

Legislation, Justice and Constitution Committee

Monitoring report

November 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 report covers the period to **10 November 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

UK-EU negotiations continue over the Northern Ireland Protocol as the Northern Ireland Protocol Bill continues its passage through the UK Parliament. The deadline to hold Northern Ireland Assembly elections will be extended by the UK Government, potentially up to 19 January.

The deadline to form an Executive in Northern Ireland passed on 28 October. On 9 November, Secretary of State for Northern Ireland, Chris Heaton-Harris, announced that the deadline to form an executive will be extended by legislation, initially by six weeks to 8 December, with an option to extend this by a further six weeks, to 19 January. He said that:

The aim is to create the time and space necessary for talks between the UK Government and the European Commission to develop, and for the Northern Ireland parties to work together to restore the devolved institutions as soon as possible.

He announced that the legislation would also grant powers to Northern Ireland Departments to support public service delivery and reduce the salaries of Members of the Legislative Assembly (MLAs).

UK-EU negotiations to try to resolve ongoing issues relating to the Protocol continue. Bloomberg reports that the EU is testing the UK’s proposed live database for tracking goods and Simon Coveney has been quoted as saying that “there is a real intent in London to try to resolve the Protocol issues through negotiation over the next few weeks and months. And I think the EU will respond to that generously. In fact, I know they will.” He later added, however, that the EU will be “very firm” in protecting its Single Market.

European Commission Vice-President, Maroš Šefčovič, said on 7 November that the “issue here boils down to “no checks” versus “minimum checks”, stemming from Brexit itself. Because we must acknowledge that Brexit did fundamentally alter trade on the island of Ireland.”

The UK Government’s Northern Ireland Protocol Bill continues its passage through the UK Parliament. A date for its Report Stage is yet to be announced. The Bill would allow UK Ministers to unilaterally change the effects of the Protocol in domestic law without the EU’s input or agreement. Vice-President Šefčovič, said on 7 November that the uncertainty around the Bill “is not going to help”, and pointed to the 25th anniversary of the Belfast (Good Friday) Agreement in April 2023.

Senedd committees report on the Northern Ireland Protocol Bill LCM ahead of 22 November consent vote.

Two Senedd committees in addition to this Committee have reported on the Welsh Government’s Legislative Consent Memorandum on the Bill to date. The Senedd’s Culture, Communication, Welsh Language, Sport and International Relations Committee noted its concerns for the Bill’s impact on UK-EU and Wales-Ireland relations. It agreed with the Welsh Government that Wales has a “direct interest” in the Protocol and called for a negotiated solution. The Economy, Trade and Rural Affairs Committee noted its concerns that the Bill’s cost implications and impact on Welsh trade & ports are unknown.

The Senedd will vote on whether to consent to the Bill on Tuesday 22 November.

Trade and Cooperation Agreement (TCA) meetings have taken place throughout October, with more expected soon. The Parliamentary Partnership Assembly (PPA) held its second meeting on 7-8 November, which was attended by Senedd members.

The Senedd was represented by the Chair of the Legislation, Justice and Constitution Committee, Huw Irranca Davies MS and Luke Fletcher MS, representing the Economy, Trade and Rural Affairs Committee. The Assembly considered the on-going negotiations in relation to the Northern Ireland Protocol, Energy cooperation and other possible areas of future cooperation, citizen’s rights, touring artists, security and defence cooperation and the engagement of the devolved legislatures and European civil society in the work of the Assembly. It adopted its first formal recommendation to Partnership Council of the Trade and Cooperation Agreement on Energy.

More TCA meetings have either recently taken place, or are expected to take place in the coming weeks.

Other developments

- The ongoing dispute over the UK's access to EU science and research programmes, including Horizon, continues. The UK Government has taken steps to mitigate the delay, including extending financial support to applicants and developing alternative plans.
- The UK has attended several EU-hosted forums, including the European Political Community and the Berlin Process on the Western Balkans. In October 2022, the UK requested to join the EU-led PESCO project on military mobility. A decision is expected on 15 November.
- The **Counsel General spoke** in Plenary on 9 November of his concerns that the EU's UK data adequacy decision could be removed in relation to the Data Protection Bill and trade agreements.

