

# **Legislation, Justice and Constitution Committee**

## Monitoring Report

January 2022

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## 1. Introduction

The Legislation, Justice and Constitution Committee has a broad remit covering a wide range of areas. This monitoring report is intended to provide Members of the Committee with an update on key policy developments related to the Committee's remit.

The Committee will consider these issues and any actions that it wishes to take in response. This report is being published to inform stakeholders of some of the issues currently under consideration by the Committee.

A glossary of key terms is included as an Annex.

## 2. UK -EU relations

**UK Brexit negotiator, Lord David Frost, stands down and is replaced by Foreign Secretary, Liz Truss.** Lord David Frost resigned on 18 December 2021 and his responsibilities transferred to Foreign Secretary, Liz Truss, and Chris Heaton-Harris MP, as Minister for Europe responsible for the TCA, Europe, Gibraltar and Russia.

**France assumes presidency of the EU Council and places UK-EU relations on the first meeting's agenda.** EU27 leaders discussed issues with the Withdrawal Agreement's Northern Ireland Protocol and citizens' rights and the 'challenges' of Trade and Cooperation Agreement (TCA) implementation on 25 January.

Particular attention was drawn to fisheries and fair competition, which is being 'monitored carefully'. On 19 January, French President, Emmanuel Macron, called for the EU and UK to find 'a path of trust' at the European Parliament.

**Northern Ireland Protocol issues remain unresolved and triggering Article 16 is still an option.** Liz Truss and European Commission Vice-President, Maroš Šefčovič, met regularly in January with no progress announced at the time of publishing. The leaders agreed to intensified talks between officials and to convene a meeting of the Withdrawal Agreement's Joint Committee in February. The Welsh Government does not ordinarily attend. Its request to attend where matters relating to the Protocol are discussed that might impact Welsh ports was denied by the UK Government.

The possibility of triggering Article 16 remains. This allows for safeguarding measures to be taken if the Protocol leads to certain difficulties or to trade diversions. Senedd Research's article explains how this might impact Wales and what action might be needed by the Welsh Government and Senedd. A quick guide on Article 16 itself is also available.

**Citizens’ rights issues persist due to different interpretations of UK-EU treaties.**

The EU remains concerned about the different statuses granted to European citizens living in the UK and the protection of their rights. The UK’s new Independent Monitoring Authority (IMA), responsible for monitoring European citizens’ rights post-Brexit, has also initiated judicial review proceedings against the UK Government. The IMA considers its interpretation of the Withdrawal Agreement and other relevant citizens’ rights agreements with the EU and other European countries to be unlawful.

Senedd Research published analysis of the latest statistics on 20 January, and the Senedd’s Equality and Social Justice Committee monitors and publishes regular reports on this issue.

**More information sheds light on how the TCA is working in practice, including more clarity on the role of the Welsh Government and Senedd.**

Over 30 new UK-EU forums were created by the TCA and Withdrawal Agreement, many of which discuss and make decisions in devolved areas or in areas which affect Wales. Senedd Research’s new guide explains the TCA’s institutional framework.

**Welsh Government officials have attended most, but not all, meetings in devolved areas**, such as on public procurement, as shown in analysis carried out by Senedd Research.

**The Welsh Government remains unhappy with its status at both treaties’ leading committees.** The First Minister confirmed that the Welsh Government’s observer status at the TCA’s Partnership Council remains unchanged despite protestations from the Minister for Economy, Vaughan Gething, to the UK Government. The UK Government has also denied the Welsh Government’s request to attend the Withdrawal Agreement’s Joint Committee when matters relating to Northern Ireland are discussed, given their implications for Welsh ports.

**New European representative appointed by the Welsh Government.** Former MEP, Derek Vaughan, will support its work in Europe, including engaging with politicians and officials at EU institutions and promoting the Welsh Government’s policy agenda in the EU.

**Devolved legislatures hope to send observers to the TCA’s Parliamentary Partnership Assembly (PPA)** as part of the UK Parliament’s delegation, subject to

the European Parliament's agreement. The UK delegation was [published on 26 January](#) and comprises 21 MPs and 14 Lords members.

