

# Agenda – Legislation, Justice and Constitution Committee

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Meeting Venue:	For further information contact:
Hybrid – Committee Room 3, Senedd and Video Conference via Zoom	P Gareth Williams Committee Clerk
Meeting date: 4 November 2024	0300 200 6565
Meeting time: 11.00	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

## Hybrid

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### Public meeting

(11.00 – 12.00)

- 1 Introduction, apologies, substitutions and declarations of interest**  
(11.00)

Items 2 and 3 will be taken together

(11.00 – 12.00)

- 2 Legislative Consent Memorandum on the Product Regulation and Metrology Bill: Evidence session with the Cabinet Secretary for Economy, Energy and Planning**

(Pages 1 – 7)

Rebecca Evans MS, Cabinet Secretary for Economy, Energy and Planning

Claire McDonald, Deputy Director, Economic Policy, Welsh Government

Jennifer Pride, Head of Energy Delivery, Welsh Government

Attached Documents:

LJC(6)–31–24 – Paper 1 – Briefing Paper

LJC(6)–31–24 – Paper 2 – Legal Advice Note on the Legislative Consent Memorandum on the Product Regulation and Metrology Bill



**3 Legislative Consent Memorandum on the Great British Energy Bill:  
Evidence session with the Cabinet Secretary for Economy, Energy  
and Planning**

(Pages 8 – 14)

Attached Documents:

LJC(6)-31-24 – Paper 3 – Legal Advice Note on the Legislative Consent  
Memorandum on the Great British Energy Bill

**4 Motion under Standing Order 17.42 to resolve to exclude the  
public from the meeting for the following business: Items 5, 6,  
12, 13, 14, 15**

(12.00)

**Private meeting**

(12.00 – 12.20)

Items 5 and 6 will be taken together

(12.00 – 12.20)

**5 Legislative Consent Memorandum on the Great British Energy Bill:  
Consideration of evidence**

**6 Legislative Consent Memorandum on the Product Regulation and  
Metrology Bill: Consideration of evidence**

**Break**

(12.20 – 13.30)

## **Public meeting**

(13.30 – 14.55)

### **7 Evidence session with the Counsel General and Minister for Delivery on the Legislation (Procedure, Publication and Repeals) (Wales) Bill**

(13.30 – 14.30)

(Pages 15 – 19)

[Legislation \(Procedure, Publication and Repeals\) \(Wales\) Bill, as introduced Explanatory Memorandum](#)

Julie James MS, Counsel General and Minister for Delivery

Dylan Hughes, First Legislative Counsel, Welsh Government

Claire Fife, Policy Advisor to the Counsel General and Head of the Legislative Codes Office, Welsh Government

Attached Documents:

LJC(6)-31-24 – Paper 4 – Briefing Paper

LJC(6)-31-24 – Paper 5 – Letter to the Business Committee, 3 October 2024

## **Break**

(14.30 – 14.35)

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

(14.35 – 14.40)

**Affirmative Resolution Instruments**

#### **8.1 SL(6)537 – The Special Procedure Licences (Wales) Regulations 2024**

(Pages 20 – 28)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-31-24 – Paper 6 – Draft report

LJC(6)-31-24 – Paper 7 – Letter to the Cabinet Secretary for Health and Social Care, 17 October 2024

**8.2 SL(6)540 – The Land Transaction Tax (Relief for Special Tax Sites) (Wales) Regulations 2024**

(Pages 29 – 33)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-31-24 – Paper 8 – Draft report

LJC(6)-31-24 – Paper 9 – Written Statement by the Cabinet Secretary for Finance and Welsh Language, 22 October 2024

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

(14.40 – 14.45)

**9.1 SL(6)535 – The Local Government Finance (Consequential and Miscellaneous Amendments and Revocations) (Secondary Legislation) (Wales) Regulations 2024**

(Pages 34 – 37)

Attached Documents:

LJC(6)-31-24 – Paper 10 – Report

LJC(6)-31-24 – Paper 11 – Welsh Government response

**9.2 SL(6)536 – The Education (Amendments Relating to the Co-ordination of School Admission Arrangements) (Wales) Regulations 2024**

(Pages 38 – 40)

Attached Documents:

LJC(6)-31-24 – Paper 12 – Report

LJC(6)-31-24 – Paper 13 – Welsh Government response

**9.3 SL(6)516 – The Listed Buildings and Conservation Areas (Procedure and Interest Rate) (Wales) Regulations 2024**

(Pages 41 – 43)

Attached Documents:

LJC(6)–31–24 – Paper 14 – Letter from the Minister for Culture, Skills and Social Partnership, 24 October 2024

LJC(6)–31–24 – Paper 15 – Letter to the Minister for Culture, Skills and Social Partnership, 11 October 2024

**10 Inter–Institutional Relations Agreement**

(14.45 – 14.50)

**10.1 Written Statement by the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs: The Sea Fisheries (Amendment) (No 2) Regulations 2024**

(Page 44)

Attached Documents:

LJC(6)–31–24 – Paper 16 – Written Statement by the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 22 October 2024

**10.2 Written Statement and correspondence from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs: The Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024**

(Pages 45 – 47)

Attached Documents:

LJC(6)–31–24 – Paper 17 – Written Statement by the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 25 October 2024

LJC(6)–31–24 – Paper 18 – Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 29 October 2024

**10.3 Written Statement and correspondence from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs: The Movement of**

**Goods (Northern Ireland to Great Britain) (Animals, Feed and Food, Plant Health etc.) (Transitory Provision and Miscellaneous Amendments) Regulations 2024**

(Pages 48 – 50)

Attached Documents:

LJC(6)-31-24 – Paper 19 – Written Statement by the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 28 October 2024

LJC(6)-31-24 – Paper 20 – Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 29 October 2024

## **11 Papers to note**

(14.50 – 14.55)

### **11.1 Written Statement by the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs: Independent Commission and Review of the Water Sector**

(Pages 51 – 52)

Attached Documents:

LJC(6)-31-24 – Paper 21 – Written Statement by the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 24 October 2024

### **11.2 Correspondence from the Minister for Culture, Skills and Social Partnership to the Llywydd: Employment Rights Bill**

(Pages 53 – 54)

Attached Documents:

LJC(6)-31-24 – Paper 22 – Letter from the Minister for Culture, Skills and Social Partnership to the Llywydd, 24 October 2024

### **11.3 Correspondence from the Local Government and Housing Committee to the Cabinet Secretary for Housing and Local Government: The Welsh Government's Legislative Consent Memorandum on the Renters' Rights Bill**

(Pages 55 – 58)

Attached Documents:

LJC(6)-31-24 – Paper 23 – Letter from the Local Government and Housing Committee to the Cabinet Secretary for Housing and Local Government, 25 October 2024

#### **11.4 Correspondence from the Minister for Children and Social Care: The Health and Social Care (Wales) Bill**

(Pages 59 – 89)

Attached Documents:

LJC(6)-31-24 – Paper 24 – Letter from the Minister for Children and Social Care, 25 October 2024

LJC(6)-31-24 – Paper 25 – Letter from the Minister for Children and Social Care to the Finance Committee, 18 October 2024

LJC(6)-31-24 – Paper 26 – Letter from the Minister for Children and Social Care to the Health and Social Care Committee, 25 October 2024

#### **11.5 Correspondence from the First Minister: Invitation to give evidence**

(Pages 90 – 91)

Attached Documents:

LJC(6)-31-24 – Paper 27 – Letter from the First Minister, 28 October 2024

LJC(6)-31-24 – Paper 28 – Letter to the First Minister, 3 October 2024

#### **Private meeting**

(14.55 – 16.00)

#### **12 Evidence session with the Counsel General and Minister for Delivery on the Legislation (Procedure, Publication and Repeals) (Wales) Bill: Consideration of evidence**

(14.55 – 15.15)

#### **13 Annual report 2023/24: Draft report**

(15.15 – 15.45)

(To Follow)

Attached Documents:

LJC(6)-31-24 – Paper 29 – Draft report

**14 Update in relation to HM Prison Parc**

(15.45 – 15.55)

**15 Correspondence to the UK Government: Update**

(15.55 – 16.00)

Document is Restricted

# Agenda Item 3

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

Document is Restricted

Rt Hon Elin Jones MS  
Y Llywydd and Chair of the Business Committee

3 October 2024

Annwyl Lywydd

### **The Legislation (Procedure, Publication and Repeals) (Wales) Bill**

Thank you for your letter of 24 September 2024 inviting my Committee to outline its views on the timetable, as proposed by the Government, for scrutiny of the Legislation (Procedure, Publication and Repeals) (Wales) Bill.

As you state in your letter, the Government has proposed a shortened period for Stage 1 scrutiny: according to the illustrative timetable, a period of eight weeks has been proposed, instead of the 12-week period which is usually afforded.

We considered the Government's paper and accompanying timetable at our meeting of 30 September 2024, and concluded that a period of less than 12 weeks is very likely to be insufficient to enable us to effectively complete our scrutiny. We set out our reasons for coming to this conclusion below.

Being required to complete our scrutiny in less than 12 weeks would leave us with limited time to take evidence from stakeholders, and would limit the Committee's ability to take account of that evidence during future sessions, including with the Member in charge of the Bill. In addition, the proposed reporting deadline of 10 January 2025 – during the first week following the Christmas recess – would also provide us with only one meeting to consider and agree our report.

While the Committee will be responsible for scrutiny of the Bill, it will also be a key stakeholder with regard to its proposals on the arrangements for making and publishing legislation. These are proposals which – as far as we are aware – have not been consulted upon by the Government, either with relevant stakeholders in the Senedd or more generally. We therefore believe it is fundamental that we are afforded an opportunity to thoroughly assess the relevant provisions, drawing on expert advice and the views of other key stakeholders as necessary.

In addition, while the Government notes in its paper that the Committee will only be considering one other Senedd Bill during the period in question, it does not take into account our other time-critical business. As you are aware, the Business Committee has referred legislative consent memoranda in respect of five Parliamentary Bills for our consideration, and the reporting deadlines in respect of all these memoranda fall within this period. We will also be undertaking our regular scrutiny of non-trade international agreements, as well as taking evidence from members of the Government on the broad-ranging matters within our remit (sessions which have been held over from before the summer recess). Therefore, in addition to the likely impact of there being insufficient time to effectively scrutinise the Bill, setting a truncated timetable will likely impact on the Committee's ability to fulfil its other essential business in a timely manner.

Furthermore, the Government has not provided us with early notice – privately or publicly – of its intention to propose an expedited timetable for scrutiny of the Bill. While the former Counsel General wrote to the Committee on 5 July 2024 to offer a technical briefing on the Bill, no reference was made in that letter to the matter of timetabling. Early notice would have provided us with an opportunity to seek to accommodate the Government's proposal, and to arrange our forward work programme accordingly.

You may also be aware that the Government had intended for the Bill to be introduced earlier this year. It is therefore unclear to us why the Government appears to be advocating a truncated timetable for scrutiny of the Bill to enable it to complete its passage by 1 April 2025, instead of seeking to achieve the same aim by introducing the Bill earlier this year as intended. We do not therefore believe it would be appropriate to reduce the standard scrutiny timetable for the Bill following a delay to its introduction.

We are also not aware of any urgency associated with the implementation of the Bill that might require an expedited timetable. We believe that in the absence of any reasons for urgency, a standard 12-week period for scrutiny should always be provided for Senedd committees to undertake Stage 1 scrutiny, to enable a full and comprehensive assessment of a Bill having taken into account a wide range of views on its proposals.

We note your intention to consider the timetable in accordance with set decision-making criteria; we have included at the Annex some further information which you may find useful to your consideration.

I am grateful to you for consulting with the Committee, and will await the Business Committee's decision on the timetable.

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

## Annex

### **Has a draft of the Bill been provided?**

The Committee has not seen a draft of the Bill.

According to the Government's paper, the Bill has two main purposes.

Provisions in respect of first purpose – bringing together and formalising the procedural arrangements for making Welsh subordinate legislation, and the requirements for publishing legislation – have not previously appeared in draft form. As far as we are aware, no public consultation has either been undertaken in respect of the policy proposals underpinning these provisions.

Provisions in respect of the second purpose – repealing, amending and otherwise disapplying in relation to Wales provisions and enactments that are no longer of practical utility or benefit – have on the other hand previously appeared in draft form, and have been subject to public consultation. However it is unclear to what degree these provisions have changed since the consultation.

### **How much detail has been provided about the policy and legislative proposals to be included in the timetable paper? Does the Bill contain provisions of a potentially contentious nature?**

As these are interconnected matters we have considered them together.

With regard to the first main purpose (as stated above), no public consultation has been previously undertaken by the Welsh Government in respect of the policy proposals underpinning these provisions. It is very difficult to make a judgement as to whether they are likely to be contentious. The purpose of a sufficiently lengthy public consultation, held by the Committee as part of its scrutiny, would therefore be to allow relevant stakeholders to properly assess these provisions and to bring any issues to its attention (such as for example their merit, impact and complexity).

With regard to the second main purpose, the Government's paper provides little detail on which provisions are proposed for repealing, amending and otherwise disapplying in relation to Wales, and whether these will reflect those previously published in draft form.

The paper also states that the relevant provisions "are no longer of practical utility or benefit"; however, in the absence of further detail on the provisions, this statement is subjective. It is therefore difficult to make a judgement as to its accuracy, and to ascertain whether the Bill's provisions are likely to be of a potentially contentious nature and draw extensive comment and scrutiny from stakeholders.

It is also unclear how many of the repealing provisions stem from recommendations made by the Law Commission, which would help to establish whether or not they are likely to be contentious.

# Agenda Item 8.1

## **SL(6)537 – The Special Procedure Licences (Wales) Regulations 2024**

### **Background and Purpose**

Part 4 of the Public Health (Wales) Act 2017 (“the Act”) provides that certain individuals who perform special procedures (as listed in section 57 of the Act) in Wales must be licensed by a local authority. The special procedures are:

- acupuncture,
- body piercing,
- electrolysis,
- tattooing.

Part 2 of the Regulations makes provision about applications for special procedure licences including the criteria that must be met in order for an application for a special procedure licence to be granted. Part 2 also makes provision about the form and content of an application form, which is set out in Schedule 1 to the Regulations.

Part 3 of the Regulations makes provision about the form and content of a special procedure licence (as set out in Schedule 2 to the Regulations).

Part 4 of the Regulations makes provision about the mandatory licensing conditions which apply to a special procedure licence (as set out in Schedules 3 to 7 to the Regulations).