3. Alignment and divergence

The UK Government's Retained EU Law (Revocation & Reform) Bill was introduced on 22 September. The Bill is the means by which the UK Government intends to deal with the majority of EU law that remains in force in the UK after Brexit. It could lead to intra-UK and UK-EU alignment and divergence.

The Bill begins a countdown for the majority of REUL to be saved, reformed or removed before 31 December 2023, unless this is extended by UK Ministers up to 23 June 2026 - the tenth anniversary of the Brexit referendum. This Bill intends to:

- sunset the majority of REUL so that it expires on 31 December 2023;
- rename remaining REUL "assimilated law";
- provide a sunset extension mechanism up to 23 June 2026;
- grant UK and Welsh Ministers powers to amend, repeal and replace REUL and assimilated law more easily;
- grant Ministers powers to reinstate the supremacy of retained EU law;
- provide domestic courts with greater discretion to depart from REUL case law; and
- repeal the Business Impact Target as part of other regulatory reforms.

The Welsh Government issued its Legislative Consent Memorandum on the Bill on 3 November, in which it recommends that the Senedd withholds consent.

4. Intergovernmental and interparliamentary relations

In Questions to the First Minister during Plenary on 11 October, the First Minister said that there had been a “collapse” in the new intergovernmental agreement since the Truss administration took office in September. Mr Drakeford said that scheduled meetings at IMSC and IMG level had all been cancelled or postponed by the new UK Government. During the entire Truss premiership, the UK Prime Minister did not speak to the First Ministers of either Wales or Scotland.

The new UK Prime Minister and the First Minister spoke on 25 October. In First Minister’s Questions on the same day, Mr Drakeford said he hoped “the new Prime Minister will take a different approach to relations with the devolved Governments across the United Kingdom” to the previous UK administration.

The Interparliamentary Forum met for a second time at the Senedd on Friday 28 October.

Representatives from Committees from the Commons, Lords, Scottish Parliament and the Senedd discussed the Northern Ireland Protocol, retained EU law and the new intergovernmental agreement. A joint statement was issued in which attendees raised concerns about the scope of delegated powers in UK legislation related to EU exit.

5. UK Internal Market Act

Single use plastics

The Environmental Protection (Single-use Plastic Products) (Wales) Bill has been referred to the Climate Change, Environment and Infrastructure Committee for Stage 2 proceedings, following the Senedd’s agreement to the motions on the Bill’s general principles and financial resolution.

6. Common frameworks

The House of Lords Common Frameworks Committee published the UK Government's response to its report on 'Common Frameworks: an unfulfilled opportunity?'

The UK Government considers that the Committee made 22 formal recommendations of which it has accepted 13, partially accepted or agreed in principle to 5 and rejected 3. The UK Government's response says it will work with devolved governments to implement some of the recommendations. In relation to the Retained EU Law (Revocation and Reform) Bill, the UK Government response confirms that Bill 'will impact on most if not all of the Common Frameworks' but 'the UK Government has committed to the proper use of Common Frameworks and will not seek to make changes to REUL falling within them without following the ministerially-agreed processes in each Framework'.

7. Legislation

Welsh Government legislation

There are four Bills being considered by the Senedd, three in their initial stages and one at stage 2.

- The Agriculture (Wales) Bill was introduced on 26 September, and is currently going through Stage 1 scrutiny.
- 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 at Stage 2.

The Welsh Government has launched a consultation on a draft Statute Law (Repeals) (Wales) Bill. The draft Bill seeks to "help declutter the statute book" and "bring clarity about what law is relevant to Wales".

The Welsh Government has published its annual report for 2021-22 on the Future of Welsh Law programme. Alongside the report's publication, the Counsel General and Minister for the Constitution provided an update on the Welsh Government's work to ensure Welsh legislation on legislation.gov.uk is up-to-date in both Welsh and English.

UK legislation

Liz Truss announced her resignation as UK Prime Minister on 20 October.

Following a short leadership contest, Rishi Sunak was chosen as her replacement, taking office on 25 October. He appointed his new Cabinet over the following days. David TC Davies was appointed Secretary of State for Wales.

