

Legislation, Justice and Constitution Committee

Monitoring report

May 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

This section provides an update on UK-EU disputes, the latest UK-EU meetings, implementation of the Withdrawal and Trade and Cooperation Agreements and other developments, including the Ukraine-Russia war.

UK-EU disputes continue in a number of areas:

- **At the WTO:** The EU initiated the first UK-EU WTO dispute since Brexit over subsidies and wind turbines on 30 March. It alleges that the criteria used by the UK in awarding subsidies for offshore wind energy projects favour UK over imported content, which is prohibited by WTO rules.
- **TCA trade disputes:** Meeting minutes of the TCA's Trade Partnership Committee detail different positions on several trade issues. Those listed are VAT and debt recovery, fiscal representatives, the EU's Brexit Adjustment Reserve, the UK's renewable energy schemes, rules of procedure for TCA Working Groups and whether issues raised by the TCA's Trade Specialised Committee should be escalated to the Partnership Council. Such issues include seed potatoes and live bivalve molluscs and touring artists. The minutes also show that the EU has rejected the UK's request to amend the TCA on VAT and debt recovery.
- **Citizens' rights:** Both parties continue to raise issues with the implementation of the Withdrawal Agreement's citizens' rights provisions at its Joint Committee.

- **Northern Ireland:** Both parties continue to address ongoing issues concerning the Northern Ireland Protocol and to seek “durable solutions as soon as possible”. The [Financial Times reported](#) UK Government plans to introduce legislation in May which would enable Ministers to unilaterally override the Protocol, including the outcome of the democratic consent vote. The [Prime Minister told the BBC](#) on 23 March that new legislation was an option.

UK-EU meetings

Welsh Ministers or their officials have attended most meetings where the subject is in a devolved or reserved area. The latest meetings have covered fisheries, energy, participation in EU programmes, law enforcement, air transport and aviation safety.

However, they chose not to attend some meetings that cover Welsh Government responsibilities. The Minister for Finance and Local Government [told the Senedd](#) that it chose not to attend the meeting on procurement because “there were no items on the agenda which warranted attendance”. The [agenda](#) and [minutes](#) show that UK and EU policy and legislative developments were discussed, as well as implementation issues, including exchanging statistics.

Officials from the Scottish Government, Northern Ireland Executive and Isle of Man Government attended some meetings without the Welsh Government on [road transport](#) and [VAT, recovery of tax and duties](#).

Two Members of the Senedd will attend the first meeting of the Parliamentary Partnership Assembly as observers in Brussels on 12-13 May. Delegates are expected to discuss implementation of the Trade and Cooperation Agreement and the implications of the War in Ukraine.

The membership of the UK’s Domestic Advisory Group was announced on 31 March. Wales is represented by a number of UK-wide organisations and the Wales Council for Voluntary Action (WCVA).

The UK-Committee of the Regions relationship continues to strengthen. The Senedd [hosted](#) the first in-person meeting of the UK-Committee of the Regions Contact Group on 17-18 March 2022. Delegates came from across the UK and the EU. Delegates held discussions with the First Minister for Wales, Deputy Presiding officer of the Senedd, the EU delegation to the UK, Natalie Loiseau MEP and Sir Oliver Heald MP. The Senedd was represented by Alun Davies MS and Laura Anne Jones MS.

The Committee of the Regions adopted an opinion in favour of strengthening UK-EU relations in April. The opinion drafted by Cllr. Michael Murphy was endorsed in a Plenary session on 27 April. It calls for both the UK and the EU to recognise the UK-Committee of the Regions contact group as a formal interlocutor under the Trade and Cooperation Agreement and highlights untapped areas for further cooperation between EU and UK regions post-Brexit. Commissioner Sěčovič attended the Plenary session and welcomed the ambition of the Committee of the Regions to strengthen EU-UK relations at the regional and local level.

Implementation of UK-EU agreements

Import controls on goods moving from EU/NI-GB were postponed for the fourth time on 28 April by the UK Government, until the end of 2023. The Minister for Brexit Opportunities, Jacob Rees-Mogg, said that the decision will “allow British businesses to focus on their recovery from the pandemic, navigate global supply chain issues and ensure that new costs are not passed on to consumers.”

The Minister for Economy, Vaughan Gething, says the move “raises a number of questions” for biosecurity and exporters which officials are “pursuing urgently” and promised to update as soon as possible.

The Minister has advised that Wales’ first Border Control Post will be operational in Holyhead in April 2023. The remaining planned sites, to serve Fishguard and Pembroke Dock, do not have expected completion dates.

The EU Council agreed steps to preserve the uninterrupted supply of medicines for human use to Northern Ireland, a requirement of the Northern Ireland Protocol. The Directive also allows the UK to place its medicines on the market in Ireland, Malta and Cyprus for three years, derogating from the EU requirement for authorisation holders to be established in the EU.

