

Legislation, Justice and Constitution Committee

Monitoring Report: June 2023

Key points

- The Retained EU Law (Revocation and Reform) Bill is in its final stages at the UK Parliament. Consideration of Commons amendments is scheduled for 6 June. Developments in UK-EU alignment and divergence are summarised in section 1.
- The UK Secretary of State for Levelling Up, Housing and Communities, Michael Gove, has said the independent intergovernmental relations secretariat will be established by summer recess (see Section 2).
- The Scottish Government has published its legal challenge to the UK Government's Section 35 order blocking the passage of the Gender Recognition Reform (Scotland) Bill (see Section 5.2.).
- The total number of LCMs and SLCMs in the Sixth Senedd now stands at 85 across 37 UK Bills (see Section 6).
- The Welsh Government has appointed Dame Vera Baird KC as an Independent Expert Advisor on Justice Devolution (see Section 9.1).
- The Counsel General announced that he will introduce a White Paper to reform the tribunal system for Wales (see Section 9.1).



Forward look

- The UK King’s Speech has been delayed until the autumn. This will be the last session of this parliament, running until an expected UK general election in the second half of 2024, or January 2025.
- The Minister for Climate Change is scheduled to make a statement on the Infrastructure (Wales) Bill on 13 June 2023.
- Legislation related to Senedd reform is expected in the autumn.
- The Welsh Government’s Legislative Statement, setting out the legislation it will bring forward over the next 12 months, is expected to be made before summer recess begins on 17 July.
- If the Retained EU Law (Revocation and Reform) Bill receives royal assent as currently drafted, Ministers will need to take action to save REUL listed on the new Schedule from revocation before 31 October. After this, REUL can be saved, removed or reformed using other powers in the Bill.

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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 **Thursday 1 June 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.

1. UK-EU relations

A cross-party group of MPs and business leaders have called for regulatory change in the UK, including to align with the EU in key areas.

The [UK Trade and Business Commission report](#) is based on evidence from over 200 business and trade groups. The report makes a number of recommendations, [summarised by the Financial Times](#) on 31 May 2023.

The report follows the latest version of [UK in a Changing Europe’s divergence tracker](#). It finds “a significant reduction in active divergence” under Prime Minister Sunak as compared to former Prime Ministers Truss and Johnson. It also finds cases of active alignment for the first time, including on EU restrictions on a range of single-use plastics. The tracker highlights proposed changes to EU packaging and packaging waste legislation, raising questions for the Welsh and Scottish governments, who could decide to continue aligning with the EU to avoid passive divergence.

Other updates:

- The [Retained EU Law \(Revocation and Reform\) Bill](#) continues its passage through the UK Parliament. Non-government changes made during Report Stage, as summarised in this [Senedd Research article](#), were mostly reversed at Third Reading. The Bill is in ping-pong, with consideration of Commons amendments scheduled for 6 June. The replacement of the automatic sunset provision with a Schedule of REUL

for revocation on 31 December continues to be the most significant change made to the Bill.

- Implementation of the Windsor Framework is underway at the EU, where the Council adopted three legislative instruments on 30 May for public, animal and plant health issues, medicines and certain steel products. Foreign Secretary, James Cleverly, gave oral evidence to the House of Lords on 16 May.
- The UK and EU have concluded a Memorandum of Understanding establishing a framework for structured regulatory cooperation for financial services.
- EU Ambassadors marked Europe Day by writing an article for the Guardian calling for the UK and EU to build on their re-engagement after the conclusion of the Windsor Framework, and to develop further ties between them.
- Committee Chair, Huw Irranca-Davies MS asked the Counsel General about the Welsh Government’s attendance at the Trade and Cooperation Agreement’s Partnership Council. The Counsel General said that meetings of Specialised Committees is “an important and growing area” and that engagement with the devolved governments is “being kept under very close observation” because “so many of these discussions impact on devolved functions” .
- The First Minister told the Culture, Communications, Sport, Welsh Language and International Relations Committee that he does not expect UK accession to Horizon to happen “in the near-term” as part of the committee’s inquiry into Wales-Ireland relations. At the same session on 10 May, the First Minister also gave oral evidence on the Welsh Government’s international relations, including UK-EU relations.
- The First Minister was asked if he would seek to re-join the EU’s Single Market on 23 May during First Minister’s Questions. He responded that “re-joining the single market is not a course of action available to Wales alone (...) It would have to be part of a much, much larger initiative that would include the whole of the United Kingdom”.