Part 5 of these Regulations makes provision about fees in relation to special procedure licences.

### **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 9 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**



There appear to be words missing from regulation 4(1):

*The licensing criteria that must be met by an individual (an "applicant") for a special procedure licence in order for the application to be granted are set out in paragraphs (2) to (4).*

Section 62(1) of the Act states that "*Regulations must set out criteria that must be met **on an application** by an individual (an "applicant") for a special procedure licence...*" (emphasis added).

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

We query whether the reference in regulation 9(2) should be to section 76(3) of the Act, as opposed to section 76(4) of the Act. Section 76(3) refers to the local authority determining the amount of the compliance fee, having regard to the costs incurred or expected to be incurred.

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

In Schedule 1 to the Regulations, which sets out the form of application for a special procedure licence, question 1.2 asks when does the applicant want the special procedure licence to start, with 'as soon as possible' being an option. Regulation 3(3) states that in the case of a temporary licence, an application must be made at least 28 working days prior to the intended start date of the temporary licence, it may have been helpful to include this information on the application form or in a guidance note.

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

In Schedule 1 to the Regulations, Guidance Note 1 states:

*(b) if the applicant believes that the special procedure is likely to be carried out by the applicant in the areas of different local authorities, an application is to be made to one of those local authorities.*

It is not clear if the applicant is required to state, on the application form, the names of all authorities in whose areas they expect to carry out the special procedure.

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

In Schedule 1 to the Regulations, Guidance Note 5 advises applicants to consult the non-statutory guidance if they are unsure as to what "basis" they perform special procedures. We ask the Welsh Government to confirm which guidance is being referring to. It would better assist applicants if the guidance was signposted.

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



Applicants are required to disclose unspent convictions for “relevant offences” in an application for a special procedure licence. In Schedule 1 to the Regulations, Guidance Note 8 “*Convictions for relevant offences*” states that what is considered a relevant offence is set out in section 66 of the Act. Given the importance of this information, why are the relevant offences not set out in the guidance notes? Setting out the relevant offences in the guidance notes would better assist an applicant in the process of completing the application form.

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

Paragraph 2(4) of Schedule 3 to the Regulations requires-

*In the event of the special procedure licence becoming mislaid, stolen or damaged, the licence holder must apply, within a reasonable period, to obtain a replacement from the issuing local authority.*

What would be considered a reasonable period? Setting a specified period of time within which a replacement should be obtained, or providing guidance on what is considered a reasonable period would provide a licence holder with more clarity.

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

Paragraph 4(2) of Schedule 3 to the Regulations requires the licence holder to keep and maintain a register of incidents associated with the performance of special procedures by the licence holder. In accordance with paragraph 4(3), the licence holder must also register such incidents. Does the Welsh Government consider the drafting of this mandatory condition to be sufficiently clear, and would a licence holder be able to identify what would constitute an ‘incident’ and know how to register such an incident?

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

Schedules 3 to 7 to the Regulations set out the mandatory licensing conditions that are to apply to special procedure licences, for the purposes of section 63 of the Act. These mandatory licensing conditions must be “*readily available upon request*” by a client.

We note that definitions have been included in the Schedules, however many of these definitions do not assist the reader in their understanding of the mandatory licensing conditions, as they merely refer to sections of the Act. The inclusion of the definitions at the end of the Schedules also hinders their accessibility.

## Merits Scrutiny

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



## **10. 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**

Regulation 4(2) sets out the licensing criteria that must be met by an applicant for a special procedure licence, in order for that application to be granted. The criteria include providing evidence of a criminal record check.

The application form for a special procedure licence, as set out in Schedule 1 to the Regulations, asks at 2.12 whether the applicant is eligible for a basic disclosure certificate issued by the Disclosure and Barring Service, an overseas criminal record certificate, or both. The applicant is also required to tick a box confirming that *“Evidence of basic disclosure certificate / overseas criminal record certificate is enclosed”*.

Guidance Note 8 on the application form states that a basic disclosure certificate will show an applicant’s unspent convictions and conditional cautions.

Part 4 of the application form is titled *“Convictions for relevant offences”* where an applicant is required to declare whether they have an unspent conviction for a relevant offence and to provide information about any relevant offences. A relevant offence is defined in section 66(8) of the Act as:

- (a) an offence under Part 4 (special procedures) or Part 5 (intimate piercing) of the Act;
- (b) an offence (whether under the law of England and Wales or elsewhere) that—
  - (i) involves violence,
  - (ii) is of a sexual nature, or relates to sexual material or images,
  - (iii) consists of tattooing a child under the age of 18,
  - (iv) relates to health and safety at work, or
  - (v) consists of a failure to comply with a requirement of a scheme for licensing or otherwise permitting or regulating the performance of an activity which is a special procedure for the purposes of the Act.

Under section 66 of the Act, where an applicant has been convicted of a relevant offence, a local authority must decide whether the applicant's fitness to perform a procedure to which the application relates has been called into question to such an extent that it would be inappropriate to issue the licence in respect of the performance of that procedure.

We ask the Welsh Government to provide an explanation as to why it considers requiring applicants for a special procedure licence to submit a criminal record check (which would show an applicant’s unspent convictions and conditional cautions, including those not considered relevant offences) a proportionate means of establishing whether an applicant has unspent convictions for relevant offences. Were any alternative means of establishing whether an applicant has unspent convictions for relevant offences considered?



## **11. 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 were initially laid on 17 September and considered by this Committee on 30 September. The initial Regulations were withdrawn and subsequently replaced by these Regulations, which were laid on 15 October.

A Welsh Government response was required to 18 of the reporting points raised in the report on the initial Regulations, however a response has not been received as at the date of this report. A response to that initial report may have addressed a number of points raised in this report. It would also have been helpful to have confirmation of the changes made to the Regulations. Why was a Welsh Government response not received?

Further, this Committee wrote to the then Counsel General in a [letter dated 15 March 2024](#) which states:

*You will know that all explanatory memoranda accompanying subordinate legislation laid before the Senedd includes a section – section 2 – which is used to highlight matters which may be of special interest to the Legislation, Justice, and Constitution Committee. Should an instrument be laid before the Senedd which is correcting a previously scrutinised instrument, we would find it helpful if the relevant information could be set out in section 2, including the reference number of the instrument and a footnote to our report.*

We ask the Welsh Government to explain why the Explanatory Memorandum does not contain this information.

## **12. 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 Public Health (Wales) Act 2017 received Royal Assent on 3 July 2017. These Regulations, if approved by the Senedd, are due to come into force on 29 November 2024. This means it will have taken over 7 years for the new rules on special procedures to be implemented.

This was also raised at point 8 of this Committee's [report on the Special Procedures Approved Premises and Vehicles \(Wales\) Regulations 2024](#). We note the following from the [Welsh Government response](#) to that report:

*Work on implementing the 2017 Act started immediately after the passing of the Act in July 2017. Part 5 (intimate piercing) of the 2017 Act came into force in February 2018, making it an offence to intimately pierce, or arrange to intimately pierce, a child or young person under the age of 18 in Wales, if that piercing involves or uses jewellery. The 2017 Act allowed for the scope of the offence to be extended, by way of regulations made by the Welsh Ministers, to capture intimate piercings which involve or use 'objects'. With this as a priority, the Government undertook a consultation on its proposals to extend the scope of the protections, prepared guidance for practitioners and regulators as well as for*



young people, and undertook a publicity campaign to inform practitioners, clients and regulators of the new prohibitions. Regulations were subsequently made in July 2019.

In the autumn of 2019, the preparatory work for the formulation of proposals for the mandatory licensing scheme set out in Part 4 of and Schedule 3 to the 2017 Act commenced. Due to the Covid pandemic response however, work on the proposals was paused, resuming in the summer of 2022. Since then, public consultation on the principles for the proposed licensing scheme has been undertaken yielding a significant number of informative responses from a range of individuals, businesses and representative bodies across all the special procedures. These informed the drafting of five complex inter-related regulations that were then consulted upon earlier this year.

Our approach has been to ensure there has been strong and effective engagement with stakeholders, including local authority officers, practitioners, businesses and industry stakeholders, about the scheme requirements. This has taken time but has ensured that the regulatory framework is understood and capable of effective implementation, providing the protections and safeguards intended by the 2017 Act.

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

We note the following extracts from the Explanatory Memorandum regarding the consultation undertaken in respect of the Regulations:

*5.2. The Welsh Government consulted on the principles of the special procedures licensing scheme (from here referred to as the 'first consultation') with a view to informing draft Regulations that would enable the commencement of the provisions of Part 4 and Schedule 3 of the Act. That 12-week consultation ran between 25 January and 19 April 2023 and the draft version of the RIA formed part of the consultation materials along with an Integrated Impact Assessment. [...]*

*5.9. A further consultation (from here referred to as the 'second consultation') ran for eight weeks between 12 February and 8 April 2024 and followed on from the first consultation referred to above[...]*

*5.10. As the policy proposals for the mandatory licensing scheme had already been consulted upon, this second consultation was considered a technical consultation specifically on the wording of the draft Regulations and draft Statutory Guidance, although the draft Regulations provided further detail around the new scheme, including those subjects where the statutory duty to consult under section 64 of the Act applied. For this reason, the Cabinet Secretary for Health and Social Services gave her consent for the consultation to run for eight weeks instead of the standard 12-week period.*



## Welsh Government response

A Welsh Government response is required for reporting points 1 to 11.

**Legal Advisers**

**Legislation, Justice and Constitution Committee**

**24 October 2024**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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Welsh Parliament **Pack Page 26**

**Legislation, Justice and Constitution Committee**

Jeremy Miles MS

Cabinet Secretary for Health and Social Care

17 October 2024

Dear Jeremy

Regulations to implement Part 4 and Schedule 3 of the Public Health (Wales) Act 2017 dealing with the creation of a mandatory licensing scheme for practitioners, premises and vehicles associated with the performance of special procedures

You will be aware that the Legislation, Justice and Constitution Committee has recently scrutinised a suite of regulations<sup>1</sup> laid before the Senedd by the Welsh Government which will implement Part 4 of, and Schedule 3 to, the *Public Health (Wales) Act 2017* (the 2017 Act) dealing with the creation of a mandatory licensing scheme for practitioners, premises and vehicles associated with the performance of special procedures.

As part of our scrutiny, you will also be aware that we have raised concerns about the timeframe within which the licensing scheme associated with special procedures has been implemented. The 2017 Act received Royal Assent on 3 July 2017. This suite of regulations is due to come into force on 29 November 2024. This means it will have taken over seven years for the new rules on special procedures to be implemented. When we asked why this was the case, the Welsh Government responses we received to our reports first note that priority was given to both bringing into force and extending the application of Part 5 of the 2017 Act which relates to intimate piercing. The response then goes on to state:

*"In the autumn of 2019, the preparatory work for the formulation of proposals for the mandatory licensing scheme set out in Part 4 of and Schedule 3 to the 2017 Act*

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<sup>1</sup> These are: SL(6)524 - [The Special Procedure Licences \(Wales\) Regulations 2024](#) (withdrawn following committee scrutiny); SL(6)527 - [The Special Procedures Approved Premises and Vehicles \(Wales\) Regulations 2024](#); SL(6)526 - [The Special Procedures Exempted Individuals \(Wales\) Regulations 2024](#); SL(6)525 - [The Prescribed Objects for Body Piercing \(Special Procedures\) \(Wales\) Regulations 2024](#); SL(6)528 - [The Special Procedures Licensing Committees \(Wales\) Regulations 2024](#)

*commenced. Due to the Covid pandemic response however, work on the proposals was paused, resuming in the summer of 2022. Since then, public consultation on the principles for the proposed licensing scheme has been undertaken yielding a significant number of informative responses from a range of individuals, businesses and representative bodies across all the special procedures. These informed the drafting of five complex inter-related regulations that were then consulted upon earlier this year.*

*Our approach has been to ensure there has been strong and effective engagement with stakeholders, including local authority officers, practitioners, businesses and industry stakeholders, about the scheme requirements. This has taken time but has ensured that the regulatory framework is understood and capable of effective implementation, providing the protections and safeguards intended by the 2017 Act.”<sup>2</sup>*

We do not consider this to be a convincing response and, with the information provided to us, have reached a view that the delay to the implementation of a key piece of public health legislation is not acceptable. At our meeting on 14 October 2024 we agreed to write to you to express these concerns.

It is also noteworthy that our report on the draft Special Procedure Licences (Wales) Regulations 2024 contained 16 technical points, nine of which identified either potential defective drafting or inconsistencies between the English and Welsh texts. We note that these draft Regulations have since been withdrawn.

We believe the Welsh Government currently plans for the Senedd to debate the suite of regulations next month. The lengthy delay to implementing Part 4 of and Schedule 3 to the 2017 Act will likely be raised during the debate and we hope you will provide additional clarity and explanation on this matter.

I am copying this letter to the Health and Social Care Committee.

Yours sincerely,



Mike Hedges

Chair

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<sup>2</sup> See, for example, the Welsh Government response to our report on The Special Procedures Licensing Committees (Wales) Regulations 2024.

## **SL(6)540 – The Land Transaction Tax (Relief for Special Tax Sites) (Wales) Regulations 2024**

### **Background and Purpose**

These Regulations amend the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (the "**2017 Act**") to insert a new Schedule 21A (Relief for Special Tax Sites) which provides for a new relief from land transaction tax ("**LTT**") for qualifying transactions of land within a "special tax site".

The Explanatory Memorandum to these Regulations<sup>1</sup> states that this will include:

*"a designated freeport(s) and, potentially in future, any designated investment zone(s)...in Wales.*

*...The tax incentives relating to special tax sites, including the LTT relief, are key drivers of the Freeport Programme and have been designed with the intention of helping sites attract private investment and to deliver the policy objectives of both the Freeports and Investment Zones programmes in Wales."*

Paragraph 2 of the new Schedule 21A inserted by these Regulations applies the new LTT relief to one site - the Celtic Freeport special tax site<sup>2</sup> – with effect from 26 November 2024.

### **Procedure**

Draft affirmative.

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

### **Technical Scrutiny**

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

### **Merits Scrutiny**

The following 3 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

- 1. 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**

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<sup>1</sup> Page 2, paragraphs 1.1 and 1.5

<sup>2</sup> The area designated by the UK Government as a special area by the Designation of Special Tax Sites (Celtic Freeport) Regulations 2024/1035 made on 16 October 2024.



**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 must pay amounts collected in the exercise of its functions, which includes the collection of LTT, into the Welsh Consolidated Fund.