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

Government. The new Secretary of State for Justice, Dominic Raab, has said that the Bill of Rights Bill may return to Parliament in the coming weeks (see section 10).

The UK Government has delayed publication of its new economic plan until 17 November. The Minister for Finance and Local Government, Rebecca Evans, has said the UK Government should provide reassurance that there will not be spending cuts.

The Government of Wales (Devolved Powers) Bill, a Private Members Bill introduced by Lord Wigley, had its second reading in the House of Lords on Friday 28 October. The Bill seeks to ensure that the Senedd's powers cannot be amended or withdrawn without a super-majority (two thirds) vote of its elected members.

Legislative consent

Legislative consent memorandums (LCMs) have now been laid for nine new UK Bills since the Queen's Speech in May. This takes the total number of LCMs and SLCMs in the Sixth Senedd to 56.

Out of the LCMs currently under consideration, the Welsh Government are currently recommending that the Senedd withhold consent from all or part of three Bills:

- the Northern Ireland Protocol Bill;
- the Levelling-up and Regeneration Bill; and
- the Retained EU Law (Revocation and Reform) Bill.

The Counsel General and Minister for the Constitution, Mick Antoniw, said that the Retained EU Law Bill included significant content that was not shared with the Welsh Government prior to introduction. Mr Antoniw said that the Bill as introduced contains concurrent powers that are “constitutionally unacceptable”.

The final decision on whether to grant consent to the UK Infrastructure Bank Bill and a small section of the Procurement Bill remains subject to ongoing discussions with the UK Government.

8. Constitution Commission

The Commission has published minutes from its meetings of 22 June and 28 June 2022. The meeting of 22 June included sessions with Sir Paul Silk on his reflections on the Silk Commission and with the Llywydd (and Senedd officials) on Senedd reform and the Senedd's work on civic education and engagement.

The Commission is due to publish its interim report by the end of 2022.

9. Electoral reform

The Electoral Administration and Reform White Paper was published on 11 October, with the consultation open for responses until January 2023.

Proposals included in the White Paper include:

- A consolidation of electoral law, including a new accessible and bilingual Conduct Order ahead of the 2026 Senedd elections, and a restating of the franchise.
- Automatic registration of voters for devolved elections becoming mandatory for all Electoral Registration Officers. This would include the use of new data sharing agreements with local authorities, and the scrapping of Open Registers. **A number of pilots** are planned.
- The establishment of an independent Electoral Management Board in Wales, set out in legislation, replacing the Wales Electoral Coordination Board.

Further details can be found in this [Senedd Research article](#).

10. Justice

UK Government

Dominic Raab MP has been re-appointed as Lord Chancellor and Secretary of State for Justice, replacing Brandon Lewis MP, who served in the role between 6 September and 25 October.

The Joint Committee on Human Rights has **written** to the Lord Chancellor and Secretary of State for Justice to confirm the UK Government's current position in regards to the Bill of Rights Bill. Mr Raab has since **confirmed** that the Bill of Rights Bill will return to Parliament "in the coming weeks".

The Criminal Bar Association **agreed** to suspend industrial action following negotiations with the Ministry of Justice. The former Lord Chancellor and Secretary of State for Justice, Brandon Lewis MP, **offered** a package of additional reforms and fee uplifts to criminal legal aid, which represents a further investment of £54m.

Wales
















The Counsel General and Minister for the Constitution, Mick Antoniw MS, **spoke** at the Legal Wales Conference in Llandudno on 7 October. The Counsel General and Minister for the Constitution called on the UK Government to take action in four areas:

- A change in tone in the UK Government’s relationship with the legal sector,
- Ditching the Northern Ireland Protocol Bill, the Bill of Rights Bill and the Retained EU Law (Revocation and Reform) Bill,
- Greater investment in the justice system,
- Fully engage with developing the Welsh justice system based on recommendations from the Thomas Commission .

Dr Robert Jones and Professor Richard Wyn Jones, both of Cardiff University’s Wales Governance Centre, have published a **book** on the Welsh Criminal Justice system.

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