**Other news:**

- UK finalises [2022 fisheries arrangements](#) with the EU, Norway and others. The Welsh Government formed [part of the UK delegation](#). Find out more about UK-EU fisheries arrangements in [Senedd Research's new guide](#).
- Welsh Government's [International Learning Exchange](#) launches in early February. This is the Welsh Government's new post-Brexit learning programme. An online vote was held to determine its new name. Voters could [choose between](#) Amdani, Ennyn or Taith.

### 3. UK-EU divergence

**In September, the UK Government announced a review of the substance and legal status of retained EU law.** In a [statement on 9 December](#), Lord David Frost set out that the review would consider a range of issues, including:

- looking at whether retained EU law could be amended or repealed by 'an accelerated process';
- ensuring that rights derived from UK law are not 'confused or overlaid' with EU-derived rights;
- removing the supremacy of retained EU law over domestic law made before the end of the transition period; and
- whether UK courts should interpret retained EU law in accordance with retained general principles of EU law or principles in UK law, and the role of EU case law.

It is not clear to what extent (if any) the review applies to retained EU law in devolved areas, or whether the devolved governments will be consulted on work undertaken through the review.

## 4. The UK Internal Market Act

**The Competition and Markets Authority (CMA) consulted on its annual plan for 2022 to 2023.** The consultation sets out information on the establishment of the Office for the Internal Market (OIM).

In evidence to the House of Lords Common Frameworks Committee in November, the Senior Director of the OIM said that it would produce an initial report on the state of the UK internal market in the spring of this year.

**The Scottish Parliament’s Constution Committee has continued taking evidence for its for inquiry into UK Internal Market.** The Scottish Parliament’s Constitution, Europe, External Affairs and Culture Committee received 17 responses to its call for views as part of its inquiry,

The Committee also began its oral evidence sessions, hearing from the interim Chair of the CMA and two directors of the Office for the Internal Market, on 13 January 2022. In this session, the OIM directors said that while the OIM had not yet received any requests for advice, its default would be to share advice between governments if possible.

**The Welsh Government’s judicial review challenging the UK Internal Market Act was due to appear before the Court of Appeal on 18 January 2022.** A judgment is likely to be published in the next few weeks.

## 5. Common frameworks

**The UK and devolved governments are in the process of publishing common frameworks for parliamentary scrutiny.** In November, the Counsel General told the Senedd that the governments had reached agreement on cross-cutting issues in the negotiation of common frameworks.

In December, the UK Government announced:

- a process for the governments to agree exclusions from the UK Internal Market Act in common framework areas; and
- the repeal of UK Government powers in section 12 of the European Union (Withdrawal) Act 2018 to ‘freeze’ devolved competence to modify retained EU law.

In the Sixth Senedd so far, the governments have provisional frameworks for scrutiny on:

- [public procurement](#)
- [late payment \(commercial transactions\)](#)
- [radioactive substances](#)
- [public health protection and health security](#)
- [blood safety and quality](#)
- [organs, tissues and cells](#)

More common frameworks are expected to be published in the coming weeks.

## 6. Intergovernmental relations

**The UK and devolved governments reached agreement on the Intergovernmental Relations Review.** The [conclusions of the review](#) **set out changes to arrangements for managing intergovernmental relations in the UK, including:**

- replacing the Joint Ministerial Committee with three new tiers of engagement: interministerial groups at portfolio level, an Interministerial Standing Committee with oversight of cross-cutting issues (including common frameworks and the UK internal market), and a Prime Minister and Heads of Devolved Governments Council;
- replacing the Finance Ministers' Quadrilateral with a Finance Interministerial Standing Committee;
- holding interministerial meetings more regularly and rotating the chairs and locations of meetings between the governments;
- setting up an Intergovernmental Relations Secretariat accountable to the Council to provide administrative support;
- setting a new process for the resolution of disputes, including setting criteria for disputes to be escalated; providing for dispute resolution meetings to be chaired by a person not party to the dispute; and requiring third party advice to be sought; and
- agreeing to 'enhanced reporting' to parliaments on intergovernmental relations.

