 75 reports on such memoranda.

The Business Committee is also aware that my Committee has written on several occasions in the Sixth Senedd to draw attention to recommendations we have made in our reports about, or to raise particular concerns with, Standing Order 29 and the legislative consent process. We welcomed your letter to us dated 20 March 2024 in which you confirmed that Standing Order 29.1 will be considered as part of the Business Committee's planned work in relation to the legislative consent process.

Most recently on 10 May 2024 we wrote to you in relation to our consideration of the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Criminal Justice Bill, where we again noted that, in determining whether a Bill's provisions require the Senedd's consent, different tests are currently being applied within the Senedd, the Welsh Government and the UK Government respectively. Again, we thank you for your letter of reply on 15 May, in which you confirmed that the Business Committee is expecting to further consider its work on the legislative consent process, including the matters we raised, ahead of the summer recess.

When my predecessor wrote on 10 May 2024, it was highlighted that the Committee would likely write again about Standing Order 29 following the publication of the Committee's report on the Welsh Government's Legislative Consent Memorandum on the Renters (Reform) Bill. The Committee's

report was laid on 10 May 2024, and I would like to draw your attention to three of the Committee's recommendations:

***Recommendation 1.** When laying a legislative consent memorandum, the relevant Cabinet Secretary should include a timeline of relevant intergovernmental discussions and engagement that have taken place at official and Ministerial level.*

***Recommendation 6.** When laying a legislative consent memorandum, the relevant Cabinet Secretary should explain in detail in that memorandum why the use of an expedited legislative scrutiny process for a Welsh Government proposed Bill is not being pursued instead of the use of a UK Government Bill to make provision in a devolved area.*

***Recommendation 8.** If a UK Bill is to be used to legislate in a devolved area, the Welsh Government must comply with Standing Order 29 and in accordance with that Standing Order must produce legislative consent memoranda normally within 2 weeks.*

The Committee has also now reported on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 4) on the Data Protection and Digital Information (DPDI) Bill. There are two serious matters in that report which we also feel need to be drawn to your attention.

First, given the reporting deadline of 13 May 2024 ahead of the scheduled legislative consent debate on 14 May 2024, it was highly unsatisfactory that the Committee only received on 13 May copies from the Cabinet Secretary for Economy, Energy and Welsh Language of critical intergovernmental correspondence relating to the Bill. The Committee was only very briefly able to review the correspondence. One issue of considerable importance to the Senedd which warranted detailed consideration was confirmation for the first time, in a letter dated 1 March 2024 enclosed within the Cabinet Secretary's letter of 13 May 2024, that it was the UK Government's intention that the Bill will "enable the better use of data in health and adult social care".

The Committee was also able to learn more about the UK Government's Devolution Guidance Note (DGN) which has been referenced several times by the Welsh Government in various legislative consent memoranda in the past few months, and this is the subject of the second matter we wish to raise. The Welsh Government has told the Committee, for example in recent correspondence relating to the DPDI Bill, that the relevant UK Government Minister of State had written to the Welsh Government noting that its DGN states that consent from the Senedd should be sought when conferring or imposing reserved functions on a devolved Welsh authority. This has been used by the Welsh Government, not only in relation to the DPDI Bill, to justify engagement of the Senedd's legislative consent process. However, having now seen the specific letter from the Minister of State (see letter dated 6 February 2024 enclosed within the Cabinet Secretary's letter of 13 May 2024), it

appears that the UK Government's position is more nuanced and actually acknowledges that the Senedd's Standing Orders do not make provision for situations where a UK Parliament bill imposes such functions. In the letter the Minister of State for Data and Digital Infrastructure states:

"The UK Government maintains that these functions are reserved, but in further consideration of the Welsh Devolution Guidance Note, which sets out that consent should also be sought when conferring or imposing reserved functions on a devolved Welsh authority, we have come to the view that it is appropriate to seek agreement to Clause 74 and Clause 78(3) - either through a Legislative Consent Motion or a statement made by the Welsh Ministers - noting that there is no procedure in the Senedd Standing Orders covering situations where a UK Parliament bill imposes reserved functions on devolved Welsh authorities."
(emphasis added)

As my predecessor said in a letter on 10 May 2024, as a Committee we are concerned that the approach being taken by the Welsh Government is leading to confusion as to the basis on which the consent of the Senedd is being sought.

I wish to reiterate that we acknowledge and very much welcome the fact that work has begun on reviewing the Standing Order.

