

Legislation, Justice and Constitution Committee

Monitoring report

September 2022

Contents

1.	Introduction.....	2
2.	UK-EU relations	2
3.	Alignment and divergence	3
4.	Intergovernmental relations	4
5.	UK Internal Market Act	4
6.	Common frameworks	6
7.	Legislation	7
8.	Constitution Commission	8
9.	Senedd reform	9
10.	Justice	9
	Annex: Glossary	10



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 report covers the period to **22 September 2022**.

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

Reports suggest that there are cross-party plans in the House of Lords to amend or halt the Northern Ireland Protocol Bill.

Around 50 members are reported to be discussing how to amend or halt the Bill based on the advice of legal and constitutional experts. A date for the Bill's second reading has not yet been confirmed.

The Senedd must soon decide whether to consent to the Northern Ireland Protocol Bill, which would disapply parts of the Northern Ireland Protocol and the Withdrawal Agreement in domestic law, empower UK Ministers to disapply more parts in future and to put new arrangements in place without the EU's input or consent.

UK Ministers could pass on their regulation making powers to Welsh Ministers, and the Bill would allow UK Ministers to determine scrutiny arrangements at the Senedd. Senedd Research has prepared a [Bill briefing and interactive tool](#) for Members ahead of their consideration of the Welsh Government's LCM. More resources are also available.

The Welsh Government's LCM is expected in the coming weeks. It will follow the Scottish Government's LCM, which recommends the Scottish Parliament withhold consent because of international law.

The Memorandum states that it cannot recommend consenting to a Bill that "reneges on a legally binding international treaty that the UK Government

signed less than two years ago, and which poses so great a risk of breaking international law.”

The UK has privately responded to the EU’s infringement procedure deadlines, initiated following the introduction of the Bill.

The response has not been made public but [Bloomberg reports](#) that the UK Government was expected to set out how no operational changes to the Protocol are required.

The Prime Minister met world leaders at the United Nations, including those urging the UK not to proceed with the legislation.

Meetings with US President Joe Biden, European Commission President, Ursula von der Leyen, and French President, Emmanuel Macron are summarised in this [BBC article](#).

The UK has launched dispute resolution proceedings with the EU over its continued delayed access to EU scientific programmes, including Horizon Europe and Copernicus.

As Foreign Secretary, the [Prime Minister accused the EU](#) of breaching the Trade and Cooperation Agreement. The UK has [requested consultations](#) with the EU.

TCA meetings have continued over the summer period, with Welsh Government officials in attendance.

The [latest meetings](#) were on social security coordination and fisheries. Meetings on air transport and UK participation in EU programmes also took place but attendance details are not yet available. The Partnership Council has also published [operational guidelines](#) on the [Civil Society Forum](#), dated May 2022.

3. Alignment and divergence

The UK in a Changing Europe publishes regular reports on UK-EU divergence post-Brexit.

[Its fourth edition](#) shows 30 cases of divergence since March 2022, including 20 cases of active divergence, 9 of passive divergence, and one of procedural divergence. There is also a new category, described as ‘active convergence’, “where one side takes steps towards the regulatory standards of the other”.

The report also highlights domestic alignment and divergence between UK nations. The report explains how new proposals are likely to lead to “lighter-touch environmental regulation” in England, while [Wales’ Taith scheme](#) “will mean its students have significantly more funding and choice when it comes to studying abroad than their English equivalents.” Finally, the report highlights Scotland’s and Wales’ alignment with EU rules on single-use plastics.

More information on alignment and divergence is available in Senedd Research’s article, [Rulemaking outside the EU](#).

4. Intergovernmental relations

The UK and devolved governments published agreed terms of reference for the [Interministerial Group for Trade](#).

The group is responsible for:

- establishing, maintaining and reviewing the role of the devolved governments in the UK’s international trade agenda;
- building effective ministerial communication on international trade and providing a coordination point for discussion of related policy issues;
- providing a resolution mechanism for disputes on international trade matters.