The EU published proposals for its implementation and enforcement of current and future UK-EU agreements. They set out internal EU processes for different elements of each current agreement. For example, the proposals grant to Member States the right to request the TCA review process be triggered where level playing field related rebalancing measures have been in place for a year or more. They also provide that the European Commission must prepare a report on their application within five years for the Committee of the Regions and others.

The High Court considered its first case involving UK-EU subsidy rules, specifically Article 10 of the Northern Ireland Protocol and the TCA's subsidy control principles which form part of the UK's post-Brexit regime. [The case](#) involved British Sugar, who failed to persuade the court that breaches had occurred to the benefit of Tate & Lyle. More information is available from [George Peretz QC](#) at EU Relations Law.

Other developments

EU membership for Ukraine

The EU initiated [Ukraine's EU membership](#) at a joint EU-Ukraine press conference on 8 April. President Zelensky submitted Ukraine's questionnaire on 18 April and expects a [decision in June](#). The war has also prompted [Moldova and Georgia](#) to apply for fast-track membership.

Article 781 of the TCA provides a role for the UK when new countries apply for EU membership. The EU must notify the UK of requests to join the EU, provide the UK with information on how its accession would impact UK-EU agreements and take into account UK concerns. The [Partnership Council](#), which oversees the TCA and has powers in this area, is attended by the Welsh Government.

Senedd Research's [latest article](#) summarises the war's impact on Wales.

Irish Sea shipping disruption

Ferry crossings in the Irish Sea were [disrupted in April](#), causing supply fears in Northern Ireland. Stena Line suspended its crossings between Fishguard, Pembrokeshire and Rosslare temporarily to plug gaps left by P&O, which suspended its services after firing 800 staff without warning in March. [Hauliers in Northern Ireland](#) were running at 50% capacity.

Replacement EU funding

On 13 April, the UK Government [announced new details](#) of the post-Brexit [Shared Prosperity Fund](#), which the [Welsh Government claims](#) leaves Wales facing "a loss of more than £1bn in unreplaced funding over the next three years." The First Minister [has accused](#) the UK Government of breaking its previous commitment that Wales would not be "a penny worse off" after Brexit. The Welsh Government provided its calculations on 4 May, showing [a shortfall of £772m](#). The [Finance Committee](#) is in the early stages of considering the implications of post-Brexit funding.

3. UK-EU divergence

The UK Government published [The benefits of Brexit: how the UK is taking advantage of leaving the EU report on 31 January 2022](#). The report includes sections on regulations, science, data and technology, business and industry, infrastructure and levelling up, climate, the environment and agriculture and international relations.

On the same day, the Prime Minister pledged a [‘Brexit Freedoms Bill’](#) to “cut EU red tape”. The timetable for the legislation has not been published. The UK Government intends to use the Bill to end the status afforded to retained EU law and make it easier to amend or remove retained EU law.

4. Intergovernmental relations

The new Interministerial Standing Committee met for the first time in March, following the [conclusion of the Intergovernmental Relations Review](#). The [First Minister and the Counsel General](#) represented the Welsh Government.

Ministers discussed implementation of the Intergovernmental Relations Review; approaches to UK legislation and future ways of working; the Levelling Up White Paper; and the implications of the war in Ukraine for the UK.

In a statement, the [First Minister said](#) that he had drawn attention to “unacceptable and increasing breaches of the Sewel Convention”, highlighting correspondence from the LJC Committee and recommendations made by the House of Lords Constitution Committee on reforming the convention.

The Finance: Interministerial Standing Committee also held its first meeting [ahead of the Chancellor’s Spring Statement](#) and published its [terms of reference](#).

Chairs and representatives of parliamentary committees from across the UK met in a new Interparliamentary Forum on 25 February. In a [joint statement](#), they agreed to:

aim to improve scrutiny through the mutual exchange of information and by seeking a consistent approach to improving transparency and accountability at both a Ministerial and inter-governmental level in our respective jurisdictions.

The first meeting of the UK-EU Relations Interministerial Group took place on 17 February. The [Minister for Economy told the Senedd](#) he was unable to attend because the meeting was re-scheduled at short notice.

The UK Government published its [annual report on intergovernmental relations for 2021](#), setting out information about cooperation between the UK and devolved governments.

5. UK Internal Market Act

The Court of Appeal dismissed the case brought by the Welsh Government challenging the Act.

The Welsh Government had argued that the Government of Wales Act 2006 is a “constitutional statute”, and that the UK Parliament can only amend such a statute by making express changes to it.

It argued that the Internal Market Act diminishes the powers of the devolved institutions not expressly but by implication, and so breaches this principle.

