
Legislation, Justice and Constitution Committee

Monitoring report

January 2023

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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 **11 January 2023**.

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

On the Northern Ireland Protocol, the UK and EU agreed a way forward on EU access to UK IT systems for the purpose of sharing trade data. They agree that a range of other critical issues still need to be resolved.

A [joint statement](#) explains how agreement was reached on a way forward for EU access to UK IT systems for the purposes of sharing trade data. This is described as a “prerequisite to building trust and providing assurance, and provided a new basis for EU-UK discussions.”

The statement underlines the UK and EU’s commitment to the Belfast (Good Friday) Agreement while protecting the integrity of the UK’s internal market and the EU’s Single Market. It says that “EU and UK technical teams will work rapidly to scope the potential for solutions in different areas on the basis of this renewed understanding”.

A further meeting will be held on 16 January to take stock of progress.

Other news relating to the island of Ireland:

- The Irish Times reports that a [series of meetings](#), designed to restore power-sharing in Northern Ireland, will take place week commencing 9 January ahead of a 19 January legal deadline. Secretary of State for Northern Ireland, Chris Heaton-Harris, has said he will call another Northern Ireland Assembly election if this deadline is not met, which must take place by 13 April.

- The Northern Ireland Protocol Bill, for which the Senedd refused consent on 22 November, is awaiting a date for Report Stage in the House of Lords.
- On 9 December, the First Minister described the Bill's impact on UK-EU relations, and on international agreements more broadly. He said that:
...the UK Government's recent willingness to breach international law and to say that that's what they intend to do, and to challenge the TCA, means that there is a cloud of suspicion that hangs around the UK Government's actions in these international arenas. So, I think that's how it intrudes upon UK-EU relations—that the actions of the UK Government in the human rights field will be seen through the lens of its recent behaviour in relation to international matters and the damage that has been done to the reputation of the United Kingdom as a country that, when it enters into an agreement, has every intention of sustaining that agreement.
- Leo Varadkar returned as Taoiseach on 17 December.
- US President Biden has appointed Joe Kennedy III as Special US Envoy to Northern Ireland for Economic Affairs. Mr Kennedy is a former member of the House of Representatives and grandson of former Attorney General, Robert F. Kennedy, and grand-nephew of former US President John F. Kennedy and Senator Ted Kennedy. The post has been vacant since 2021.

The High Court has ruled that UK rules for European citizens are unlawful under the Withdrawal Agreement.

Under current rules, European citizens with temporary pre-settled status automatically lose their rights, including to live and work in the UK, if they do not convert their status to permanent settled status via a second application.

On 21 December, the High Court ruled that the requirement for European citizens with pre-settled status to make a mandatory second application to acquire settled status is unlawful. The Home Office is seeking permission to appeal the decision.

There are over 38,000 pre-settled citizens in Wales. The Senedd's Equality and Social Justice Committee monitors this area for the Senedd.

3. Alignment and divergence

UK in a Changing Europe latest divergence report shows several cases relevant to Wales.

The [report](#) shows 13 cases of active divergence (where the UK or some part of it changes its rules), nine of passive divergence (where the EU changes its rules and the UK does not follow), and three of procedural divergence (changes in the systems for managing pre-existing divergence). These occur across diverse topics, such as retained EU law, the UK Internal Market Act 2020, environmental land management schemes, bans on peat sales in England, deforestation in supply chains and trade with New Zealand.

The UK and EU consider legal action against one another for alleged breaches of the Trade and Cooperation Agreement.

[The Telegraph](#) reported that European Commission officials told the European Parliament that the Commission was considering taking legal action against the UK relating to discharges of untreated wastewater in the Channel and North Sea. Analysis can be found in the UK in a Changing Europe's [latest report](#).

The [UK Government launched](#) infringement proceedings against the EU in August 2022 over delays to UK participation in EU's research and development programmes, including Horizon Europe.