The UK Government published its [report on intergovernmental relations](#) for the second quarter of 2022.

5. UK Internal Market Act

The [Supreme Court has refused the Welsh Government’s application for permission to appeal the Order of the Court of Appeal that their claim for Judicial Review of the UK Internal Market Act was premature and does not raise an arguable point of law](#).

The Office of the Internal Market has accepted the UK Government’s request to [consider the potential impact of a ban on the sale of peat in England on the UK Internal Market](#). The Office is aiming to provide its analysis by February 2023. This

will be the first report to be made under section 34(1) of the UK Internal Market Act 2020.

Exclusions from Market Access Principles: Services

The Minister for Economy, Vaughan Gething MS, wrote to the Committee in August 2022 to confirm that he had given his consent for the Secretary of State for Business, Energy and Industrial Strategy to make the United Kingdom Internal Market Act 2020 (Exclusions from Market Access Principles: Services) Regulations 2022.

The Regulations amend the list of exclusions from the Market Access Principles in Schedule 2 of the UK Internal Market Act 2020 in three ways:

- Amend the wording of the existing social services exclusions to clarify the scope;
- Add new exclusions to Part 1 (mutual recognition) for gas, electricity, water supply and sewerage services, waste sector services, qualifications-awarding services and heat network services; and
- Remove existing exclusions for financial services, postal services, electronic communications services, services of temporary work agencies, and services of a statutory auditor from their respective entries in Part 1 (mutual recognition) and Part 2 (non-discrimination).

Single use plastics

On 20 September, the Welsh Government laid the Environmental Protection (Single-use Plastic Products) (Wales) Bill, which includes proposals to ban a number of single-use plastic items.

Most of these items are included in the United Kingdom Internal Market Act 2020 (Exclusions from Market Access Principles: Single-Use Plastics) Regulations 2022 and would therefore be excluded from the Market Access Principles in the UK Internal Market Act. However, single-use carrier bags and all single-use oxo-degradable plastic products are outside of the existing exclusions.

Despite this, the Minister's written statement and the Bill's explanatory memorandum make no mention of the UK Internal Market Act or its relationship to the Bill's proposals. In his statement on the Welsh Government's Legislative

Programme the First Minister said the Bill would go through an expedited process to support the Welsh Government's on-going legal challenge to the UK Internal Market Act.

The Welsh Government published a summary of responses to its consultation on reducing single-use plastic waste held in 2020.

The Genetic Technology (Precision Breeding) Bill was introduced to the House of Commons on 25 May 2022. The Bill applies in England only, but the effects of the UK Internal Market Act will mean it impacts Welsh legislation.

The Genetic Technology (Precision Breeding) Bill was introduced to the House of Commons on 25 May 2022. The Bill will exclude some organisms developed using what the Bill describes as 'precision breeding techniques' from the existing regulatory regime for Genetically Modified Organisms (GMOs) in England, and creates a new regime for their management.

Whilst the law in Wales on GMOs isn't being amended by the Bill, the market access principles enshrined in the UK Internal Market Act mean that plants, animals, food or feed produced in England any under the new regime will be able to be sold in Wales without having to meet the GMO requirements still in force in Wales.

The Bill's Explanatory Notes and Impact Assessment acknowledges this UK Internal Market Act effect. The Welsh Government has said that it only had a day's notice to consider the implications of the Bill before introduction, and has written to the UK Government about its provisions. The Scottish Government has also written a letter to the UK Government expressing concerns.

6. Common frameworks

No further provisional common frameworks have been published for scrutiny since the election to the Northern Ireland Assembly in May.

Briefings on provisional common frameworks considered by Senedd committees can be found on the Senedd Research website.