The First Minister welcomed the agreement.

The Senedd debated the Inter-Institutional Relations Agreement between the Senedd and the Welsh Government on 15 December.

## 7. Legislation

### 7.1. Legislative consent

**The Welsh Government has now laid legislative consent memorandums for seventeen UK bills in this Senedd.** The Senedd continued to consider legislative consent memorandums and vote on consent motions. Members voted to withhold consent from parts of the Police, Crime Courts and Sentencing Bill on 18 January.

This table summarises of the current Welsh Government position on consent.

LCM	Welsh Government recommending Senedd consent?
<u>The Leasehold Reform (Ground Rents) Bill</u>	Yes
<u>Building Safety Bill</u>	Yes
<u>Public Service Pensions and Judicial Offices Bill</u>	Yes
<u>Skills and Post-16 Education Bill</u>	Yes
<u>Advanced Research and Invention Agency Bill</u>	Yes
<u>Animal Welfare (Kept Animals) Bill</u>	Yes
<u>The Cultural Objects (Protection from Seizure) Bill</u>	Yes*
<u>Police, Crime, Sentencing and Courts Bill</u>	In part
<u>Nationality and Borders Bill</u>	No
<u>Professional Qualifications Bill</u>	No
<u>Subsidy Control Bill</u>	No

<a href="#">Health and Care Bill</a>	No
<a href="#">Elections Bill</a>	No
<a href="#">Commercial Rent (Coronavirus) Bill</a>	No
	<i>*subject to further discussion</i>

The [Senedd debated](#) a motion on the legislative consent process on 15 December.

**In the UK Parliament, the UK Government’s approach to passing constitutionally significant legislation continued to draw criticism.** The UK Government suffered [defeats in the House of Lords](#) on provisions in the Police, Crime, Courts and Sentencing Bill.

The House of Commons [Public Administration and Constitutional Affairs Committee](#) criticised the Government’s approach to the [Elections Bill](#), including provisions to introduce requirements to show voter ID at reserved elections.

In November, the [House of Lords Secondary Legislation Scrutiny Committee](#) and the [Delegated Powers and Regulatory Reform Committee](#) issued reports criticising the UK Government’s approach to delegating powers in primary legislation.

## 7.2. COVID-19

**The Scottish Parliament Delegated Powers and Regulatory Reform Committee took evidence for its inquiry into the use of the made-affirmative procedure during the COVID-19 pandemic.** The [inquiry](#) heard [evidence from the Scottish Government](#) on 11 January.

## 8. Constitution

**Membership announced and first meeting held of the Independent Commission on the Constitutional Future of Wales.** The [Counsel General](#) announced the membership of the [Commission](#) on 16 November. [A full list of members along with short biographies](#) was also published. The Commission had its first meeting on 25 November, with the First Minister and Counsel General in attendance.

**In January the co-chair of the Commission, Professor Laura McAllister, wrote that its work has ‘a licence to be radical’,** and will [‘explore options for governing](#)

Wales as a distinct nation within the existing UK, and also the options for a future for Wales outside the Union.’

The Commission is expected to produce an interim report by the end of 2022, with a full report with recommendations published by the end of 2023.

**The House of Lords Constitution Committee has published its report on the future of the Union.** The Committee published its report, Respect and Co-operation: Building a Stronger Union for the 21st century, on 20 January 2022. The report argued that each nation of the United Kingdom ‘would be diminished if the Union ceased to exist.’

However, the Committee also argued that an ‘increased lack of overall coherence in constitutional arrangements, and in particular a failure to develop modern forms of shared governance, has undermined the strength of the Union.’

## 9. Senedd reform

**The Senedd Reform Committee has held its first meeting.** Following its creation on 6 October 2021, the Special Purpose Committee on Senedd Reform held its first meeting on 3 November. In this meeting, the Committee agreed to work through three phases in its inquiry:

- phase one: identifying areas where there is common ground between the policy positions of political parties on Senedd reform, or the potential to establish common ground;
- phase two: gathering further information as necessary in relation to those areas of common ground to assist the Committee develop policy instructions; and
- phase three: developing recommendations for policy instructions.