2. Intergovernmental and interparliamentary relations

The UK Government published its Intergovernmental Relations Review Annual Report for 2022 on 30 March 2023.

The Annual Report states that there were 277 intergovernmental (IGR) meetings in 2022, compared with 440 in 2021. The report states this lower figure was “due to the UK Government’s leadership changes and suspension of the Northern Ireland Executive.”

It is unclear whether this number refers to meetings under the new intergovernmental relations structures, or if the UK Government are including more informal departmental meetings as part of these figures. In the infographic provided on page 8 of the report, meetings are listed by UK Government department, rather than by the structures included in the new agreement. There is little mention of Interministerial groups in the report. The report also does not mention whether the new IGR secretariat has been established.

In March, the Minister for Intergovernmental Relations, Michael Gove, gave evidence to two Commons committees on the intergovernmental agreement.

On 22 March, the Minister told the Public Administration and Constitutional Affairs Committee that, in his view, the new agreement was working well. When questioned on whether the independent IGR secretariat had been established, the UK Minister said that the process was still ongoing.

On 27 March, Michael Gove told the Levelling Up, Housing and Communities Committee that until the secretariat is established, for each meeting, “whoever happens to be in the chair will have their Government service that meeting, with the support of other administrations.” The Minister said that “there has been a barrier to getting the secretariat up and running, because of the lack of a Northern Ireland Executive at the moment”, and committed to establishing the secretariat before summer recess.

At First Minister’s Questions on 21 March, the First Minister, Mark Drakeford, raised concerns about an exclusion for the UK Treasury from the new independent IGR disputes resolution process.

Mr Drakeford said:

The Treasury itself refused, even in Whitehall, and even under pressure, as I believe, from the Cabinet Office, to submit its decisions to any form of independent oversight. And that fundamental flaw continues to operate, to the detriment of Wales.

The third meeting of the Interparliamentary Forum took place on 24 March at the House of Commons.

The Chairs of both the LJC Committee and the Climate Change, Environment and Infrastructure Committee represented the Senedd. A [communiqué](#) was issued from the meeting, detailing discussions that took place on the Retained EU Law (Revocation and Reform) Bill, the Sewel convention and a need for more consistency and transparency of intergovernmental relations.

The Interministerial Standing Committee (IMSC) met for the fourth time on 17 May.

The Counsel General and Minister for the Constitution, Mick Antoniw, attended the meeting. A [communiqué](#) was issued from the meetings, covering the discussions on topics including the new interministerial group on cost-of-living pressures, the Retained EU Law Bill and international engagement. The next IMSC will be chaired by the Scottish Government.

3. UK Internal Market Act

The Office for the Internal Market has published its first [annual](#) and [five-year periodic](#) reports on the UK internal market regime.

The annual report provides an overview of data relating to intra-UK trade and analyses regulatory developments that affect the UK internal market. The periodic report, published every five years, assess the effectiveness of Parts 1-3 of the UK Internal Market Act and the development of Common Frameworks.

This [Senedd Research article](#) summarises the key findings of the reports.

The Scottish Government has [announced changes](#) to its deposit return scheme as a result of a failure to agree an exclusion from the UK Internal Market Act.

The launch of the scheme has been [delayed](#) until 1 March 2024 and some amendments have been made as a result of feedback from businesses. The Scottish Government's Minister for Green Skills, Circular Economy and Biodiversity

confirmed that the UK Government refused to agree an exclusion to the Act that included glass products. The Welsh Government's proposals for a deposit return scheme also include glass.

4. Common frameworks

The Committee published its report on common frameworks on 12 May 2023. The report makes overarching recommendations across the common frameworks programme as a whole.

The Climate Change, Environment and Infrastructure Committee has continued its consideration of frameworks on emissions trading and waste and resource management. Adoption of frameworks in their final form continues to be affected by the absence of an Executive in Northern Ireland.

5. Legislation

5.1. Welsh Government legislation

There are five Bills being considered by the Senedd, one at Stage 1, one at Stage 2, one at report stage and two that have completed their Senedd stages.