7. Legislation

Welsh Government legislation

There are three bills currently in their initial stages, and two that have passed all their stages:

- The Social Partnership and Public Procurement (Wales) Bill was introduced on 7 June, and is currently going through Stage 1 scrutiny.
- The Historic Environment (Wales) Bill was introduced on 4 July, and is currently going through its Initial Consideration Stage.
- The Environmental Protection (Single-use Plastic Products) (Wales) Bill was introduced on 20 September, and is beginning its scrutiny.
- The Welsh Tax Acts etc. (Power to Modify) Bill passed its Stage 4 proceedings on 12 July. The four week intimation period for the Bill ended on 9 August. The Bill received Royal Assent on 8 September.
- The Tertiary Education and Research (Wales) Bill passed its Stage 4 proceedings on 28 June. The Bill received Royal Assent on 8 September.

UK legislation

Liz Truss became the UK Prime Minister on 6 September 2022, and a new UK Government was appointed.

After the previous UK Government set out its new legislative programme in May 2022, the Counsel General said he expected 12 policy areas in which legislation of particular relevance to devolved interests might be included. Out of these 12 areas, eight Bills are now before the UK Parliament. Several pieces of legislation included in the Counsel General's statement are yet to be introduced, including:

- A Brexit Freedoms Bill that would make it easier for the UK Government to change or repeal retained EU law;
- A Bill that will reform mental health care (a draft Bill was published on 27 June); and
- A Transport Bill that will give the new public body, Great British Railways (GBR), statutory powers, replacing Network Rail.

It is possible that legislative plans may now change under the new UK Government.

It has been reported that the new UK Government will scrap the Bill of Rights Bill, which has begun its UK Parliamentary stages. The Bill would repeal the Human Rights Act 1998. The Welsh Government has said it has “substantial concerns” about the Bill, and remains opposed to any proposal to replace the Human Rights Act. The UK Government are yet to comment.

Legislative consent

Legislative consent memorandums (LCMs) have now been laid for five new UK Bills since the Queen’s Speech in May.

LCMs from two UK Bills that were carried-over from the previous UK Parliamentary session have yet to be voted on in Plenary. Several supplementary LCMs (SLCMs) have also been laid.

Complex SLCMs are expected for the Procurement Bill, where consent is being sought for 103 clauses. Over 300 amendments to the bill have already been tabled in the Lords, with more expected.

8. Constitution Commission

The Independent Commission on the Constitutional Future of Wales published a progress report on 15 July 2022.

The Commission has heard evidence from a number of individuals and groups, and has held a technical workshop on Wales’ fiscal position.

The Commission **launched a Community Engagement Fund** to ensure the views of the varied communities in Wales are reflected in the Commission’s interim report, which is due by the end of 2022. The Commission is providing grants of up to £5,000 per eligible organisation to undertake engagement between August-November 2022.

The Have Your Say survey has received over 1800 responses and views received before the end of July 2022 will inform the Commission’s interim report.

9. Senedd reform

The Senedd voted to endorse the proposals of the Special Purpose Committee on Senedd Reform on 8 June 2022.

Recommendations from the Special Purpose Committee are now with the Welsh Government, and a draft Bill is expected in due course.

Further information about the Committee's proposals can be found in the Senedd Research [article](#) and [glossary](#).

10. Justice

UK Government

The Ministry of Justice issued an interim response to the Independent Review of Criminal Legal Aid. A full response to the review is expected to follow in the autumn.

The UK Government made legislation to increase barrister fees and fees for solicitor work in magistrates' courts and police stations by 15% by the end of September. The Criminal Bar Association and the Law Society have argued that the increases are not sufficient. Members of the Criminal Bar Association began indefinite weeks of industrial action on 5 September.
















The Ministry of Justice also formally responded to its consultation on reform of the Human Rights Act 1998. This followed the introduction of the Bill of Rights Bill to Parliament (see Section 7 on UK Legislation).

Welsh Government

The Counsel General & Minister for the Constitution and the Minister for Social Justice published a written statement in response to the UK Government's Bill of Rights Bill. The statement outlines the Welsh Government's opposition to proposals to replace the Human Rights Act and their dissatisfaction with the UK Government's engagement with the Devolved Governments in relation to the Bill (see Section 7 on UK Legislation).

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