These Regulations provide for relief from LTT for certain transactions involving land situated within a special tax site until 30 September 2029.

**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 notes<sup>3</sup> that,

*“...In order to apply this LTT relief to any new special tax sites in the future (whether they be freeports or investment zones) or make any amendments to existing special tax site areas, further amendments will be required to ...[the 2017 Act]...via further regulations. Such regulations would also require the approval of the Senedd.”*

**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 Explanatory Memorandum also confirms<sup>4</sup> that the new LTT relief is a subsidy, in respect of which a proposed “Subsidy Control Scheme for Welsh Freeports” has been submitted to the Competition and Markets Authority (“**CMA**”) in accordance with section 31 of the Subsidy Control Act 2022. The Memorandum further notes that a report from the CMA on the proposed scheme is expected by 1 November 2024. It states:

*“...Following a mandatory ‘cooling-off’ period and an opportunity to consider the CMA’s report (and if needed, make amendments to the proposed scheme in light of that), it is anticipated that this scheme will be registered on the UK subsidy Transparency database as required under the Subsidy Control Act 2022. That registration will have occurred before the Senedd debate and vote on the making of the Regulations.”*

The Government is therefore asked to:

1. explain the reasoning for laying these Regulations before the Senedd prior to the conclusion of the CMA’s consideration of the proposed scheme; and
2. in advance of the Senedd debate on the Regulations, confirm whether the CMA has raised any concerns in relation to the new LTT relief and, if so, the Government’s response.

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<sup>3</sup> Page 3, paragraph 2.3

<sup>4</sup> Page 4, paragraph 3.4



## Welsh Government response

A Welsh Government response to the third merits reporting point is required.

**Legal Advisers**

**Legislation, Justice and Constitution Committee**

**28 October 2024**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—

Welsh Parliament

**Legislation, Justice and Constitution Committee**

Pack Page 31



Llywodraeth Cymru  
Welsh Government

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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**            **The Land Transaction Tax (Relief for Special Tax Sites) (Wales) Regulations 2024**

**DATE**            **22 October 2024**

**BY**                **Mark Drakeford MS, Cabinet Secretary for Finance and Welsh Language**

I am pleased to announce that I have today laid the draft Land Transaction Tax (Relief for Special Tax Sites) (Wales) Regulations 2024 before the Senedd Cymru. If approved, the Regulations will provide a relief from land transaction tax (“LTT”) for qualifying transactions within a designated Welsh special tax site.

Each special tax site must be designated by the UK government through regulations before the relief can become available on qualifying transactions within that special tax site. The Celtic Freeport special tax site will be the first to be designated by the UK government, with the designation taking effect on the 26 November. Freeport status will be especially welcome in this part of Wales, in the context of job losses at TATA steel. When future special tax sites are designated, I will make further regulations (subject to the Senedd Cymru’s approval) to include these new sites within the LTT special tax sites relief.

A Welsh Freeport will provide tax and customs duty incentives to new businesses establishing themselves in the Freeport area or to existing businesses in the Freeport area that expand their operations. The tax incentives include targeted relief from employer national insurance contributions and enhanced capital allowances - both UK government reserved taxes. Tax incentives will also be provided for non-domestic rates (“NDR”) and LTT - both devolved matters for the Welsh Ministers and the Senedd Cymru.

The Freeport tax incentives, including the LTT relief, are key drivers of the programme’s impact and have been designed with the intention of helping sites attract private investment and deliver the wider policy objectives of the Freeports Programme in Wales.

A copy of the draft regulations and Explanatory Memorandum are available here:

[SUB-LD16757 - The Land Transaction Tax \(Relief for Special Tax Sites\) \(Wales\) Regulations 2024](#)

[SUB-LD16757-EM - The Land Transaction Tax \(Relief for Special Tax Sites\) \(Wales\) Regulations 2024 - Explanatory Memorandum](#)

# Agenda Item 9.1

## **SL(6)535 – The Local Government Finance (Consequential and Miscellaneous Amendments and Revocations) (Secondary Legislation) (Wales) Regulations 2024**

### **Background and Purpose**

These Regulations make amendments to secondary legislation in consequence to amendments made by the Local Government Finance (Wales) Act 2024 (**the 2024 Act**) to the Local Government Finance Act 1988 (**the 1988 Act**) and the Local Government Finance Act 1992 (**the 1992 Act**).

For example, the Regulations amend:

- various statutory instruments to ensure that those instruments refer to new sections 41ZA and 52ZA of the 1988 Act, which deal with the compilation and maintenance of non-domestic rating lists in relation to Wales;
- the Council Tax (Demand Notices) (Wales) Regulations 1993 to ensure that they refer to the appropriate provisions of the 1992 Act.

The Regulations also make other amendments which are not consequential to the 2024 Act and revoke statutory instruments or omit provisions which no longer have effect.

### **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**

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

#### **1. Standing Order 21.2(i) – that there appears to be doubt as to whether it is intra vires**

The preamble to the Regulations says that section 54(1) of the Local Government (Wales) Act 1994 is one of the powers that the Welsh Ministers used to make the Regulations.



A footnote to the preamble says that the power in section 54(1) was, in relation to Wales, transferred from the Secretary of State to the original National Assembly for Wales via a Transfer of Functions Order in 1999<sup>1</sup> and then from the National Assembly for Wales to the Welsh Ministers via the Government of Wales Act 2006.

However, having looked at the Transfer of Functions Order, it does not appear that the power in section 54(1) was transferred to the original National Assembly for Wales. While the Transfer of Functions Order transferred many of the powers contained in the Local Government (Wales) Act 1994, the power in section 54(1) was not one of them.

Therefore, to the extent that the Regulations are made under section 54(1), there appears to be doubt as to whether they are *intra vires*.

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

In regulation 6(4) and (5), “sub-paragraph (ii)” should read “paragraph (ii)”.

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

Regulation 23 deals with consequential amendments to the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (**the 1989 Regulations**).

Regulation 23 reads as follows:

*23. The amendments made to regulation 3(2) of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 by paragraph 1(b) of Schedule 1 to the Local Government (Non-Domestic Rating) (Consequential Amendments) (England) Order 2008 and regulation 2(b) of the Non-Domestic Rating (Consequential and Other Amendments etc.) (England) Regulations 2023 apply in relation to hereditaments in Wales.*

Therefore, regulation 23 does not amend the text of the 1989 Regulations. Rather, regulation 23 simply says that changes made to the 1989 Regulations in relation to England also apply in relation to Wales.

It is unclear why the Welsh Ministers have taken this approach, as opposed to making their own textual amendments to the 1989 Regulations. It seems to us that making textual amendments would have been clearer and made the law more accessible.

We also note that regulation 23 refers to “Schedule 1” to the Local Government (Non-Domestic Rating) (Consequential Amendments) (England) Order 2008. However, there is only one Schedule to that Order, which should be referred to as “the Schedule”.

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<sup>1</sup> The National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672).



## 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 to reporting points 1 and 3 is required.

## Committee Consideration

The Committee considered the instrument at its meeting on 21 October 2024 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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Welsh Parliament **Pack Page 36**

**Legislation, Justice and Constitution Committee**

## **Government Response: The Local Government Finance (Consequential and Miscellaneous Amendments and Revocations) (Secondary Legislation) (Wales) Regulations 2024**

**Technical Scrutiny point 1:** The Welsh Government accepts that the power in section 54(1) of the Local Government (Wales) Act 1994 was not in fact transferred to the National Assembly for Wales (as it was referred to at the time) and subsequently to the Welsh Ministers.

This enabling power was cited to make the provision in regulation 11(4), namely to omit article 10 of the Local Government Reorganisation (Wales) (Finance) (Miscellaneous Amendments and Transitional Provisions) Order 1996. This article amended section 86 of the Local Government and Housing Act 1989, which was subsequently repealed by section 131 of the Housing (Wales) Act 2014. Accordingly, the amendment made by article 10 no longer has effect.

The intention was to omit article 10 for accessibility purposes, however, regulation 11(4) has no effect and therefore article 10 continues to exist. This article remaining on the statute book has no impact in practice.

The remainder of the 2024 Regulations is intra vires.

**Technical Scrutiny point 3:** The Welsh Government is content that the drafting of regulation 23 achieves the intended effect.

In relation to the reference to “Schedule 1”, as there is only one Schedule to the Local Government (Non-Domestic Rating) (Consequential Amendments) (England) Order 2008, the Welsh Government considers that it is clear which Schedule is referred to.

# Agenda Item 9.2

## **SL(6)536 – The Education (Amendments Relating to the Co-ordination of School Admission Arrangements) (Wales) Regulations 2024**

### **Background and Purpose**

The Education (Co-ordination of School Admission Arrangements and Miscellaneous Amendments) (Wales) Regulations 2024 ("the 2024 Regulations") make provisions in relation to the duty on local authorities to implement a qualifying scheme for the co-ordination of admission arrangements for schools they maintain.

The 2024 Regulations also amended the School Information (Wales) Regulations 2011 to require a local authority to include in its composite prospectus a summary of the local authority's co-ordinated scheme and a clear explanation of the stages in the process of applying for a school place.

These Regulations make largely technical corrections to the 2024 Regulations, which were highlighted in the LJC Report on the 2024 Regulations dated 5 June 2024.

### **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(ii) – that it appears to make unusual or unexpected use of the powers conferred by the enactment under which it is made or to be made.**

It is unclear why section 89C(2) School Standards and Framework Act 1998 has been relied on as an enabling power. Given that these amending regulations are narrower in scope than the 2024 Regulations, it would appear that the broader enabling power of section 89C(1) is more appropriate than section 89C(2).

It is also noted that paragraph 3.5 of the Explanatory Memorandum also paraphrases the power in section 89C(1) rather than 89C(2), stating that "*section 89C provides that regulations*



*may be made about the contents of qualifying schemes including the duties imposed by such schemes on local authorities and school admission authorities".*

## **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 to the Technical Scrutiny point is required.

## **Committee Consideration**

The Committee considered the instrument at its meeting on 21 October 2024 and reports to the Senedd in line with the reporting point above.



## **Government Response: The Education (Amendments Relating to the Co-ordination of School Admission Arrangements) (Wales) Regulations 2024**

### **Technical Scrutiny point 1:**

The Welsh Government does not agree with the technical scrutiny point. Section 89C(1) of the 1998 Act provides that the Welsh Ministers may make provision about the contents of schemes under section 89B(2) (“schemes”). Section 89C(2) provides a further specific power for the Welsh Ministers to make regulations that provide that the provisions in Chapter 1 and Chapter 2 of Part 2 of the School Standards and Organisation (Wales) Act 2013 are to apply to schemes. Therefore, the power in section 89C(2) is not merely illustrative of what provision can be made under section 89C(1) (“the specific power”). It was necessary to rely on section 89C(2) of the 1998 Act as regulation 2(3) of the 2024 Regulations amended the provision in the principal the Education (Amendments Relating to the Co-ordination of School Admission Arrangements) (Wales) Regulations 2024 which applied the 2013 Act to the schemes. Relying on the specific power is more transparent to the reader.

The Explanatory Memorandum describes the full legislative background in sections 89B and 89C but is entirely consistent with the enabling powers cited in the 2024 Regulations and so refers to sections 89B(1), 89C(2) and 92 of the 1998 Act.

Jack Sargeant AS/MS  
Y Gweinidog Diwylliant, Sgiliau a Phartneriaeth Gymdeithasol  
Minister for Culture, Skills and Social Partnership



Llywodraeth Cymru  
Welsh Government

Mike Hedges MS, Chair  
Legislation, Justice and Constitution Committee  
Senedd Cymru  
Cardiff Bay  
Cardiff  
CF99 1SN

24 October 2024

Dear Mike,

**SL(6)516 – The Listed Buildings and Conservation Areas (Procedure and Interest Rate) (Wales) Regulations 2024 (S.I. 2024/930 (W. 155))**

Thank you for your letter of 11 October and the work of the Legislation, Justice and Constitution Committee.

In relation to reporting points 4, 5 and 6 to which you refer, we will address these points in a correcting instrument before the end of the year.

Yours sincerely,

**Jack Sargeant AS/MS**  
Minister for Culture, Skills and Social Partnership  
Y Gweinidog Diwylliant, Sgiliau a Phartneriaeth Gymdeithasol

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Jack.Sargeant@llyw.cymru](mailto:Gohebiaeth.Jack.Sargeant@llyw.cymru)  
[Correspondence.Jack.Sargeant@gov.wales](mailto:Correspondence.Jack.Sargeant@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.

Jack Sargeant MS  
Minister for Culture, Skills and Social Partnership

11 October 2024

Dear Jack,

**SL(6)516 - The Listed Buildings and Conservation Areas (Procedure and Interest Rate) (Wales)  
Regulations 2024**

We considered your response to our report on the above regulations on 7 October 2024.

Our report identified eight technical reporting points highlighting issues with the drafting of the Regulations. Overall, we do not consider the response to be satisfactory, particularly in relation to reporting points 4, 5 and 6.

Reporting point 4 identifies a problem with the drafting of the text in paragraph 6 of Schedule 2 to the Regulations. While the point we raise is accepted, the government response says that "any confusion ... can be addressed in practice." In our view, such an approach is sub-optimal and inconsistent with good legislative practice: it is the regulations that set out the law and we do not consider it appropriate for legislation to require resolution through practice in order for its meaning to be clearly understood.

Reporting point 5 identified an issue with the definition of 'concurrent application' in the modifications made by paragraph 6 of Schedule 4. This term has been defined for the purposes of modified regulation 8, but is also used in modified regulation 6. While accepting this point, the government considers that it would be clear in context that the term is intended to have the same meaning in both modified regulations. We disagree: if a term is defined for the purposes of a single regulation, then it will suggest to those interpreting this legislation that, if the same term is used in a different regulation, then it is intended to have a different meaning.

Finally, on reporting point 6, we noted that the location of an amendment made by the modifications in paragraph 6 of Schedule 4 is unclear. Again, we disagree with the government's response, which,



while accepting the point, suggests that the effect would be sufficiently clear. In our view, there is a clear risk of confusion, not least because if the amendment applies as the government says it does, there will be two paragraphs numbered '(4)' in the modified regulation, which we believe would cause unnecessary confusion.

We would therefore be grateful if the government could explain why it is not proposing to amend the regulations in question to remove the potential for confusion that currently exists and which we identify above and in our report.