- The Environmental Protection (Single-use Plastic Products) (Wales) Bill was introduced on 20 September 2022, and is at Post-Stage 4.
- The Historic Environment (Wales) Bill was introduced on 4 July 2022, and is at Post-Final Stage.
- The Agriculture (Wales) Bill was introduced on 26 September 2022, and is at report stage in order to consider further amendments to the Bill.
- The Health Service Procurement (Wales) Bill was introduced on 13 February 2023, and is currently at Stage 2.
- The Environment (Air Quality and Soundscapes) (Wales) Bill was introduced on 20 March 2023, and is currently going through Stage 1 scrutiny.

The Social Partnership and Public Procurement (Wales) Act 2023 gained Royal Assent on 24 May 2023.

The Minister for Climate Change is scheduled to make a statement on the Infrastructure (Wales) Bill on 13 June 2023.

A consultation has been launched by the Welsh Government on a White Paper that will form the basis of a Welsh Language Education Bill.

5.2. Scottish legislation

The Scottish Government, under new First Minister Humza Yousaf, has said it will pursue its legal challenge of the UK Government’s use of a Section 35 order blocking passage of the Gender Recognition Reform (Scotland) Bill.

In response to a written question tabled on 11 April, Cabinet Secretary for Social Justice, Shirley-Anne Somerville, said that “Scottish Ministers will now lodge a petition for judicial review of the Secretary of State’s decision.” This petition was published on 19 April.

The petition lays out the grounds on which the Scottish Government are challenging the Order. These grounds are:

- Material error of law: that the UK Secretary of State is making an error when stating that the Bill will have an “adverse effect” upon reserved areas of law.
- Irrationality: the Scottish Government cite an “absence of any supporting evidence” from the UK Secretary of State.
- Irrelevant considerations: the UK’s Secretary of State assertions that there are “insufficient safeguards” in the Bill is a policy issue and therefore irrelevant to the Section 35 Order.
- Inadequate reasons: the UK Secretary of State has provided insufficient reasoning to justify laying a Section 35 order.

The UK Government has argued that the Gender Recognition Reform (Scotland) Bill “would have serious effects on the operation of the Equality Act”. The First Minister, Mark Drakeford, has said that the use of the Order is “a very dangerous moment” for devolution.

5.3. UK budget and legislation

The UK Government presented its spring budget to the UK Parliament on 15 March.

The UK Government set out elements of the budget that it said would benefit Wales, including funding for the restoration of the grade II listed Holyhead breakwater, increased funding for a high-tech industrial cluster in north-east Wales, and the development of investment zones.

The Minister for Finance and Local Government, Rebecca Evans, criticised the amount of additional funding for Wales contained within the budget. The Minister said there was a “lack of additional funding for health, social services and local government”, as well as a clear lack of capital investment in Wales.

The UK Public Order Act received royal assent on 2 May. The Act gives police extra powers to prevent disruption at protests (see Section 9.1.)

The UK Strikes (Minimum Service Levels) Bill has passed the majority of its parliamentary stages, with amendments now being considered by both Houses.

Several non-government amendments to the Bill were passed in the Lords, including one moved by Lord Thomas of Cwmgiedd that would remove devolved governments and service providers in Wales and Scotland from the provisions of the Bill.

In the consideration of Lords amendments in the Commons, the Parliamentary Under-Secretary of State for Business and Trade, Kevin Hollinrake, opposed this amendment. Mr Hollinrake argued that “industrial relations is clearly a reserved matter”. The amendment was defeated by 288 votes to 227. The Bill is currently back in the Lords for consideration of Commons amendments. The Welsh Government continues to oppose the Bill.

The Government of Wales (Devolved Powers) Bill, a Private Members’ Bill introduced by Lord Wigley, has completed its passage through the House of Lords. At its Third Reading, Baroness Bloomfield confirmed that the UK Government would not be supporting the Bill. The Bill has been sent to the House of Commons.

The UK Government has published its response to the Joint Committee on Human Rights’ report on the Bill of Rights Bill. The UK Government disagrees

with the majority of the Committee’s recommendations but did agree to further consider some of them.

6. Legislative consent

LCMs for 18 new UK Bills have been laid since the Queen’s Speech in May 2022.

This takes the total number of LCMs and SLCMs in the Sixth Senedd to **85 across 37 UK Bills**.

The Senedd voted to not agree the LCM for the Retained EU Law (Revocation and Reform) Bill on 28 March. It also voted to not agree the LCM for the Strikes (Minimum Service Levels) Bill on 25 April (see Section 5.3.). The Trade (Australia and New Zealand) Bill received royal assent on 23 March, despite the Senedd voting to withhold its consent to the Bill.