4. Intergovernmental relations

The first meeting of the Prime Minister and Heads of Devolved Governments Council took place on 10 November in Blackpool.

The First Minister attended the meeting virtually. The UK Prime Minister and the First Minister for Scotland attended in person. A [communiqué](#) was issued from the meeting which said the Council discussed the cost of living crisis, the impact of rising inflation and the NHS. The First Minister also attended the British-Irish Council in a virtual capacity. A [communiqué](#) was issued from the meeting. This was the first British-Irish Council meeting chaired by a UK Prime Minister for 15 years.

The First Minister [welcomed the engagement](#), but said there had been no further meetings. Mr Drakeford said he wanted regular, predictable engagement from the UK Government, and that the new intergovernmental agreement needed to be properly implemented.

In [evidence to the LJC Committee on 5 December](#), the Counsel General and Minister for the Constitution, Mick Antoniw, said that the intergovernmental dispute process has not been used yet. The Counsel General gave the example of a competence dispute over a Bill as something that potentially could go through the new disputes process.

The UK Government published its latest quarterly report on intergovernmental relations in December.

[The report](#) states that five meetings took place between the four Governments of the UK between 1 July and 30 September 2022. The report also includes a short case study of joint working between the Welsh and UK Governments on justice policy.

5. UK Internal Market Act

The Environmental Protection (Single-use Plastic Products) (Wales) Bill completed its passage through the Senedd on 6 December 2023.

The [Bill's](#) four-week intimation period ended on 3 January 2023 with the Counsel General [confirming](#) that he would not be referring the Bill to the Supreme Court.

The UK Government has confirmed its intention to [ban single-use plastic cutlery, plates and trays](#) used for takeaway food and drink. The ban will not cover items sold in shops or supermarkets, which the UK Government say will be addressed by other means.

The Welsh Government laid a Legislative Consent Memorandum on the Genetic Technology (Precision Breeding) Bill. It is an England only Bill but the Welsh Government argues it impacts Welsh legislation due to the provisions of the UK Internal Market.

The Welsh Government laid [an LCM](#) on the Bill on 8 December 2022. The Welsh Government's view is that the Bill requires the consent of the Senedd because the effect of the UK Internal Market Act will mean that the provisions in the Bill will allow the sale and marketing of Precision Bred Organisms in Wales.

The Office for the Internal Market (OIM) has responded to recommendations made by the House of Lords Common Frameworks Scrutiny Committee on the operation of the OIMs

functions under the UK Internal Market Act 2020.

This includes a response to the Committee’s recommendation that the Office when looking at divergence should make clear how it takes into account devolved policy autonomy when advising and assessing the impact of policy divergence.

6. Common frameworks

The Senedd’s Economy, Trade and Rural Affairs Committee published its report on seven common frameworks within its remit.

The report makes 46 recommendations across the common frameworks it considered. The report includes cross-cutting recommendations that call for changes across all frameworks, such as improving the quality assurance process for all frameworks and specific recommendations on the content of individual frameworks. The cross-cutting recommendations include calling on the Welsh Government to commit to ensuring that the frameworks ‘will lead to no dilution of public consultation or parliamentary scrutiny in policy making or the legislative process’.

7. Legislation

Welsh Government legislation

There are five Bills being considered by the Senedd, three in their initial stages, one at Stage 2 and one at post-Stage 4.

- The **Environmental Protection (Single-use Plastic Products) (Wales) Bill** was introduced on 20 September, and is at Post-Stage 4.
- The **Social Partnership and Public Procurement (Wales) Bill** was introduced on 7 June, and is currently at Stage 2.
- The **Historic Environment (Wales) Bill** was introduced on 4 July, and is currently going through its Initial Consideration Stage.
- The **Agriculture (Wales) Bill** was introduced on 26 September, and is currently going through Stage 1 scrutiny.
- The **Food (Wales) Bill** was introduced as a Senedd Member Bill by

Peter Fox MS on 17 November. The Bill is now going through Stage 1 scrutiny.