We look forward to receiving your response by 31 October 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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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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**TITLE**            **The Sea Fisheries (Amendment) (No 2) Regulations 2024**

**DATE**            **22 October 2024**

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

Members of the Senedd will wish to be aware I have given consent to the Secretary of State for Environment, Food and Rural Affairs exercising a concurrent subordinate legislation-making power in a devolved area in relation to Wales.

Agreement was sought on to make a statutory instrument titled the Sea Fisheries (Amendment) (No 2) Regulations 2024. The 2024 Regulations apply in relation to Great Britain and Northern Ireland.

The 2024 Regulations have been made by the Secretary of State for Environment, Food and Rural Affairs in exercise of powers conferred by section 36(1)(b) and (c) of the Fisheries Act 2020.

The 2024 Regulations relate to measures which apply to the seabass fishery which extends beyond the Welsh Zone. In order for them to be effective, they need to apply on a UK basis and apply to all vessels operating in UK waters. In particular the 2024 Regulations remove seabass fishing provisions for United Kingdom registered fishing vessels from Council Regulation (EU) 2020/123. This is to enable more responsive management to be brought in through vessel licensing .

Consent was granted as these Regulations apply to a shared fishery which operates within and beyond the Welsh zone. In order for them to be effective, they need to apply on a UK basis and apply to all vessels operating in UK waters.

The 2024 Regulations were laid before Parliament 16 October 2024 and will come into force on 16 December 2024.

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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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<b>TITLE</b>	<b>The Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024</b>
<b>DATE</b>	<b>28 October 2024</b>
<b>BY</b>	<b>Huw Irranca-Davies MS, Deputy First Minister and Cabinet Secretary for Climate Change &amp; Rural Affairs</b>

I have given consent to the UK Government to make and lay the Producer Responsibility Obligations (Packaging and Packaging Waste) Regulations 2024 ("the Regulations"). The Regulations intersect with devolved policy and will apply to Wales. The Regulations apply in relation to England, Scotland, Northern Ireland and Wales.

The Regulations have been made by the Secretary of State for Environment, Food and Rural Affairs in exercise of powers conferred by the Environment Act 2021.

The Regulations revoke the previous Producer Responsibility Obligations (Packaging Waste) Regulations 2007 and the Packaging Waste (Data Collections and Reporting) (Wales) Regulations 2023 and introduce an Extended Producer Responsibility (EPR) scheme for packaging and packaging waste. EPR for packaging will require producers of packaging to pay the cost of managing packaging waste and the provision of public information about the disposal of packaging waste. This will result in the costs of managing packaging waste being met by the producers who use and supply packaging, applying the "polluter pays" principle. The producer fees will be raised by a scheme administrator jointly appointed by the four governments of the UK and will distribute these monies to local authorities. The scheme will also require producers to meet packaging recycling targets.

Collectively, the aim of these measures is to incentivise producers to reduce unnecessary packaging, design and use packaging that is easy to recycle, encourage the use of reusable and refillable packaging, and reduce packaging litter. The EPR scheme for packaging is therefore important in both tackling the climate and nature emergency and building a stronger, greener economy as we progress towards a net zero Wales.

Whilst it is normally the policy of the Welsh Government to legislate for Wales in matters of devolved competence, in certain circumstances there are benefits to Wales in doing so collaboratively with the UK Government where there is a clear rationale. In this case, the UK-wide Regulations will enable consistency across the UK while enabling Wales to sustain and build on its performance as second in the world for recycling. In turn, this will facilitate delivery of positive outcomes for Wales by allowing a uniform approach among commercial organisations as they invest, often in operations across the UK market. It is therefore appropriate that the Regulations are made on a UK-wide basis in this instance.

The Regulations were laid before Parliament on 24<sup>th</sup> October 2024. They are to be debated in Houses of Parliament during the window of 7 November - 4 December 2024. If the regulations are approved the scheme will come into force on 1<sup>st</sup> January 2025.

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-5465-24

Mike Hedges MS  
Chair  
Legislation, Justice, and Constitution Committee  
Senedd Cymru  
Cardiff Bay  
Cardiff  
CF99 1SN  
[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

29 October 2024

Dear Mike,

I refer to my letter to you of 9 8 2024 regarding the above referenced UK Statutory Instrument (SI) [The Producer Responsibility Obligations \(Packaging and Packaging Waste\) Regulations 2024](#)

I previously wrote to you to notify the Committee of my intention to give consent to the Secretary of State for Environment, Food and Rural Affairs for the above UKSI to apply to Wales. I am writing to notify you that I have now provided this consent. I also laid a Written Statement which can be found here: [ws-ld16763-r-e.pdf](#)

The Regulations intersect with devolved policy and will apply to Wales, England, Northern Ireland and Scotland. The Statutory Instrument (SI) is subject to the affirmative procedure, and it was laid before Parliament on 24 October 24 subject to debate in the Houses of Parliament the scheme will then come into force on 1 January 2025.

I have also written to Llŷr Gruffydd, Chair of the Climate Change, Environment, and Infrastructure Committee.

Yours sincerely,

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

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Huw.Irranca-Davies@llyw.cymru](mailto:Gohebiaeth.Huw.Irranca-Davies@llyw.cymru)  
[Correspondence.Huw.Irranca-Davies@gov.wales](mailto:Correspondence.Huw.Irranca-Davies@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.



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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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<b>TITLE</b>	<b>The Movement of Goods (Northern Ireland to Great Britain) (Animals, Feed and Food, Plant Health etc.) (Transitory Provision and Miscellaneous Amendments) Regulations 2024</b>
<b>DATE</b>	<b>28 October 2024</b>
<b>BY</b>	<b>Huw Irranca-Davies MS/AS, Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs</b>

Members of the Senedd will wish to be aware that we are giving consent to the Secretary of State exercising a subordinate legislation-making power in a devolved area in relation to Wales.

Agreement was sought by The Rt Hon Lord Benyon, the then Minister for Biosecurity, Marine and Rural Affairs to make a Statutory Instrument (SI) titled the Movement of Goods (Northern Ireland to Great Britain) (Animals, Feed and Food, Plant Health etc.) (Transitory Provision and Miscellaneous Amendments) Regulations 2024 (“the 2024 Regulations”) to apply in relation to the United Kingdom.

The above titled SI was made by the Minister of State, in exercise of the powers conferred under section 8C(1) of, and paragraph 21(a) of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Consent has been given for the UK Government to make this instrument as a result of the agreement on the Border Target Operating Model between the three governments in Great Britain to introduce a coherent and consistent sanitary and phytosanitary regime for goods imported into Great Britain to protect biosecurity and ensure food safety standards are maintained.

The purpose of this instrument is to preserve and sharpen the benefits of unfettered market access for qualifying Northern Ireland goods by applying the regime of sanitary and phytosanitary (“SPS”) controls to non-qualifying goods entering Great Britain

("GB") from Northern Ireland ("NI"), as applied to European Union ("EU") / European Economic Area ("EEA") goods under the Transitional Staging Period. The 2024 Regulations make consequential amendments to the qualifying Northern Ireland goods definition referenced in existing legislation. The Regulations and accompanying Explanatory Memorandum, setting out the purpose, and effect of the 2024 Regulations are available here:

[published SI linked here.](#)

The three governments in Great Britain have begun to phase in SPS controls for EU goods and non-qualifying goods arriving in GB from the island of Ireland. Since 31 January 2024, non-qualifying goods arriving into GB from Ireland have been required to provide prenotification and the relevant health and phytosanitary certification. The 2024 Regulations introduces equivalent SPS requirements for non-qualifying goods entering GB from NI, ensuring an aligned approach to SPS controls. Qualifying Northern Ireland goods will continue to benefit from unfettered access and will continue to be exempt from these SPS controls. The 2024 Regulations are subject to the affirmative procedure.

The 2024 Regulations do not commit Welsh Ministers to adopting any future UK Government position on biosecurity. The 2024 Regulations do not diminish or undermine the powers of Welsh Ministers in any way.

I would like to reassure the Senedd it is normally the policy of the Welsh Government to legislate for Wales in matters of devolved competence. However, in certain circumstances there are benefits in working collaboratively with the UK Government where there is a clear rationale for doing so. On this occasion, I have given my consent to these Regulations for reasons of efficiency and expediency in future policy change and adherence to international obligations, cross-UK coordination, and consistency.

The UK Government have stated that the purpose of the 2024 Regulations is to preserve the benefits of unfettered market access for qualifying Northern Ireland goods. The UK Government made a commitment in the Border Target Operating Model, published in August 2023, and the Safeguarding the Union Command Paper, published in January 2024, that non-qualifying goods will be subject to the UK's full SPS regime.

**Huw Irranca-Davies AS/MS**  
Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid  
Hinsawdd a Materion Gwledig  
Deputy First Minister and Cabinet Secretary for Climate Change  
and Rural Affairs



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: HID/CC/MA/5032/24

Mike Hedges MS  
Chair,  
Legislation, Justice and Constitution Committee  
Senedd Cymru  
[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

29 October 2024

Dear Mike,

Further to my letter of 30 April 2024. I am writing to inform the Committee that I have given my consent to the then Minister of State to lay the Movement of Goods (Northern Ireland to Great Britain) (Animals, Feed and Food, Plant Health etc.) (Transitory Provision and Miscellaneous Amendments) Regulations 2024 in relation to Wales. I have laid a Written Statement which can be found at: <https://senedd.wales/media/csijfbmi/ws-ld16766-e.pdf>

Consent has been given for the UK Government to make these Regulations in order to implement the milestones of the Borders Target Operating Model (BTOM). The Regulations intersect with devolved policy and will apply to Wales. The Statutory Instrument (SI) is subject to the affirmative procedure and was laid before Parliament on 28 October 2024 with a commencement date which will be subject to the SIs approval by resolution of each House of Parliament.

This instrument was scheduled to lay on 22<sup>nd</sup> May; however, the General Election was announced that day which led to a pause to the timetable.

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**  
Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd  
a Materion Gwledig  
Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Huw.Irranca-Davies@llyw.cymru](mailto:Gohebiaeth.Huw.Irranca-Davies@llyw.cymru)  
[Correspondence.Huw.Irranca-Davies@gov.wales](mailto:Correspondence.Huw.Irranca-Davies@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.

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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE**            **Independent Commission and Review of the Water Sector**

**DATE**            **24 October 2024**

**BY**                **Huw Irranca-Davies MS, Deputy First Minister & Cabinet  
Secretary for Climate Change and Rural Affairs**

I am pleased to inform the Senedd that, in collaboration with the UK Government Secretary of State for the Environment, Food and Rural Affairs, I have yesterday jointly launched an Independent Commission to review the water sector and its regulation. This will be the largest review of the industry since privatisation and will consider policy and regulation in the water sector on both sides of the border.

This vital review couldn't come at a more urgent time for our water environment and water industry. It is a great example of the fresh approach of our two governments to cross-border cooperation on an issue which affects us all as consumers, investors and as stewards of the natural world. Our rivers and waterways cross borders, and water is a complex and highly sensitive aspect of the devolution settlement in Wales, which needs to be considered when developing future arrangements.

Former Deputy Governor of the Bank of England, Jon Cunliffe, will chair the Commission. The Commission will draw upon a panel of experts from across the regulatory, environment, health, engineering, customer, investor and economic sectors, as well as extensive public consultation. The Commission will report back next year with recommendations to the Government on how to tackle issues in the water sector to restore our rivers, lakes and seas to good health, meet the challenges of the future and drive green economic growth. The Commission's recommendations will form the basis of further legislation to attract long-term investment and clean up our waters for good.

We have clear priorities for reform and a shared sense of the work that will be needed across both countries' policy and regulatory regimes to make this change happen. There will need to be a consensus for action, and this includes where distinctive solutions are needed in Wales and in England to deliver a reset and secure a resilient water sector and framework that will work for the long term. The Commission will consider the unique situation of the industry and policy approach in Wales and will include a dedicated representative of the sector in Wales and seek the views of Wales' experts to ensure the Welsh perspective is considered at the highest level.

This crucial work will complement the wide range of work on water quality that is already underway in other areas, including the reviews of the Control of Agricultural Pollution regulations and of spreading of organic materials to land. I look forward to receiving the Commission's report and to our continued collaboration with our counterparts in England on this vital issue.

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

[Llywydd@senedd.wales](mailto:Llywydd@senedd.wales)

24 October 2024

Dear Llywydd,

The Employment Rights Bill was introduced into the House of Commons on 10 October 2024.

The Bill contains 119 clauses, six parts and seven schedules. The breadth of the Bill is considerable and is illustrated by its long title to:

*“make provision to amend the law relating to employment rights; to make provision about procedure for handling redundancies; to make provision about the treatment of workers involved in the supply of services under certain public contracts; to provide for duties to be imposed on employers in relation to equality; to provide for the establishment of the School Support Staff Negotiating Body and the Adult Social Care Negotiating Body; to make provision about trade unions, industrial action, employers’ associations and the functions of the Certification Officer; to make provision about the enforcement of legislation relating to the labour market; and for connected purposes.”*

Our initial analysis is that the Bill makes relevant provision for the purposes of Standing Order 29 and will therefore require a Legislative Consent Memorandum to be laid. We are working through the detail required. Although we had productive discussions with the UK Government before the Bill was published, the scope of the Bill has posed a challenge in completing our analysis.

Whilst the Legislative Consent Memorandum will be laid as soon as possible, due to the scale and complexity of the Bill, this will be outside the normal two-week Standing Order 29 deadline. The House of Commons second reading of the Bill takes place on 21 October with the committee stage starting in November.

I am copying this letter to the Counsel General and Minister for Delivery, Julie James MS, the Cabinet Secretary for Economy, Energy and Planning, Rebecca Evans MS, the Cabinet

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Jack.Sargeant@llyw.cymru](mailto:Gohebiaeth.Jack.Sargeant@llyw.cymru)  
[Correspondence.Jack.Sargeant@gov.wales](mailto:Correspondence.Jack.Sargeant@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.

Secretary for Social Justice, Trefnydd and Chief Whip, Jane Hutt MS, and the Chair of the Legislation, Justice and Constitution Committee, Mike Hedges MS.

Yours sincerely,

*JACK SARGEANT*

**Jack Sargeant AS/MS**  
Minister for Culture, Skills and Social Partnership

Jayne Bryant MS  
Cabinet Secretary for Housing and Local Government  
Welsh Government

25 October 2024

Dear Jayne,

### **Renters' Rights Bill LCM**

You'll be aware that the Legislative Consent Memorandum (LCM) for the Renters' Rights Bill has been referred to the Local Government and Housing Committee for consideration. We initially considered the LCM at our meeting on 23 October and Members agreed that I should write to seek clarification on a number of issues.