The [Court of Appeal upheld](#) the earlier decision of the High Court that the case was brought prematurely, saying that only when there is a specific Senedd Bill whose potential effect is said to be diminished by the Act can the Court make a decision. The Welsh Government is seeking permission to appeal to the Supreme Court.

The Office for the Internal Market published an initial report on the state of the UK internal market on 22 March.

In an [overview of changes to regulation](#) since the end of the transition period, the OIM found no evidence of “substantial new policy divergence” between the countries of the UK since the end of the Brexit transition period, but collated examples of areas in which future divergence could develop.

The UK Government agreed to create an exclusion from the Act on single-use plastics legislation.

The [Welsh Government and the Scottish Government expressed disappointment](#) at the “narrow nature of the exclusion.” Further information can be found in this [Senedd Research article](#).

6. Common frameworks

21 of the 26 planned common frameworks relating to Wales were published by the time of the dissolution of the Northern Ireland Assembly at the end of March.

Committees in all four legislatures have been carrying out scrutiny of provisional common frameworks. In the Senedd:

- The **Health and Social Care Committee** wrote to the Welsh Government with recommendations about common frameworks on health, and with questions about the food compositional standards and labelling common framework.
- The **Public Accounts and Public Administration Committee** corresponded with Welsh Government about common frameworks on public procurement and late payment (commercial transactions).
- The **Economy, Trade and Rural Affairs Committee** consulted on common frameworks within its remit. The Committee also considered the common framework on fisheries management and support as part of its scrutiny of the Joint Fisheries Statement.
- The **Climate Change, Environment and Infrastructure Committee** corresponded with the Welsh Government about common frameworks on radioactive substances and on air quality and chemicals & pesticides after taking ministerial evidence in February.

The Counsel General updated Members on the progress of the common frameworks programme in a written statement on 30 March.

7. Legislation

UK legislation

The UK Parliament was prorogued on Thursday 28 April. The Queen's Speech will be held on Tuesday 10 May.

Four UK bills which the Senedd has voted to withhold consent from received Royal Assent in the UK Parliament on 28 April. These were:

- The Police, Crime, Sentencing and Courts Bill;

- The Professional Qualifications Bill;
- The Subsidy Control Bill; and
- The Nationality and Borders Bill.

The Elections Bill also received Royal Assent on 28 April 2022.

Although the Welsh Government had previously recommended against consent to the Bill, it changed its view after UK Government amendments ‘carved out devolved elections in Wales from the scope of many of the provisions set out in the original LCM’.

However, disagreement remains over digital imprint provisions, which the Welsh Government argue are within Senedd competence. Disagreement also persists over the introduction of disqualification orders, which the Welsh Government argue is a devolved matter due to the impact on qualification for membership of the Senedd and local authorities in Wales.

The Judicial Review and Courts Bill was granted Royal Assent on 28 April 2022.

The Act abolishes so-called *Cart* judicial review. This refers to applications made to review decisions of the Upper Tribunal to refuse permission to appeal against decisions of the First Tier Tribunal based on an error of law.

The Act also provides that the courts may issue suspended and prospective-only quashing orders when nullifying decisions of public bodies.

The Dissolution and Calling of Parliament Bill received Royal Assent on 24 March 2022, coming into force on the same day.

The Act repeals the Fixed-term Parliaments Act 2011, and restores the prerogative power to call UK general elections to the UK Government. The House of Commons rejected one Lords amendment attempting to enforce a Commons vote on a dissolution motion.

Several UK bills, including the Online Safety Bill, will be carried over into the new UK Parliamentary session.

Other bills that may impact Wales that are expected to be in the Queen’s Speech include:

- a Procurement Bill to reform to current EU-derived public procurement regime;

- legislation around removing the special status of retained EU law in UK legislation; and
- a UK ‘Bill of Rights’ to replace the Human Rights Act.

Legislative consent

Since the last monitoring report in January 2022, a further 10 legislative consent motions (LCMs) and supplementary LCMs (SLCMs) have been laid by the Welsh Government.

The Senedd has now voted to recommend consent to several Bills where previously the Welsh Government had recommended against consent, including the Health and Social Care Bill, the Commercial Rent (Coronavirus) Bill, and the Elections Bill.

Covid-19

The majority of temporary provisions included in the Coronavirus Act 2020 (which had not already been expired early) expired on 25 March 2022, as part of the two year sunset clause in Section 89 of the Act.

The Commons Public Administration and Constitutional Affairs Committee (PACAC) published its report: [‘Coronavirus Act 2020: Two Years On’](#) on 18 March.

The Committee recommended that future use of sunset clauses in similar legislation “should come with a clear explanation about why the [length of the clause] is proportionate to the emergency being addressed”. The Committee also raised concerns about the UK Parliament’s lack of ability to amend sunset clauses after the Bill was passed.