UK legislation

The Schools Bill has been scrapped by the UK Government.

While the Bill would mainly have impacted England only, Senedd consent was being sought over one amendment to the Bill. This LCM will now be withdrawn.

The Strikes (Minimum Service Levels) Bill was introduced in the House of Commons on 10 January 2023.

The Bill would give the UK Secretary of State the power to introduce minimum service levels in certain public services, including health services and fire and rescue services. The UK Government do not believe an LCM will be required for this Bill, as employment and industrial relations are reserved policy areas.

In response to the Bill, the Counsel General and Minister for the Constitution, Mick Antoniw, said it was an “unjustified attack on workers' rights and trade unions” which “will do lasting damage to industrial relations across the UK and interfere with devolved public services in Wales”.

Scottish legislation

The Gender Recognition Reform (Scotland) Bill passed its final stages in the Scottish Parliament on 22 December 2023.

The legislation simplifies the process for legal gender recognition in Scotland. The UK Government has made comments suggesting it is considering blocking the law on grounds of equalities legislation being a reserved policy area. To do this it would have to issue an order under Section 35 of the Scotland Act 1998, which would prohibit the Scottish Presiding Officer from submitting the Bill for Royal Assent. This would be the first time such an order has been used in the history of devolution. The UK Government has until 19 January to make such an order.

The First Minister said that he was “surprised by the UK Government's reaction” to the legislation, and that “if anybody obtains a gender recognition certificate in Scotland and then comes to Wales, that certificate will be recognised here for all the purposes that you would expect it to be recognised for.”

Legislative consent

Legislative consent memorandums (LCMs) have now been laid for 12 new UK Bills since the Queen’s Speech in May.

This takes the total number of LCMs and SLCMs in the Sixth Senedd to 69 across 31 UK Bills.

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

- Northern Ireland Protocol Bill;
- Levelling-up and Regeneration Bill;
- Trade (Australia and New Zealand) Bill;
- Procurement Bill;
- Retained EU Law (Revocation and Reform) Bill; and
- Genetic Technology (Precision Breeding) Bill.

Following amendments to the Bill, the Welsh Government is now recommending that the Senedd gives its consent to the UK Infrastructure Bank Bill.

The below table shows how many clauses in each active UK Bill are subject to the consent procedure. This table refers to the original LCM as laid, and not to any subsequent SLCMs.

Bill	Number of clauses
Animal Welfare (Kept Animals) Bill	28
Economic Crime and Corporate Transparency Bill	2
Energy Prices Bill	5
Genetic Technology (Precision Breeding) Bill	n/a ¹
Levelling-up and Regeneration Bill	31
Northern Ireland Protocol Bill	25
Online Safety Bill	1
Procurement Bill	103
Retained EU Law (Revocation and Reform) Bill	22
Shark Fins Bill	3

Social Housing (Regulation) Bill	31 (2 other clauses that “may” require consent)
Trade (Australia and New Zealand) Bill	3
UK Infrastructure Bank Bill	9
Total:	263

¹ The Welsh Government believes consent is required for the whole Bill due to reasons related to the UK Internal Market Act.

The Leader of the House of Commons, Penny Mordaunt, gave evidence to the Commons Procedure Committee on 28 November. Ms Mordaunt was asked about the LCM process, and whether she would support making it clearer in explanatory notes whether an LCM is required. Ms Mordaunt said she would support this, and added:

How we work with the devolved Administrations matters, as does the service we provide to Members here in terms of people being able to understand what the processes are.

Ms Mordaunt said she had “seen the [LCM] process and understand the frustrations [...] and where we can make improvements, we obviously want to”.

8. Constitution

Constitution Commission

The Independent Commission on the Constitutional Future of Wales published its interim report on 7 December 2022.

The report provided an overview of the work the Commission has done so far, its analysis of the Wales’ current constitutional status, and outlined options it will be exploring for the future in the next phase of its work.