We note that the main reason given in the LCM for making these changes using a UK Bill is expediency. However, we are aware that many of the provisions in the previous Renters (Reform) Bill, now replicated in this Bill, were introduced in advance of November 2023 and still have not been implemented due to the dissolution of Parliament. As we noted in our report on the previous LCM, relying on the UK Government and Parliament to progress a Bill, rather than bringing legislation within a timetable set by the Senedd, is a disadvantage of the LCM process. We are conscious that, should the Welsh Ministers have decided from the outset to bring forward a Senedd Bill to amend two Senedd Acts, then it could have done so sooner than this Bill. Given the significant delays in enacting the provisions in this Bill relevant to Wales, we would be grateful if you could explain why you believe expediency to be a valid reason for using the LCM approach.

We note that the LCM describes the changes to both the Renting Homes (Wales) Act 2016 and the Renting Homes (Wales) (Fees etc.) (Wales) Act 2019 as "*a discrete policy aim*". However, the Bill goes further than the rental discrimination provisions. Moreover, the rental discrimination provisions are far-reaching (e.g. impacting insurance and mortgages) and create a new criminal offence for landlords in Wales. We would be grateful if you could clarify your plans for implementation of the changes: will there be a grace period for landlords to ensure they do not contravene the new provisions? What steps will be taken to raise awareness of these changes e.g. through Rent Smart Wales etc?

We are aware that the position on sanctions and enforcement differs between England and Wales. Breaches in England will be a civil offence with a fine of up to £7,000. Breaches in Wales and Scotland will be subject to criminal sanctions. Please could you confirm whether Welsh Government intends to maintain its position that criminal enforcement is the preferred approach and, if so, why.

We would be grateful if you could provide further information on the data available regarding how many tenants are currently in Occupation Contracts that prevent them from claiming benefits or having children at the properties. Could you outline what practical difference would it make if these changes only applied to Occupation Contracts entered into after the Bill comes into force? We would also like to know whether the Welsh Government has undertaken any consultation on these changes in Wales.

Clause 46 would enable the Welsh Ministers, through regulations, to add to the groups of people protected from rental discrimination. It would be useful to know how the Welsh Government envisages using this power and the groups likely to be added. We note the consultation requirements on Welsh Ministers before making such regulations and that a Statutory Instrument containing such regulations will be made under the affirmative procedure. We also note that clause 47 grants similar regulation-making powers to the Secretary of State, but that an LCM has not been deemed as needed for this provision. Please could you explain why such a regulation-making power for the Secretary of State has been included, whether this been inserted into the Bill with the Welsh Government's consent and why the Welsh Government has not listed this clause as requiring consent. It would also be useful if you could provide examples of when it is envisaged that this power will be used and outline whether the same consultation requirements would apply.

Clause 70 makes amendments to Schedule 2 of the Housing Act 1996 which concerns housing complaints in the social rented sector. Social landlords must be members of a Government approved social landlord redress scheme, the only approved scheme currently being the Housing Ombudsman. We note that the Explanatory Notes to the Bill indicate that this provision does not apply to Wales and the LCM process is not engaged, however paragraph 33 of the LCM states that the Welsh Government's opinion is that consent is required for these changes. Paragraph 40 goes on to state:

*"Despite the fact that applies to a dwelling in England, it is the view of the Welsh Government that the amendment to paragraph 10 of Schedule 2 to the Housing Act 1996 is not consequential on the new PRS landlord ombudsman service but is substantial because it applies in relation to a number of homes in Wales".*

We find paragraph 40 to be confusing as it states that the change applies to dwellings in England but also that it applies to a number of homes in Wales. Please could you clarify the reasons for consent being sought, particularly as the Housing Ombudsman only deals with complaints about social housing in England.

Similarly, clause 29(2) provides the Secretary of State with powers to introduce regulations to amend legislation or the effect of private instruments so that they operate to comply with the changes to the assured tenancies system made by Part 1 Chapter 1 of the Bill, specifically in relation to a ground for possession in Schedule 2 to the Housing Act 1988. However, as acknowledged by paragraph 11(a) of the LCM, the assured tenancy regime is no longer applicable in Wales so it is unclear why this clause requires consent. Please could you clarify the reasons for consent being sought.

We note that the Bill contains some England only provisions which we considered as part of our work on the private rented sector.

The Bill includes some provisions in relation to pets, for example clause 10 grants a right to request permission to keep a pet, which a landlord cannot unreasonably refuse and that these will apply in England only. Given that we recently received evidence on this during our recent inquiry, please could you explain why similar measures were not included for Wales or if there is any intention to introduce those at a later stage.

The Bill would bring an end to 'no fault' evictions in England, subject to exceptions, using section 21 notices, while such evictions are possible in Wales with 6 months' notice under section 173 of the Renting Homes (Wales) Act 2016. As we stated in our recent report, we would not want tenants in Wales to be worse off than tenants in England. We would be grateful if you could therefore outline how the situation in Wales will differ from England if the Bill is passed and the Welsh Government's intentions for no fault evictions in light of these reforms for England.

We would be grateful for a response by 7 November to enable us to consider it at our meeting the following week and report by the deadline of 29 November.

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

Yours sincerely



John Griffiths MS

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Dawn Bowden AS/MS  
Y Gweinidog Plant a Gofal Cymdeithasol  
Minister for Children and Social Care

Agenda item 11.4



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref MA-DB-10629-24

Mike Hedges MS  
Chair  
Legislation, Justice and Constitution Committee  
Senedd Cymru  
[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

25 October 2024

Dear Mike,

Thank you once again for your consideration of the Health and Social Care (Wales) Bill during Stage 1. I thank Committee Members for the detailed consideration of the Bill, and for their recommendations.

I have set out below my response to the recommendations.

I hope that the attached information helps to inform your further scrutiny as the Bill progresses through Stage 2. I look forward to continuing to work with Committee Members on the details of the legislation in the near future.

I am copying this letter to the Chairs of the Finance Committee and the Health and Social Care Committee.

Yours sincerely,

**Dawn Bowden AS/MS**  
Y Gweinidog Plant a Gofal Cymdeithasol  
Minister for Children and Social Care

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Dawn.Bowden@llyw.cymru](mailto:Gohebiaeth.Dawn.Bowden@llyw.cymru)  
[Correspondence.Dawn.Bowden@gov.wales](mailto:Correspondence.Dawn.Bowden@gov.wales)

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## Health and Social Care (Wales) Bill

### Responses to the Legislation, Justice and Constitution Committee's recommendations

#### **Conclusion 1:**

**As a general matter of principle, a Bill should not be introduced into the Senedd until all relevant impact assessments have been fully completed, such that all relevant information can be included in the Explanatory Memorandum that must accompany a Bill in accordance with Standing Order 26.6.**

The Explanatory Memorandum and Regulatory Impact Assessment laid alongside the Bill at introduction included an assessment of impact and the Welsh Government will also seek to provide further information to Members of the Senedd during scrutiny where requested.

#### **Conclusion 2:**

**As a matter of good practice, an Explanatory Memorandum should provide clear information about the Welsh Government's assessment of the potential impact of a Bill on human rights and accordingly, how it is compatible with the European Convention on Human Rights.**

Ministers agree that it is helpful for an Explanatory Memorandum to provide clear information about the Welsh Government's assessment of a Bill's compatibility with Convention rights and all Explanatory Memorandums have included such information. Bill provisions are always subject to thorough assessment of legislative competence including Convention rights.

#### **Conclusion 3:**

**We have concerns that the Bill was introduced too early and before all necessary preparatory work had been completed, including but not limited to, consulting on a draft version of the Bill and the preparation of impact assessments and the Statement of Policy Intent for Subordinate Legislation to be made under the Bill.**

In line with Standing Orders, the Explanatory Memorandum and Regulatory Impact Assessment laid alongside the Bill at introduction included an assessment of impact. In order to aid the Senedd's consideration of the Bill, we endeavour to publish full versions of the documentation as soon as possible after the Bill has been introduced. The Government did consult extensively on these proposals in 2022. The reasons for not consulting on a Draft Bill are provided at paragraph 4.10 of the Explanatory Memorandum.

#### **Conclusion 4:**

**As a general principle, we believe that legislation should clearly define terms that it uses, rather than require the reader to exercise a degree of interpretation when doing so, however simple that interpretation may be perceived to be by the relevant Welsh Minister.**

**Conclusion 5:**

**As a matter of principle, if information can be set out on the face of the Bill, that is where it should be placed, for reasons of transparency, certainty and good legislative practice.**

We have considered and responded to conclusions 4 and 5 together.

As we have set out in *Writing Laws for Wales: A guide to legislative drafting*, “Legislation must be effective, but it should also be as clear as possible.” We always encourage comments on our approach to drafting legislation and we will reflect on the points raised by the Committee.

**Recommendation 1:**

**The Minister should respond to the conclusions and recommendations we make in this report at least two working days before the Stage 1 general principles debate takes place.**

I accept this recommendation in principle.

The Welsh Government endeavours to respond to the Committees as soon as reasonably possible but it is not always practical for Welsh Ministers to do this prior to the Stage 1 debate.

**Recommendation 2:**

**The Minister should update the Senedd on the Welsh Government’s discussions with the UK Government regarding the outstanding Minister of the Crown consent required for paragraph 4 of Schedule 2 to the Bill.**

I accept this recommendation.

I am pleased to confirm to the Committee and the Senedd that the Secretary of State for Wales has written to me to provide Minister of the Crown consent for the provisions in paragraph 4 of Schedule 2 to the Bill.

**Recommendation 3:**

**The Minister should state whether she has had discussions with the Counsel General and the Welsh Government Cabinet about the priority which should be attached to the consolidation of the law on the regulation and provision of social care services and health care in Wales.**

**Recommendation 4:**

**The Minister should commit to assessing and scoping the consolidation of the law on the regulation and provision of social care services and health care in Wales, and report to the Senedd on this work within 12 months of the Bill being passed.**

I have considered and responded to recommendations 3 and 4 together.

I accept recommendation 3, and I reject recommendation 4.

The Government's priorities for the consolidation and codification of Welsh law in this Senedd are set out in our Future of Welsh law programme (revised January 2024). The Counsel General will be laying the next annual report on progress against that programme before the Senedd in due course, but Members will be aware the consolidation and codification of historic environment has been completed, the second Bill in the programme has just been introduced on 21 October, and the Government will be bringing forward the consolidation of planning law in Wales next year.

The Committee's continuing commitment to the accessibility of Welsh law and support for consolidation is helpful. However, the current accessibility of law programme does not include proposals for this Senedd term on the consolidation of social care services or health care law in Wales so I am unable to accept Recommendation 4 at this time. Nonetheless, the findings in the Committee's report will be taken into account as proposals for future consolidation projects are developed and I have shared the Committee's views on this matter with the Counsel General.

**Recommendation 5:**

**The Minister should amend the Explanatory Memorandum (including the Explanatory Notes) by the start of Stage 3 proceedings to ensure it accurately reflects the intention of the Bill to restrict rather than eliminate the making of profit from the care of looked after children.**

I reject this recommendation.

The provisions of the Bill are intended to prevent the extraction of profit from the provision of a restricted children's service. Any trading surplus or profit is retained within the organisation providing the service, and can be re-invested. This is clearly explained in the Explanatory Memorandum and we believe it is also understood by stakeholders that this is the way in which we are seeking to eliminate private profit from the care of looked after children.

**Recommendation 6:**

**The Minister should table amendments to the Bill to include a date on which the transitional arrangements to be introduced under Part 1 of the Bill will end, and to enable such a date to be amended by regulations subject to the draft affirmative procedure.**

I reject this recommendation.

The Welsh Government has not pursued the option of including an end date for the transition period on the face of the Bill which could be extended by subordinate legislation. That approach would mean that children settled in placements with for-profit providers might be aware of a date approaching by which their placement will automatically be ended, unless the date was extended by subordinate legislation. The end date could potentially be subject to multiple extensions to avoid disruption to children, but this could, in itself, be distressing for children who may be aware of the deadlines approaching and then being extended.

Instead, the power already in the Bill will allow Welsh Ministers to determine the end of the transitional period for restricted children's services in a manner sensitive to the needs of children still in such placements, and will allow placement disruption for children and service providers to be avoided or minimised.

**Recommendation 7:**

**Should the Bill receive Royal Assent, the Minister should ensure that information is provided to all stakeholders about the transitional arrangements that will apply under Part 1 of the Bill in such form that the arrangements can be easily understood.**

I accept this recommendation.

As part of our communications plan for the eliminating profit programme, we will provide information to stakeholders about the transitional arrangements.

**Recommendation 8:**

**The Minister should explain clearly how any phased ending of the transitional arrangements under Part 1 of the Bill would work in practice, including how the rights of children will be affected if they have to move placements.**

I accept this recommendation.

As part of our communications plan for the eliminating profit programme, we will provide further information on how the transitional arrangements will work in practice including how children may be affected. We accept that it has a degree of complexity and we may need to come back to it from time to time to reassure and to explain to those affected by it. The aim of the flexible transitional period is precisely to avoid the need for children to have to move placements as a result of the status of the provider of the foster carer or the children's home. This opens the way to the ending of the transitional period in a way which avoids any interference with the rights of children caused by ending a placement.

**Recommendation 9:**

**The Minister should explain clearly:**

- **why it is appropriate to potentially treat local authorities individually and therefore differently in respect of Part 1 of the Bill, but not in respect of Part 2;**
- **the implications for health and social care in Wales of such an approach.**

I accept this recommendation.

The Welsh Government is happy to provide an explanation for the approach taken to these two policies.

In Part 1, Chapter 1 of the Bill, the Welsh Government is seeking to eliminate private profit from the care of looked after children across Wales, so that in future, residential care, secure accommodation and foster care of looked after children in Wales will be provided by the public sector, or by charitable or not-for-profit organisations.

Some parts of Wales are likely to reach a point where all of their relevant provision is not-for-profit before other parts. It is therefore appropriate that powers in the Bill can enable the Welsh Ministers to end transitional arrangements for those parts of Wales that have eliminated private profit, so that this progress is not reversed.

Part 2 of the Bill contains powers to enable direct payments in health care. While in England direct payments were piloted in certain parts of the country, this is unnecessary in Wales as we can learn from the experience of implementation in England. It is therefore intended that regulations to enable direct payments for continuing healthcare will apply across Wales and that implementation will take place across the whole of Wales over the same period.