The Committee will consider recommendations from the Committee on Senedd Electoral Reform, which published its report in September 2020. Among these recommendations were legislating to increase the size of the Senedd to between 80 and 90 Members, and the introduction of the Single Transferable Vote (STV) electoral system.

The Special Purpose Committee will aim to make recommendations for policy instructions for a Welsh Government Bill on Senedd reform by 31 May 2022.

## 10. Justice

### 10.1. Welsh Government

**The Counsel General told the Committee that the Welsh Government intends to publish ‘ a programme related to the issues around social justice and the devolution of justice and a strategy in the spring’.** The Counsel General gave evidence on the Welsh Government’s priorities on justice to the Committee on 17 January. This followed correspondence between the Committee and the First Minister on allocations for justice-related work in the draft Budget for 2022-23.

In November, the Minister for Social Justice updated Members on the Welsh Government’s work on criminal justice, including the progress of the blueprints for female offending and youth justice.

The Welsh Government Cabinet Sub-committee on Justice met on 7 October. The Sub-committee discussed the accessibility of Welsh law; the Law Commission’s project on the Welsh Tribunals; and the start of a Family Drug and Alcohol Court pilot in Cardiff.

### 10.2. UK Government

**The UK Government is consulting on reforms to the Human Rights Act 1998.**

Following the publication of the Independent Human Rights Act Review, the UK Government is taking views on changes to the Act until 8 March.

The Minister for Social Justice and the Counsel General said that the Welsh Government had significant concerns about some of the proposals in the consultation.

**The Independent Review of Criminal Legal Aid recommended that the funding for criminal legal aid should be increased to an annual level of at least 15% above present levels.**

The Ministry of Justice is considering the conclusions of the review and is expected to publish a response by the end of March.

The Counsel General welcomed the conclusions of the review and called for increased funding for legal aid.

## 10.3. The Welsh Tribunals

**The Law Commission reported on its project on the Welsh Tribunals in December.** The report recommends:
















- replacing the existing Welsh tribunals with a unified First-tier Tribunal for Wales, to be divided into chambers;
- bringing the Valuation Tribunal for Wales and the work of school exclusion appeal panels into the First-tier Tribunal;
- creating an Appeal Tribunal for Wales;
- creating a new tribunals procedure committee to review and update the procedural rules;
- creating a new Tribunals Administration Service for Wales as a non-ministerial department with an increased role for judges, to replace the existing Welsh Tribunals Unit;
- imposing a new statutory duty on Welsh Ministers and all those responsible for tribunals administration to uphold the independence of the tribunals.

The Counsel General welcomed the Law Commission’s recommendations, saying that they ‘go a long way to creating the capability for Welsh legislation to be enforced through Welsh institutions’.

The Senedd debated the third annual report of the President of Welsh Tribunals on 23 November.

## Annex: Glossary

### Post-Brexit framework: key terms

International obligations		International duties and commitments of the UK
Trade agreements		Establish new trading arrangements between the UK and other countries
International agreements		Agreements between the UK and other countries or organisations
UK-EU Trade & Cooperation Agreement		Establishes the new UK-EU relationship
UK-EU Withdrawal Agreement		Sets the terms of the UK's exit from the EU
Protocol on Ireland-Northern Ireland		Part of the Withdrawal Agreement to avoid a hard border on the island of Ireland
EU (Withdrawal) Act 2018		Converted EU law to domestic law, stops new EU laws having automatic effect in the UK and gives Ministers powers to correct the statute book after leaving the EU
EU (Withdrawal Agreement) Act 2020		Implements the Withdrawal Agreement
EU (Future Relationship) Act 2020		Implements the Trade & Cooperation Agreement
Internal Market Act 2020		Establishes rules for the regulation of goods, services and qualifications across the UK
Common Frameworks		Set up UK-wide frameworks for some areas previously governed by the EU
Implementing regulations	 	Regulations passed in the Senedd or UK Parliament to implement the new arrangements
Correcting regulations	 	Regulations passed in the Senedd or UK Parliament to make EU laws retained after leaving the EU workable in a domestic context