The majority of remaining legal Covid-19 measures in Wales, including the requirement for face coverings to be worn in retail premises and on public transport, [were lifted on 28 March](#). The requirement for businesses to undertake specific coronavirus risk assessments ended on 18 April.

The Welsh Government published a long-term plan for living with Covid-19 on 4 March.

The plan set out a long term transition from pandemic to endemic, with the Government “moving towards accepting coronavirus as a vaccine-preventable disease where immunisation is the most critical first line of defence.”

The Welsh Government also published a summary of the legislative response by Welsh Ministers to the pandemic. This covers all emergency powers exercised by Welsh Ministers from 1 September 2021 to 31 March 2022.

The UK Government published its draft terms of reference for the public inquiry into the Covid-19 pandemic on 10 March.

Consultation on these draft terms ended on 7 April. The inquiry will be chaired by former UK Court of Appeal judge Baroness Hallett, who will make final recommendations for full terms of reference to the Prime Minister in May 2022. Public hearings are not expected to begin until 2023.

8. Constitution Commission

The Independent Commission on the Constitutional Future of Wales met on 16 February 2022.

It launched a public consultation on 31 March, citing “an opportunity to tell [the Commission] what is working well with the way Wales is governed at the moment, and what needs to change”. The consultation will run until 31 July 2022, with an interim report expected in the autumn/winter. The final report from the Commission is expected by the end of 2023.

9. Senedd reform

Delegates at the Welsh Labour Conference backed a motion in favour of increasing the size of the Senedd to between 80 and 100 members.

The motion also said that reform should include a method of election “at least as proportional as the current method”, and agreed that a boundary commission should be established. Plaid Cymru also backed reform proposals in its annual conference, while the Welsh Conservatives remain opposed.

The Special Purpose Committee on Senedd Reform is expected to publish a report by 31 May 2022.

10. Justice

UK Government

The UK Government concluded its consultation on proposals to replace the Human Rights Act 1998 with a Bill of Rights.

The [proposals](#) were widely criticised, including by the [UK Parliament's Joint Committee on Human Rights](#) and the [Welsh Government](#).

On 3 May, the [Counsel General announced plans](#) to undertake preparatory work on options for the incorporation of UN conventions into Welsh law.

The Ministry of Justice is consulting on its response to Sir Christopher Bellamy's independent review of criminal legal aid.

The [consultation sets out proposals](#) for changes to criminal legal aid, including increases to legal aid rates and changes to fee structures.

The [Law Society has criticised](#) the consultation for not matching [Sir Christopher's recommendation](#) of an annual increase in funding of at least 15%.

The Ministry of Justice published a summary of responses to its consultation on dispute resolution in England and Wales.

The [department said](#) the responses would inform work on using dispute resolution processes to deliver “swifter, more cost-effective and more consensual access to justice”, and that any policy proposals would be subject to further public consultation.

Welsh Government

The Welsh Government's Cabinet Subcommittee on Justice published minutes of meetings held on 2 February and 29 November.

At the [February meeting](#), the Counsel General introduced a draft “justice plan publication”. On 4 May, the [Counsel General told the Senedd](#) publication was expected in “a matter of weeks”.

The Subcommittee also discussed a range of other matters, including meetings with UK Ministers; the retirement of Lord Lloyd Jones from the Supreme Court; funding for remote evidence sites for victims of domestic abuse to participate in magistrates' courts; reducing reoffending; and official work to map requirements for disaggregated justice data.

In November, the Subcommittee held a discussion with Police and Crime Commissioners, and heard an update from officials on plans to take a joint “blueprint” approach between devolved and non-devolved bodies to tackling violence against women, domestic abuse and sexual violence

The Welsh Government issued its annual report on the implementation of Law Commission proposals.

The report notes progress towards implementation of Law Commission recommendations, including on planning, elections, taxi and private hire vehicles, wildlife, and the Welsh Tribunals.

On 3 May, the Welsh Government, the Law Society and CILEX announced a new legal apprenticeship pathway, open to over-16s with employer sponsorship.

Apprentices will complete the Foundation stage (Level 3) and Advanced stage (Level 5) of the CILEX Professional Qualification (CPQ), enabling qualification as an advanced CILEX paralegal or trainee CILEX lawyer.

Supreme Court
















Lord Lloyd-Jones retired from the Supreme Court in January, on reaching the age of 70. The Public Service Pensions and Judicial Offices Act has since increased the mandatory judicial retirement age to 75.

Lord Lloyd-Jones was the first Supreme Court Justice from Wales and has now joined the Court's supplementary panel.

Under the Constitutional Reform Act 2005, the Court must have members with knowledge of, and experience of practice in, the law of each part of the United Kingdom. Applications were sought for new Justices in the spring.

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