**Recommendation 10:**

**The Minister should table an amendment to the Bill so that when calculating the number of days for the purpose of new section 2A(2) of the Regulation and Inspection of Social Care (Wales) Act 2016 (to be inserted by section 2(b) of the Bill), it is clear that the 12-month period must be continuous.**

I reject this recommendation.

The Welsh Government is going to give further consideration to the wording of new section 2A(2) of the 2016 Act (to be inserted by section 2(b) of the Bill) which is likely to render this proposed amendment superfluous.

**Recommendation 11:**

**The Minister should clarify why the term ‘looked after children’ is to be introduced to the Social Services and Well-being (Wales) Act 2014 by the Bill when the term is not used in the operative provisions of the original Act.**

I accept this recommendation.

The term “looked after children” is used in the cross heading to Part 6 of the 2014 Act and in a number of the section headings so that it is plain to the reader that the phrase “looked after” means the same whether it is placed before the words “child”, or “children”, or after.

**Recommendation 12:**

**If the Minister decides to continue with the use of the term ‘looked after children’, the Minister should table an amendment to the Bill to clarify its meaning including, if necessary, by defining the term within new paragraph 1(3B) of Schedule 1 to the Bill (to be inserted by section 2(c) of the Bill).**

I accept this recommendation.

The Welsh Government will table an amendment at Stage 2 to clarify the meaning of the term ‘looked after children’ in the amendment inserted into the Regulation and Inspection of Social Care (Wales) Act 2016.

**Recommendation 13:**

**The Minister should table an amendment to the Bill to include a definition of ‘public good’ in new section 6A of the Regulation and Inspection of Social Care (Wales) Act 2016 (to be inserted by section 3(3) of the Bill).**

I reject this recommendation.

The power to prescribe other public goods which could allow an organisation to meet this condition, in order to deliver a restricted children’s service, would only be used to specify an additional acceptable public good, in addition to the welfare of children.

The other condition and requirements would still apply to these providers.

The Welsh Government does not believe that this requirement is exceptionally broad or in need of further definition. As a point of comparison, in the definition of community benefit society in section 2(2) of the Co-operative and Community Benefit Societies Act 2014, the test around an organisation’s purposes is "that the business of the society is being, or is intended to be, conducted for the benefit of the community". The community interest test for a community interest company is equally wide and is defined by reference to what a reasonable person would consider are activities being carried on for the benefit of the community or a section of the community.

**Recommendation 14:**

**The Minister should table an amendment to the Bill to apply a super-affirmative procedure to the making of regulations under new section 6A(3)(b) of the Regulation and Inspection of Social Care (Wales) Act 2016 (to be inserted by section 3(3) of the Bill).**

I accept this recommendation in part.

Whilst the Welsh Government does not consider that a super-affirmative procedure is appropriate in these circumstances it is willing to apply the draft affirmative procedure.

**Recommendation 15:**

**The Minister should consider tabling an amendment to the Bill to clarify how objects or purposes are to be determined, and by whom under new section 6A(3) of the Regulation and Inspection of Social Care (Wales) Act 2016 (to be inserted by section 3(3) of the Bill).**

I accept this recommendation in part.

I am happy to provide clarity on how and by whom objects and purposes are to be determined. The task of determining whether a provider’s objects or purposes comply with regulation 6A(3) will be for the regulator, that is to say Care Inspectorate Wales carrying out the functions of the Welsh Ministers. All relevant providers will have their objects/purposes set out in their governing documents and Care Inspectorate Wales will have a margin of discretion in deciding whether these primarily relate to the accepted purposes or not. I consider that having made a statement to that effect removes the need for a clarificatory amendment.

**Recommendation 16:**

**The Minister should table amendments to section 3 of the Bill to remove the definition of a ‘company having a share capital’ to be inserted into new section 6B(6)(b) of the Regulation and Inspection of Social Care (Wales) Act 2016 and replace it with an appropriate definition in respect of the phrase ‘without a share capital’.**

I accept this recommendation in principle.

The Welsh Government will give consideration to the drafting of the relevant provision with a view to addressing the point raised by the Committee.

**Recommendation 17:**

**The Minister should consider tabling an amendment or amendments to ensure that it is clear what ‘wholly or mainly to children’ means in each place that it is used in the Bill.**

I accept this recommendation in principle.

I am happy to commit to giving consideration to how best to avoid confusion or a lack of clarity about the intentions behind the use of “wholly or mainly to children”.

**Recommendation 18:**

**The Minister should table an amendment to the Bill to remove the regulation-making power from paragraph 2(4)(b) of new Schedule 1A (to be inserted by section 4 of the Bill).**

I accept this recommendation.

The Welsh Government will table an amendment at Stage 2 to remove the regulation-making power.

**Recommendation 19:**

**The Minister should table amendments to section 6 of the Bill to ensure that the drafting of new sections 9B(2)(e) and 9B(3)(d) is in line with conclusion 4 of our report.**

I reject this recommendation.

As I set out in my letter on 9 July, we are content that no difficulty or ambiguity of interpretation is created by the current drafting.

**Recommendation 20:**

**The Minister should table an amendment to section 14 of the Bill to include the timeframe for the publishing of an annual return by a service provider in new section 10(4A) of the Regulation and Inspection of Social Care (Wales) Act 2016.**

**Recommendation 21:**

**The Minister should consider tabling an amendment to section 14 of the Bill to enable regulations subject to the draft affirmative procedure to change the timeframe for the publication of an annual return by a service provider (to be set out in new section 10(4A) of the Regulation and Inspection of Social Care (Wales) Act 2016 Act as a consequence of recommendation 20).**

I have considered and responded to recommendations 20 and 21 together. I reject both recommendations.

To set a timescale for the publication of annual returns on the face of the Bill would constrain the regulator in its necessary work to agree a process for working with providers post-submission to ready them for publication. This process will inform the timescale set out in regulations. Stipulating a timescale on the face of the Bill is inconsistent with the approach already taken in the 2016 Act in relation to the time limit for submitting an annual return, which is set out in Regulations made under the negative procedure.

**Recommendation 22:**

**The Minister should table an amendment to section 19(1) of the Bill to ensure its wording is consistent with the policy intention set out in section 19(2).**

I accept this recommendation.

An amendment will be tabled at Stage 2 to make this amendment.

**Recommendation 23:**

**The Minister should table an amendment to the Bill to require that paragraph 7 of new Schedule A1 to the Social Services and Wellbeing (Wales) Act 2014 (to be inserted by section 20 of the Bill) is free-standing and its policy intent does not require repeating in regulations to be made under paragraph 1 of new Schedule A1.**

I reject this recommendation.

For the reasons set out in our response on 9 July, the Welsh Government does not believe that this amendment to the Bill is required. The ability of health boards to offer direct payments for mental health after care services is entirely contingent on the making of the Regulations – health boards will not be able to offer direct payments without the Regulations being in place and the statutory framework must therefore include the restriction discussed.

**Recommendation 24:**

**The Minister should provide detail on all the services that could be subject to direct payments using the provisions to be inserted into the National Health Service (Wales) Act 2006 by section 24. This information should be provided no later than the commencement of Stage 3 proceedings.**

I accept this recommendation in principle.

The power will enable direct payments in health care to recipients with a wide range of conditions and diagnoses. It would not be appropriate to provide an exhaustive list of where a direct payment could be made in lieu of services. In addition, it would be taking a 'medical model' approach and would not be in keeping with the social model of disability to be prescriptive in terms of type of condition or disability. However, I would be happy to provide the Committee with indicative information.

**Recommendation 25:**

**The Minister should review the breadth of the provisions in section 24 including whether the Bill may allow the Welsh Ministers, at some point in the future, to make payments to people who have not been assessed as having a primary health need. Having done so, the Minister should make a statement to the Senedd about the outcome of this review no later than the commencement of Stage 3 proceedings.**

I reject this recommendation.

The provisions in section 24 have been the subject of careful consideration during the drafting and scrutiny processes and should be retained as drafted to allow for the introduction of direct payments for CHC.

**Recommendation 26:**

**If the Minister's intention remains to exercise the regulation-making power under section 10B(5) of the National Health Service (Wales) Act 2006 (to be inserted by section 24 of the Bill) solely for all Local Health Boards at the same time, the Minister should table an amendment to the Bill to reflect that intention (and remove the ability for it to be exercised in respect of one Local Health Board only).**

I reject this recommendation.

The Welsh Government does not believe that this amendment to the Bill is required. The Minister has already set out to the Committee the Government's intention to exercise the power for all health boards at the same time.

**Recommendation 27:**

**The Minister should table an amendment to the Bill such that the meaning of 'a person lacking capacity' as set out in new section 10B(8)(b) of the Social Services and Well-being (Wales) Act 2014 (to be inserted by section 24(2) of the Bill) is described by all relevant provisions of the Mental Capacity Act 2005 that specify its meaning.**

I reject this recommendation.

As set out in earlier correspondence with the Committee, defining "mental capacity" by reference to the Mental Capacity Act 2005 generally as opposed to a more specific reference to section 2 is the more common practice in the statute book. It is the same formulation used in section 197(5) of the 2014 Act.

In addition, because the definition in section 2 is subject to additional provision in section 18(3) (referred to in section 2(6)), in our view it is more appropriate to refer to the definition by reference to the whole Act.

**Recommendation 28:**

**The Minister should table an amendment to the Bill such that regulations to be made under section 10C(1) of the National Health Service (Wales) Act 2006 (to be inserted by section 24(2) of the Bill) are subject to the draft affirmative procedure.**

I accept this recommendation.

The Welsh Government will table an amendment to apply the draft affirmative procedure to this regulation-making power.

**Dawn Bowden AS/MS**  
Y Gweinidog Plant a Gofal Cymdeithasol  
Minister for Children and Social Care



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref MA-DB-10629-24

Peredur Owen Griffiths MS  
Chair  
Finance Committee  
Senedd Cymru  
[SeneddFinance@senedd.wales](mailto:SeneddFinance@senedd.wales)

18 October 2024

Dear Peredur,

Thank you once again for your consideration of the Health and Social Care (Wales) Bill during Stage 1. I am pleased that your Committee welcomes the aims of the Bill, and I thank Committee Members for this, and for their recommendations.

I have set out below my response to the recommendations.

I hope that the attached information helps to inform your further scrutiny as the Bill progresses through Stage 2. I look forward to continuing to work with Committee members on the details of the legislation in the future.

I am copying this letter to the Chairs of the Health and Social Care Committee and the Legislation, Justice and Constitution Committee.

Yours sincerely,

**Dawn Bowden AS/MS**  
Y Gweinidog Plant a Gofal Cymdeithasol  
Minister for Children and Social Care

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Dawn.Bowden@llyw.cymru](mailto:Gohebiaeth.Dawn.Bowden@llyw.cymru)  
[Correspondence.Dawn.Bowden@gov.wales](mailto:Correspondence.Dawn.Bowden@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.

## **Health and Social Care (Wales) Bill**

### **Responses to the Finance Committee's recommendations**

**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.**

I welcome the Committee's consensus with the financial implications of the Bill as set out in the Regulatory Impact Assessment. I have set out my responses to the Committee's recommendations in its report below. I will be accepting thirteen of the recommendations in full; accepting three in part; and accepting two in principle.

#### **Recommendation 1:**

**The Committee recommends that the Welsh Government ensures a consistent approach when presenting financial information in Regulatory Impact Assessments, especially where a Bill is proposing a number of different policy changes.**

I accept this recommendation.

The Welsh Government will always seek to ensure Regulatory Impact Assessments (RIA) present the financial information in a consistent and transparent way, while also trying to maintain accessibility. The Committee's report and recommendations have been shared with Welsh Treasury officials who lead on the RIA process.

In terms of this specific RIA, we will look to address the Committee's concerns when we come to revise the RIA following completion of Stage 2.

#### **Recommendation 2:**

**The Committee recommends that the Welsh Government ensures it includes summary tables in the Regulatory Impact Assessment to demonstrate how the constituent elements agree to the range of total costs of the Bill.**

I accept this recommendation.

When revising the RIA following completion of Stage 2, we will include additional summary tables.

#### **Recommendation 3:**

**The Committee recommends that the Welsh Government reviews the arrangements it has in place to quality check information prior to it being shared with the Committee, to avoid it having to subsequently correct its evidence.**

I accept this recommendation.

The Welsh Government will ensure that an additional check is made for all further complex figure work provided to the Committees on the Bill, in order to prevent a repetition.

**Recommendation 4:**

**The Committee recommends that the Minister updates and corrects the Explanatory Memorandum at the next opportunity to address any errors and apparent inconsistencies between the aggregate value of the annual costs and benefits with the figures in the RIA summary, as well as include information about how those costs and benefits have been calculated.**

I accept this recommendation.

The Welsh Government will update and correct the Explanatory Memorandum in order to address any errors, to explain or address any apparent inconsistencies, and to provide further information where possible. A revised Explanatory Memorandum will be laid following completion of Stage 2.

**Recommendation 5:**

**Given the uncertainties with the estimates, the Committee recommends that, should the costs associated with the Bill significantly change during its passage through the Senedd, updated calculations are made available, and the Minister appears before the Committee for further scrutiny.**

I accept this recommendation.

The Welsh Government will update the Explanatory Memorandum following completion of Stage 2 and I would be content to attend the Committee again at that time or to provide further information as needed.

**Recommendation 6:**

**The Committee recommends that the Minister provides an update about the latest evidence on whether private providers are expected to convert to 'not-for-profit' status, and that this information is included in a revised Regulatory Impact Assessment.**

I accept this recommendation.

We will provide a statement based on the latest available market intelligence and we will include information on this, in the event that it would modify our costings, when we update the Explanatory Memorandum following completion of Stage 2.

Regular updates are also provided to the Eliminating Profit Programme Board to help mitigate risks and will be a key component in future planning.

**Recommendation 7:**

**The Committee recommends that, in revising the Explanatory Memorandum, the Minister should model the financial consequences of extending the transitional period beyond three years.**

I accept this recommendation.

The Welsh Government will provide modelling for the financial consequences of extending the transitional costs in respect of eliminating private profit from the care of looked after children beyond three years.

**Recommendation 8:**

**The Committee recommends that the Minister revisits the assumptions made about the projected number of looked after children in the Regulatory Impact Assessment to ensure the costs of the proposals to eliminate profit from their care are as accurate as possible, and based on historical and empirical evidence.**

I accept this recommendation.

Whilst the trend in the number of children looked after has been increasing since data has been collected in 2003, this has levelled off in more recent years since 2020.