However, the Committee now has strong concerns that these most recent developments highlight a potential need for the Business Committee to undertake a full procedural review of Standing Order 29 to ensure it is fit for purpose. We have reached this view because we believe that consent is being sought for provisions in devolved areas on a scale that may not have been envisaged when the standing order was originally drafted. In our view, in circumstances where the Welsh Government is seeking the Senedd's consent for significant devolved provision to be included in a UK Bill, relevant legislative consent memoranda should be required to provide more detailed information to enable more informed and timely scrutiny to take place. Of course, a key matter that would still require recognition is that even with more detailed information, consideration of legislative consent memoranda cannot replicate the level of scrutiny that would be available for provisions that were included in Bills introduced to the Senedd).

Yours sincerely,



Mike Hedges

Chair

Agenda Item 12

Ysgrifennydd y Cabinet dros yr Economi, Ynni a'r Gymraeg
Cabinet Secretary for Economy, Energy and Welsh Language



Ein cyf/Our ref MA/JMEEW/5564/24

Llywodraeth Cymru
Welsh Government

Chair of the Legislation, Justice and Constitution Committee

17 June 2024

Dear Chair

I am writing in response to the Legislation, Justice and Constitution Committee's (LJCC) report on the Supplementary Legislative Consent Memorandum (Memorandum No.4), laid on 13 May in respect of the Data Protection and Digital Information Bill ('the Bill').

As you will know, the plenary debate for the Legislative Consent Motion on the Bill was held on 14 May. During the debate I recommended that the Senedd withheld its consent for the Bill and the motion was not agreed.

You will also be aware that the Bill fell following the dissolution of the UK Parliament on 30 May.

I would like to thank the Committee for their detailed consideration of Memorandum No.4. I have considered the conclusions set out in the report and have responded to each of the recommendations below.

Legislative Consent

I note that the Committee agreed that the amendments to the clauses (and Schedule) set out in Memorandum No.4 require the consent of the Senedd.

In respect of clauses 74 and 78, I also note that the Committee agreed that consent should be sought for clause 74 and clause 78(3), reflecting the UK Government's view that legislative consent should be sought when conferring or imposing reserved functions on a devolved Welsh authority.

Constitutional concerns

I welcome the Committee's support in respect of the constitutional concerns the Welsh Government raised on the Bill. I agree with the Committee's conclusion that, were the Bill to have not fallen and been passed by the UK Parliament without the consent of the Senedd, this would have brought into question the operation of the Sewel Convention.

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

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

Recommendations

Recommendation 1

Should the Bill be enacted in its current form, the Cabinet Secretary should confirm if it is the Welsh Government's intention to bring forward provisions in a Bill that would re-delegate to the Welsh Ministers the regulation-making powers under section 79 of the New Roads and Street Works Act 1991 (subject to the Welsh Ministers consulting the appropriate UK Minister in accordance with paragraph 11(2) of Schedule 7B to the Government of Wales Act 2006).

Response:

The Bill fell following the dissolution of Parliament.

Recommendation 2

The Cabinet Secretary should, during the relevant consent debate for the Bill, provide full details to explain his statement that a number of the Bill's provisions could impact on the UK's EU Data Adequacy status and have the potential to lead to legal challenge in the Court of Justice of the European Union.

Response:

I note in the report that the Committee found concerns around the potential for legal challenge in the Court of Justice of the European Union in respect of the Bill's impact upon the UK's EU Data Adequacy status, to be stark and concerning.

During the Legislative Consent Motion debate, I explained the provisions in the Bill which we consider to have the potential of a review by the European Commission, or legal challenge in the Court of Justice of the European Union. This included those provisions which were seen to weaken the independence of the Information Commissioner and undermine individual rights.

I went on to explain that as the Bill amended the statutory definition of personal data, there was a risk that a broader range of health and social care data could have been included in the scope of free trade agreements.

Although the Bill has fallen, the importance of retaining EU data adequacy remains and my officials will monitor the matter going forward.

Recommendation 3

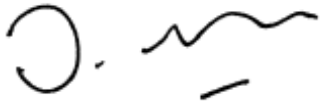
The Cabinet Secretary should make clear during the relevant consent debate for the Bill whether, in addition to the UK-EU obligations already cited, the Welsh Government considers the Bill has implications for other international arrangements such as the UK-US data bridge established in 2023. If so, the Cabinet Secretary should provide detailed information.

Response:

During the motion debate I set out my concerns that the Bill signalled the beginning of the UK's divergence from the data protection regime currently in place across the EU. Further, that this approach had the potential to undermine the data protection provisions in the Trade and Co-operation Agreement across a broad range of policy areas and could lead to the potential loss of EU data adequacy.

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

Yours sincerely

A handwritten signature in black ink, consisting of a stylized 'J' followed by a series of wavy lines and a short horizontal stroke at the end.

Jeremy Miles AS/MS

Ysgrifennydd y Cabinet dros yr Economi, Ynni a'r Gymraeg
Cabinet Secretary for Economy, Energy and Welsh Language

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

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