The Counsel General and Minister for the Constitution announced his intention to schedule a statement in plenary on the report in the New Year.

Commission on the UK’s Future

On 5 December 2022, the UK Labour Party published the report of its Commission on the UK’s Future.

The Commission was chaired by former Labour Prime Minister Gordon Brown and set out 40 recommendations for change, including reforms to the House of Lords, further devolution across the UK and proposals to protect and enhance the UK's constitution.

Scottish Independence

The UK Supreme Court has unanimously ruled that the power to legislate for a second referendum on Scottish independence is a reserved power.

The judgement given on 23 November, rejected the Scottish Government's argument that "any practical effects beyond ascertaining the views of the people of Scotland" are speculative, consequential and indirect, and should not be taken into account by the court. The court said that a second independence referendum would be an "important political event, even if its outcome had no immediate legal consequences, and even if the UK Government had not given any political commitment to act upon it".

In addition, the court also ruled that the proposed Scottish Bill on a second independence referendum has "more than a loose or consequential connection with the reserved matters of the Union of Scotland and England and the sovereignty of the UK Parliament", and therefore relates to reserved matters and is outside the legislative competence of the Scottish Parliament.

In response to the ruling, the First Minister of Scotland, Nicola Sturgeon, said that the SNP would run the next UK general election as a "de facto referendum" on Scottish independence.

9. Senedd reform and elections

The Business Committee has published its response to the Special Purpose Committee on Senedd Reform's report in December.

In the report, the Committee considered the recommendations in the Special Purpose Committee's report relevant to its remit. It concluded:

- In an expanded 96 Member Senedd, it would be reasonable for the maximum number of Welsh Ministers to be increased from 12 to 17 (excluding the First Minister and the Counsel General), with a mechanism for a further increase to 19 by way of secondary legislation (subject to an affirmative vote of the Senedd).

- In an expanded Senedd, the maximum number of Deputy Presiding Officers (DPO) should be increased from one to two. The second DPO should, if practicable, not belong to the same political group as either the other DPO or the Llywydd.
- The English titles of the DPO and the Presiding Officer should be changed to Speaker and Deputy Speaker. The Welsh titles of Llywydd and Dirprwy Lywydd should be established in primary legislation.
- Further consideration will be given to the issue of Members changing parties under the recommended closed list electoral system. The reform legislation should not include any provisions which results in consequences for Members on this issue.

Regulations required to implement voter ID at reserved elections have now passed both Houses in the UK Parliament, as part of the UK Elections Act 2022.

This will not impact Senedd elections or local government elections in Wales, but will impact Welsh seats in UK General Elections, as well as Police and Crime Commissioner elections in Wales. The Welsh Government opposes the introduction of voter ID, and has warned of potential unintended consequences such as voter and candidate confusion, as well as complexity for administrators.

10. Justice

The Minister for Social Justice & the Counsel General and Minister for the Constitution published a joint statement marking International Human Rights Day.

The Counsel General and Minister for the Constitution met with Lord Bellamy KC, Parliamentary Under Secretary of State, Ministry of Justice, on Monday 5 December.

Lord Bellamy KC in evidence to the Committee expressed his support for the development of intergovernmental mechanisms on justice.









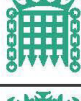
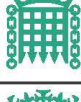
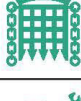




The Ministry of Justice published its full response to the Independent Review of Criminal Legal Aid. The response includes an additional £138m to be spent on legal aid every year.

The Counsel General, has said that the Ministry of Justice’s response to the Review “falls well short of meeting the challenge faced by the sector”. He added that “by failing to accept the recommendations of its own independent review the UK Government is risking exacerbating a two tier justice system that leaves people without the support they need”.

The Ministry of Justice has launched a review to explore options for improving the sustainability of the civil legal aid system. The review will include external analysis of how people in need access support, assessments of how systems work in other comparable countries and further publication of data on how civil legal aid is accessed and delivered.

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