The costs have been estimated using an assumption that the number of looked after children in Wales is likely to remain similar in the next ten years. The Welsh Government will review this assumption further as it prepares an updated RIA following completion of Stage 2.

**Recommendation 9:**

**The Committee recommends that the Minister reviews the apparent inconsistencies between the aggregate value of the annual resource (or revenue) costs expected to be incurred by local authorities and the reduction in their outturn as a result of the provisions in the Bill to eliminate profit from the care of looked after children, with the values reported in the Regulatory Impact Assessment summary, and provides an update to the Committee.**

I accept this recommendation.

The Welsh Government notes that the Finance Committee has raised concerns in paragraph 98 of its report that the sum of the annual start-up, legal and commissioning costs for new residential and fostering services does not match the value of revenue costs in the RIA summary. The sum of these costs is £65.0m for Scenario B (which is £13.6m lower than the figure in the RIA summary) and £86.7m for Scenario C (which is £16m lower than the figure in the RIA summary).

In explanation, in addition to the revenue costs identified above, the figures in the RIA summary also take into account the increased revenue costs which have been modelled in the cost of for-profit provision during the transition period, on the assumption that providers exiting the market would charge a premium during the transition period. These costs are found in tables 7.19 (Scenario B) and 7.22 (Scenario C) in the Local authorities – residential outturn line for 2025-26 and 2026-27 (the figure for 2026-27 in Scenario C is £0).

We will continue to reflect on costs and ensure the updated RIA, following completion of Stage 2, sets out the rationale for them clearly. The outturn costs represent local authority savings.

**Recommendation 10:**

**The Committee recommends that the Minister further clarifies how the proposals to eliminate profit from the care of looked after children will result in a reduction in local authority outturn for residential care and fostering services.**

I partially accept this recommendation.

The Welsh Government provided clarification on this in its written response to the Committee's questions on 26 July 2024 (see the response to Q2(a)).

However, we will consider whether any further clarification can be provided in the updated RIA following the completion of Stage 2.

**Recommendation 11:**

**The Committee recommends that the Minister confirms whether she has implemented the recommendation by the Competition and Markets Authority to conduct pilots to test the potential for local authorities to make savings by bringing some fostering services in-house:**

- **if so, the Minister should publish the results of the pilots;**
- **if not, the Minister should explain why the Welsh Government did not implement the recommendation.**

I accept this recommendation.

As noted, the CMA report recommended that pilots should be set up in certain local authorities to test the potential to make savings by bringing more fostering placements in-house.

The Welsh Government's commitment to the transformation of children's services, however, is not primarily about saving money. It is about changing how we provide services to children and their families as part of locally-based provision that has the welfare of the young person at its heart.

We have not therefore set up pilots in certain local authorities to test the potential to make savings in local authority foster care, as we are focused on applying the principle of in-sourcing by bringing more fostering placements in-house across the whole of Wales.

Foster carers are central to delivery of the changes we are seeking to make, and we are committed to increasing the supply of local authority foster carers. This will also help deliver our wider transformation agenda to re-balance provision away from residential care to foster care. We are providing significant funding to Foster Wales to help achieve its ambitious target of recruiting an additional 800 foster carers by 2026.

We would be happy to provide a future update on the progress that Foster Wales is making.

**Recommendation 12:**

**The Committee recommends that, in updating the Regulatory Impact Assessment, the Minister includes information about:**

- **the component elements of the resource (or revenue) costs expected to fall on local authorities as a result of the proposals to eliminate profit from the care of looked after children to better demonstrate which have been included in the estimates; and**
- **how these revenue costs, and the reduction in the outturn for both children's residential and foster care, have been calculated.**

I accept this recommendation in principle.

The Welsh Government will consider how the basis for the revenue costings (including component elements) can be clarified and potentially expanded further as it prepares an updated RIA following completion of Stage 2.

**Recommendation 13:**

**The Committee recommends that the Minister provides information about the planned processes to monitor, and the measures to be put in place to mitigate, increases in the fees charged to local authorities by private providers for placements.**

I accept this recommendation in part.

We will work with our local government partners to consider the most appropriate mechanisms to monitor the fee position regarding placements and consider any collective actions to mitigate the impact of any increases. As Members will be aware, all local authorities in Wales already work together to commission accommodation services for children through their consortium arrangements. The consortium approach has been a substantial tool through which local authorities have been able both to proactively plan to meet their need to commission placements from private providers, and to negotiate on price. Local authorities will continue to be able to use the collective power of their consortium to mitigate cost increases and maximise their bargaining position in the commissioning process.

**Recommendation 14:**

**The Committee recommends that, in updating the Regulatory Impact Assessment, the Minister provides information on:**

- **the alternative models considered to achieve the policy objective of eliminating profit from the care of looked after children, including the associated costs; and**
- **why the options for alternative models were rejected and not included in the Regulatory Impact Assessment.**

I accept this recommendation in part.

We have already set out why the options for alternative models were rejected at paragraph 7.43 of the Explanatory Memorandum. However, we will revisit the text already in the Explanatory Memorandum and Regulatory Impact Assessment to ensure that it is as clear and as comprehensive as possible in setting out why these models were considered to not achieve the policy objective.

Regarding providing costings of these alternative models, given we do not consider these achieve the basic policy intent we do not consider this to be an exercise relevant to the Bill.

**Recommendation 15:**

**The Committee recommends that the Minister provides further information to illustrate how reinvestment of any profit made by providers will improve services for looked after children and how this will be measured.**

I accept this recommendation.

We will explore the potential for future studies, following implementation, to consider the extent to which the move to not-for-profit provision of services has positively impacted looked after children and the longer-term sustainability of children's services. We will consider the timescales for this with Eliminating Profit Programme Board members as part of considering the broader timescales for the eliminating profit programme.

**Recommendation 16:**

**The Committee recommends that the Minister provides further information to explain how cost estimates associated with implementing and administering Continuing Health Care direct payments, expected to fall on the Welsh Government, were calculated, including details of the data and models used, and for this information to be included within a revised Explanatory Memorandum.**

I accept this recommendation.

When we update the Explanatory Memorandum following completion of Stage 2 we will provide further detail on how the costs for implementation and administration of Continuing Healthcare direct payments have been estimated.

**Recommendation 17:**

**The Committee recommends that the Minister provides evidence to support its assumption that, when the cost of Continuing Health Care direct payment packages will be similar to the average costings for Personal Health Budgets in England, the Regulatory Impact Assessment notes the cost will be towards the bottom of this range.**

I accept this recommendation.

The Welsh Government will provide further information to support its use of the estimated average cost of a CHC package in the RIA.

**Recommendation 18:**

**The Committee recommends that the Minister confirms the sources used to justify modelling the financial implications of the proposals for funding Continuing Health Care direct payments in Wales on the level of savings made by NHS England after the introduction of Personal Health Budgets, and for this information to be included in a revised Regulatory Impact Assessment.**

I accept this recommendation in principle.

Information sourced from internal data supplied confidentially by NHS England provided the basis for modelling a level of 11-16% savings associated with Continuing Healthcare direct payments. Officials are asking NHS England whether that data can be published, and if it is, the Welsh Government will include a link or reference to it in the revised Explanatory Memorandum.

It is however the case that sometimes information which has informed our estimates of costs and benefits has been shared on a confidential basis with the Welsh Government, whether due to commercial sensitivity or other reasons, and for this reason it will not always be appropriate to cite specific sources for estimates of costs and benefits.

**Dawn Bowden AS/MS**  
Y Gweinidog Plant a Gofal Cymdeithasol  
Minister for Children and Social Care



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref MA-DB-10629-24

Russell George MS  
Chair  
Health and Social Care Committee  
Senedd Cymru  
[SeneddHealth@senedd.wales](mailto:SeneddHealth@senedd.wales)

25 October 2024

Dear Russell,

Thank you once again for your consideration of the Health and Social Care (Wales) Bill during Stage 1. I am pleased that the majority of your Committee supports the general principles, and I thank Committee Members for this, and for their recommendations.

I have set out below my response to the recommendations.

I hope that the attached information helps to inform your further scrutiny as the Bill progresses through Stage 2. I look forward to continuing to work with Committee Members on the details of the legislation in the near future.

I am copying this letter to the Chairs of the Finance Committee, the Legislation, Justice and Constitution Committee and the Children, Young People and Education Committee.

Yours sincerely,

**Dawn Bowden AS/MS**  
Y Gweinidog Plant a Gofal Cymdeithasol  
Minister for Children and Social Care

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

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Dawn.Bowden@llyw.cymru](mailto:Gohebiaeth.Dawn.Bowden@llyw.cymru)  
[Correspondence.Dawn.Bowden@gov.wales](mailto:Correspondence.Dawn.Bowden@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.

## **Health and Social Care (Wales) Bill**

### **Responses to the Health and Social Care Committee's recommendations**

#### **Recommendation 1:**

**A majority of the Committee recommends that the Senedd supports the general principles of the Health and Social Care (Wales) Bill.**

I note this recommendation.

The Welsh Government welcomes this support for the general principles of the Bill.

#### **Recommendation 2:**

**The Welsh Government should continue to work with partners to explore business models currently not provided for in the Bill that would promote the principles of social enterprise whilst still being not-for-profit.**

I accept this recommendation.

The Welsh Government will continue to work with partners to consider whether any further not-for-profit business models can be included within the Bill.

However, it will be important to ensure that any further proposed models do not allow profit of any sort to be extracted even where these are types of organisation that the Welsh Government would encourage more broadly, in order to achieve the aim of eliminating private profit from the care of looked after children. It will also be important to ensure that any further proposed models have the welfare of children or such other public good as the Welsh Ministers may prescribe as their primary purpose/objects.

#### **Recommendation 3:**

**The Welsh Government should amend the Bill to include regulation-making powers to enable the Welsh Ministers to take steps to close any loopholes enabling extraction of private profit from the care of looked after children, should they become apparent in the future. Such regulations should be subject to the affirmative procedure.**

I reject this recommendation.

I agree with the Committee's concern that the legislation should not allow organisations to circumvent the restrictions on extracting private profit. However, the Welsh Government believes that the provisions currently in the Bill strike the right balance between providing clarity for providers and ensuring that practices which undermine the intention to eliminate private profit from the care of looked after children can be addressed. As such I do not think that adding further provision of this kind is desirable.

I believe that the principle behind the recommendation is that Welsh Ministers should have some ongoing power to curtail novel behaviours that aim to extract profit in unexpected ways. I would like to reassure the committee and Members on that point

by referring you to the Bill's provisions which provide that unreasonable or disproportionate financial arrangements entered into by those not-for-profit entities which are restricted children's services, would be evidence to which Ministers must have regard when deciding if a provider is a fit and proper person. If the Welsh Ministers are no longer satisfied a person is fit and proper, they may cancel the person's registration.

**Recommendation 4:**

**The Welsh Government should prepare and publish a detailed offer of the guidance and support that it will make available to private and independent providers wishing to transition to a not-for-profit model. This should be done as a matter of urgency, and should be accompanied by a communication plan.**

I accept this recommendation in part.

The Welsh Government will continue to work with stakeholders to consider what guidance and support could be made available to private and independent providers wishing to transition to a not-for-profit model. This will build on funding made available earlier this year through Business Wales to provide bespoke support to a number of providers to start planning for transition.

A communication plan has been developed under the Eliminating Profit Programme Board and we are currently working with members to finalise a series of targeted communications to support different parts of the sector to understand the key Bill provisions, and their expected impacts. We will publish these once members have had an opportunity to input and seek wider sector input where appropriate.

**Recommendation 5:**

**The Welsh Government should make a clear commitment to the level of future funding and support it will make available to local authorities beyond the transition period to support the 'eliminate profit' agenda. As a minimum, this should set out funding for the next five years, which will be a crucial time for local authorities in developing their own provision.**

I accept this recommendation in part.

This commitment is a priority for the Welsh Government and we intend to continue prioritising our financial support to local authorities to implement the eliminating profit commitment, whilst recognising the need to manage the overall Welsh Government budget within the outcome of the current and future budget planning rounds. Officials are currently meeting individually with each local authority to discuss planning for implementation in their areas, and their expected level of revenue and capital funding required for future years. Once completed these discussions will inform our consideration of the arrangements for, and amount of, funding in future financial years.

**Recommendation 6:**

**The Minister should write to us, within six months of publication of this report, with details of:**

- **the work undertaken by the Eliminating Profit Programme Board in monitoring and evaluating the implementation of the ‘eliminate profit’ policy so far;**
- **the more formal evaluation of the Bill proposed by the Minister, including who will be involved in this review, its terms of reference and how frequently it will report.**

I accept this recommendation.

I will write to the Committee by 11 April 2025 updating on the Eliminating Profit Programme Board’s monitoring of the policy so far, and any initial thoughts on evaluation to date. Within that response I will also set out my thoughts on how formal evaluation will be conducted.

**Recommendation 7:**

**The Minister should consider and respond to the recommendation from the Children, Young People and Education Committee, based on its extensive scrutiny of this policy area, “that the Bill be amended to make it mandatory for foster carers to register with Social Care Wales in order to provide foster placements for looked after children, thereby accelerating progress towards a national register of foster carers”.**

I accept this recommendation.

I am happy to consider and respond to the recommendation from the Children, Young People and Education Committee. I have already made clear that I am happy to explore how a national register of foster carers would work and how it could add value.

However, introducing such a change would require consultation with all parts of the sector. Appropriate time will be needed to do this properly. I do not therefore consider that this Bill is the right vehicle for progressing this work.

**Recommendation 8:**

**The Minister should review the evidence from stakeholders setting out their significant concerns about the transition timescales proposed by the Welsh Government, and their potential to exacerbate existing sufficiency problems, in order to assure herself that the policy is deliverable within the timescales proposed, without having a detrimental effect on looked after children and young people.**

I accept this recommendation.

The Welsh Government continues to carefully consider the evidence received, alongside information gathered from our own engagement with stakeholders.

**Recommendation 9:**

**The Minister should prepare and publish a report on progress with the transition to a not-for-profit model. This should include an update, by local authority, on the number of placements leaving the market and the number of new placements created, and should reflect on the stability of existing placements. It should also include details of the consultation with children and young people directly affected by the Bill and the numbers taking up the active offer of advocacy. This should be done at six monthly intervals, starting from the date of the Stage 1 debate.**

I accept this recommendation.

I will arrange for publication of a six-monthly progress report with intended publication of the first report by 22 April 2025 (6 months after the general principles debate).

**Recommendation 10:**

**The Minister should ensure that any guidance or Code of Practice issued in relation to section 13 confirms that the Bill does not prevent local authorities from placing a child in a supplementary placement prior to Ministerial approval being granted, and that Welsh Government officials are able to act on behalf of Welsh Ministers to approve placements, if necessary. Such guidance should emphasise that the use of supplementary placements should not become the default position, particularly during challenging times.**

I accept this recommendation.

The Welsh Government will ensure that the Code of Practice or guidance provides clarity on these issues.

**Recommendation 11:**

**The Minister should prepare and publish an annual report on supplementary placements approved by the Welsh Ministers under the Bill. This report should include anonymised data on matters including, but not limited to, the age-bracket of the child; local authority; the type of placement requested (for profit foster, for profit, residential, out-of-county, out-of-Wales, unregistered); whether the child was already in the placement, cost bracket). An exception must apply to any report produced in line with this recommendation, to the effect that the report must not include any data which, when read in conjunction with any other publicly available information, would enable any individual to be identified. The Minister should include provision for this on the face of the Bill.**

I accept this recommendation in part.

While I do not consider this requirement is necessary to be included within the primary legislation, I will update the Senedd periodically on the position regarding Welsh Ministers' approval of supplementary placements.

**Recommendation 12:**

**When correcting paragraph 55 of the Explanatory Notes to remove the term ‘unregistered’ placement, the Minister should make it explicit that placements which are not registered with Care Inspectorate Wales are unlawful and must not be used as ‘supplementary placements’ or under any other circumstances.**

I accept this recommendation in part.

Placements that are not registered with Care Inspectorate Wales do not come within the scope of ‘supplementary placements’ and therefore could not be the subject of an application by a local authority for approval under section 81B. While we do not consider the Explanatory Notes to be the appropriate avenue to clarify this we will ensure we make this clear to local authorities when we begin detailed work on guidance to support operation of the supplementary placement process.

**Recommendation 13:**

**The Welsh Government should commit to producing accessible resources aimed at informing children and young people about the Bill and how to make known their views on it.**

I accept this recommendation.

As part of our planned communications aimed at different parts of the sector, the Welsh Government has produced a draft document for children and young people explaining the key elements of the Bill and what it means for them. We are currently reviewing this with Eliminating Profit Programme Board members and expect to publish this in the coming months. We will continue to work with those organisations that represent children and young people to ensure their voices can be heard and ongoing communication needs considered.

**Recommendation 14:**

**The Minister should amend the Bill to include provision for an active offer of advocacy for children and young people whose care arrangements may be affected by the Bill.**

I accept this recommendation in part.

I accept that children should have an active offer of advocacy for all placement types and locations. Advocacy for all children looked after is already a statutory requirement, therefore the Bill does not need to include this provision.

Section 178 of the Social Services and Well-being (Wales) Act 2014 outlines the local authority’s duty to provide advocacy services to specified persons. This duty extends to children who are looked after, ensuring that these children have access to advocacy services if they need help to:

- Express their views (whether on a specific issue, care plan, or day-to-day decisions).
- Understand their rights (regarding care arrangements or legal proceedings).
- Participate fully in decisions about their care and well-being.
- The local authority is obliged to ensure that children looked after can access advocacy services to support their involvement in decisions about their care.

This is an active offer, meaning that advocacy services must be proactively offered to these children, rather than waiting for them to request it.

**Recommendation 15:**

**The Minister should amend section 10 of the Bill to make it explicit that:**

- **placing a child “near to” the local authority’s area means a bordering or adjacent local authority, and**
- **the use of this provision should be exceptional circumstances.**

I reject this recommendation, although I do commit to reviewing the Explanatory Notes for clarity.

I accept that it may be helpful to have some additional text in the Explanatory Notes to help the reader understand how “near to” should be interpreted. I do not think it would be helpful to restrict use of the provision to exceptional circumstances without defining what these might be and we do not think it plausible to do so where there is potential for such a wide range of circumstances specific to the cases of individual children.

Members will also note that the phrase “is near to” is inserted into the general duty for a local authority to secure sufficient accommodation of the relevant sort, not a duty about placing individual children, so it is unclear that an amendment would work in the way envisaged.

**Recommendation 16:**

**The Minister should set out the actions being taken by the Welsh Government in relation to awareness-raising of mandatory reporting, by organisations, of child sexual abuse. She should do this in time to allow Members to consider her response and be able to table amendments to the Bill if they do not believe these actions are sufficient.**

I accept this recommendation.

We will provide a written response to the Committee about the awareness raising of existing organisational duties to report, detailing what we have undertaken and continue to undertake in Wales.

We wholly agree with the Independent Inquiry into Child Sexual Abuse, that where there has been disclosure, witnessing or observation of other evidence that a child is experiencing or is at risk of sexual abuse, this must be reported without delay. Our existing duties, and well-established procedures, support this and aim to help protect and to prevent all harms to children, and adults with care and support needs.

In Wales we have been focusing on close collaboration with key partners, with the purpose of strengthening and improving compliance with safeguarding requirements, already in place, across our regulated childcare, education, health and social care settings.

We have also published revised National Minimum Standards for Childcare, enhancing the standard in relation to safeguarding; and published a draft Quality Framework for Early Childhood Play, Learning and Care, which includes a quality standard around safeguarding babies and young children from all forms of harm.

The new National Framework for Commissioning Care and Support will further highlight the responsibilities of local authorities and health boards to ensure that services provided on their behalf safeguard and promote the well-being of children and adults; and will prompt them to promote the Wales Safeguarding Procedures in their commissioning activities.

During the remainder of this Senedd, we intend to engage widely and further explore views on how best to ensure that others who provide services or offer activities for children and adults, who may be experiencing or at risk of abuse, have proportionate and effective safeguarding arrangements in place.

A series of roundtable discussions with stakeholders will begin in November to test out stakeholder views on placing mandatory reporting duties on individuals.

Given the nature of such a serious change it is important that stakeholders are central to that journey.

#### **Recommendation 17:**

**The Minister should provide an update on progress with the development of the central hub to support the implementation of direct payments for continuing healthcare. This should include details of its current operational status, staffing numbers, operating costs and the number of people receiving advice and support. It should be produced within six-months of the Stage 1 debate, and annually thereafter.**

I accept this recommendation.

The Welsh Government will provide these updates on the development of the central hub as it is being established.

#### **Recommendation 18:**

**The Minister should amend the Bill to make provision for a ‘right to information, advice and support’ for individuals seeking to take up direct payments for continuing healthcare. Any guidance issued under this provision should include information about transitions between social care and CHC, and should promote continuity of care as far as possible.**

I accept this recommendation in part.

We are committed to ensuring that information, advice and support is available to support take-up of direct payments for continuing health care. An information booklet for individuals, families and carers was published in 2022 upon the publication of the current Continuing NHS Healthcare Framework. This will be refreshed to include

information about the availability of direct payments for individuals who are, or may be, entitled to CHC. There is also already a power in the new section 10C (to be inserted into the 2006 Act by section 24(2) of the Bill) which will enable health boards to be required to arrange for information, advice and other support in connection with direct payments. I therefore do not consider that an amendment is needed.

In addition, provision of information, advice and support for individuals is already planned through the introduction of a support Hub for direct payments for CHC. The Hub will raise awareness of the availability of direct payments, as well as providing information, advice and support to those interested in receiving direct payments for CHC.

The transition from social care to CHC direct payments will be a particular focus for the provision of information, advice and other support. Links will be maintained to local authority and third sector support which is provided for social care direct payment recipients, to ensure that there are also familiar and trusted contacts for those transitioning to NHS direct payments for CHC.

**Recommendation 19:**

**The Minister should give further consideration to the concerns of stakeholders that, in rural areas in particular, direct payments can sometimes be the only available option in the absence of other services. She should work with partners to consider how any service limitations in these areas can be managed and how best to support the individuals affected by them.**

I accept this recommendation.

The Welsh Government will give further consideration to these concerns and will work with partners to consider how any service limitations in rural areas can be managed and how best local health boards and other partners can support those affected.

**Recommendation 20:**

**The Minister should provide an update periodically setting out her assessment of the progress being made to prepare health boards for their new responsibilities in this area. This should be done on a six-monthly basis, and should start following completion of the Stage 1 debate. As part of this, the Minister should ensure that health boards are actively working with local authorities to learn from their experiences and best practice.**

I accept this recommendation.

I will provide these updates on the progress being made by health boards as they prepare to take on these new responsibilities.

**Recommendation 21:**

**The Minister should write to us in six months with an update on progress with the development of the new performance framework and implementation plan for CHC in Wales. This should include guidance on safe delegation of**

**appropriate tasks and details of the metrics developed specifically for direct payments to enable progress and success to be measured.**

I accept this recommendation.

The Welsh Government is working on an action plan that will identify and address known issues with the current National CHC Framework. This action plan includes the redevelopment and roll out of the performance framework.

The Welsh Government is also exploring the requirements of guidance for the safe delegation of tasks.

**Recommendation 22:**

**The Minister should:**

- **monitor the spend by health boards over the initial three years of the policy, and report back at the end of this period on the financial position of health boards as regards their ability to continue to fund and deliver direct payments for continuing healthcare, and**
- **continue to monitor and review spending by health boards on this policy going forward.**

I accept this recommendation in part.

The Welsh Government will monitor the spend and financial impact of the delivery of direct payments for health boards over the initial three years of the policy as part of the evaluation.

Beyond that period the Welsh Government's approach will be informed by the outcome of the evaluation.

**Recommendation 23:**

**The Minister should work with relevant Cabinet colleagues and wider partners to promote the role of Personal Assistant (PA), to drive up the numbers of applications and to improve retention of staff longer term. Appropriate training will be an important part of this work.**

I accept this recommendation.

Following research commissioned by the Social Care Fair Work Forum, the current Welsh Government-led PA Stakeholder Group was established and earlier this year agreed to take forward actions relating to: Pay; Terms and Conditions; Training and Development; Promoting Trade Unions and promote the support and information available for PAs. The PA Stakeholder Group includes representation from Government, Trade Unions, Social Care Wales and employer representatives for PAs.

In addition, last year an "All Wales PA Working Group" was developed with representatives from each local authority aiming to drive forward better terms and conditions for PA's and bring parity across the local authorities. These two groups

are working closely together to ensure clear links and understanding of what work is taking place to improve the role for PAs.

Some actions already being taken forward include the inclusion of PAs in the development of the Social Care Workforce Pay and Progression Framework, which will ensure PAs are considered in relation to pay and progression as part of the wider workforce moving forward. In addition, the Stakeholder Group has commissioned a survey which is currently being undertaken by Social Care Wales across Local Authorities to establish what training is available for PAs and consistency in approach to training across Wales. We expect the results of this survey shortly and will consider how the Welsh Government can ensure a fair and national approach to training for PAs moving forward.

We recognise the value of our PAs and are committed to improving their terms and conditions to encourage more people to take up the role, but to also retain those dedicated workers already in place.

**Recommendation 24:**

**The Minister should update the Committee, upon completion of the CHC framework review, highlighting any changes and additional eligibility guidance that have been provided as a result of the review.**

I accept this recommendation.

The Welsh Government will provide a briefing on what elements of the CHC Framework have changed following a review.

**Recommendation 25:**

**The Minister should ensure that the UN Convention on the Rights of Disabled Persons features prominently in guidance issued on Part 2 of the Bill.**

I accept this recommendation.

Paragraph 65 of the Social Services and Well-being (Wales) Act 2014 Part 2 Code of Practice: General Functions sets out that “when exercising social services functions in relation to disabled people who need care and support and disabled carers who need support, local authorities must have due regard to the United Nation Convention on the Rights of Persons with Disabilities.” Any guidance issued on Part 2 of the Bill relating to direct payments in continuing healthcare would similarly highlight the importance of the UN Convention on the Rights of Disabled Persons.

**Recommendation 26:**

**The Minister should:**

- **ensure that the post-implementation review of the Bill considers the awareness, amongst social care users, about the new option of direct payments for CHC;**
- **agree to request from LHBs and then make available the datasets from LHBs which are intended to provide a picture of take-up of direct payments for CHC across Wales, and**
- **provide details of the timescales for the post-implementation review.**

I accept this recommendation.

The evaluation of the introduction of CHC direct payments will consider awareness among social care users of the option of direct payments for CHC.

The evaluation will also include acquiring the datasets from LHBs which will be used to understand take-up of CHC direct payments in Wales.

Timescales for the evaluation have not yet been fixed but the Welsh Government will provide an update on this as part of a future update on implementation.



Llywodraeth Cymru  
Welsh Government

Mike Hedges MS  
Chair  
Legislation, Justice and Constitution Committee

28 October 2024

Dear Mike,

Thank you for your letter inviting me to attend a meeting of the Legislation, Justice and Constitution Committee to consider inter-governmental relations, Wales and Europe, and the Legislative Programme.

Later this term, I will be attending the Committee for the Scrutiny of the First Minister, where I will of course be very happy to give evidence on any matter relevant to the exercise of the functions of the Welsh Government.

I understand that the Deputy First Minister and the Counsel General and Minister for Delivery are appearing in front of your committee on the 25<sup>th</sup> of November. Given their roles and responsibilities, I am confident that they will be well placed to answer questions regarding Welsh Government activities that fall within the remit of your committee.

Yours sincerely,

**Eluned Morgan**

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

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

[Gohebiaeth.Eluned.Morgan@llyw.cymru](mailto:Gohebiaeth.Eluned.Morgan@llyw.cymru)  
[Correspondence.Eluned.Morgan@gov.wales](mailto: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.

Eluned Morgan MS  
First Minister of Wales

3 October 2024

Dear Eluned,

### Invitation to give evidence

As you are aware, our Committee's scrutiny remit extends extensively into your responsibilities as First Minister, including inter-governmental relations, Wales and Europe, and the Legislative Programme. We would therefore like to invite you to attend a Committee meeting to consider these issues with you in detail.

We understand that you are invited to give evidence each term to the Committee for Scrutiny of the First Minister and you may also give evidence to the Culture, Communications, Welsh Language, Sport, and International Relations Committee. However, as you have specific and strategic responsibility for the areas outlined above, we would find it extremely valuable if you could appear before us to provide evidence in relation to these matters.

We would be grateful if you could confirm, at your earliest convenience, whether you will be available to attend. The Committee Clerk can liaise with your officials to discuss suitable dates and timings.

We look forward to hearing from you.

Yours sincerely,



Mike Hedges  
Chair