When presented with these increased numbers of LCMs and withholding of consent, the UK Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations, Michael Gove, said:

Some legislation consequent upon our withdrawal from the European Union, because of the different positions taken by the Welsh Government and the Scottish Government on that question, do mean that it is more difficult to secure LCMs.

7. Constitution

7.1. Independent Commission on the Constitutional Future of Wales

The Independent Commission on the Constitutional Future of Wales published its latest progress report on 23 May 2023.

The report outlines that the Commission has met to receive evidence on four occasions since the last progress update in November 2022. In these evidence sessions, the Commission has heard from former Prime Minister Gordon Brown, Darren Millar MS and three of Wales’ Police and Crime Commissioners. The Commission has also held two workshops on the implications of the three constitutional options identified in their interim report.

Professor Laura McAllister and Dr Rowan Williams, Co-Chairs of the Commission, gave evidence to the House of Commons Welsh Affairs Select Committee on 17 May 2023.

Members of the Committee asked the Co-Chairs about the Commission’s objectives, its choice of constitutional options to consider, the representativeness of its membership and their engagement with the Welsh public. The Committee also questioned the Co-Chairs on whether changes to the devolution settlement would address concerns raised about the delivery of public services in Wales.

The Commission published a [framework](#) for analysing and appraising the constitutional options set out in its interim report.

The framework is made up of a series of key issues which any constitutional model will impact. The Commission’s final report will include a ‘base analysis’ based on the framework and will test these findings in different constitutional scenarios.

8. Senedd reform and elections

The First Minister [published](#) an update on the Welsh Government’s work to prepare legislation on Senedd Reform.

The Welsh Government has been progressing work on elements of the Special Purpose Committee’s report on gender quotas and mandatory zipping; repurposing of the Local Democracy and Boundary Commission for Wales; collection and publication of data on candidates for election; and increasing the numbers of Welsh Ministers and Deputy Presiding Officers.

In addition to the proposals in the Committee’s report, the Welsh Government has also been exploring whether to include provisions for requiring candidates to declare political party membership in the 12 months prior to the election; requiring candidates to, and Members of, the Senedd to reside in Wales; and including a review of the new provisions following the 2026 election.

The Welsh Government published a summary of responses to its Electoral Administration and Reform White Paper in March 2023.

More details of the White Paper can be found in [this Senedd Research article](#).

In a statement following the publication of the summary, the Counsel General and Minister for the Constitution, Mick Antoniw, said the Welsh Government will take forward reforms including:

- automatic voter registration for devolved elections;
- establishing an Electoral Management Board;
- the transfer of the functions of the Independent Remuneration Panel for Wales to the Local Democracy and Boundary Commission for Wales; and
- legislating to extend the scope of the offence of undue influence.

Legislation will be brought forward to implement these reforms in time for the next set of devolved elections in 2026 and 2027. The Minister said that other aims, such as the consolidation of electoral law and the restating of the franchise into one bilingual act, remain in the Government’s longer-term programme.

An independent review of voter ID provisions will look at the impact on voter registration in Wales.

The Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations, Michael Gove, told the Public Administration and Constitutional Affairs Committee on 22 March that he had not yet discussed the implications of voter ID policy on Wales with the Welsh Government, but that this would be included in the forthcoming review.

While voter ID provisions do not apply to devolved elections or local government elections in Wales, the Welsh Government has previously raised concerns about voter and candidate confusion and complexity for administrators.

9. Justice

9.1. Wales

The Welsh Government has appointed Dame Vera Baird KC as an Independent Advisor to the Welsh Government on Justice Devolution.

The appointment of the former Victims Commissioner for England and Wales comes alongside a programme of work to prepare for the potential devolution of

justice, including work commissioned on youth justice and probation, with a commitment to also look at policing.

The Counsel General announced that he will introduce a White Paper to reform the tribunal system for Wales.

A consultation will be launched on the Welsh Government’s proposals to establish a “single, unified tribunal system for Wales” that will be the “cornerstone of a future justice system in Wales”. The Counsel General confirmed the Welsh Government’s intention to establish an appellate court as part of the reforms.

Sir Gary Hickinbottom was sworn in as President of Welsh Tribunals on 2 May 2023.

Sir Gary is a retired Judge of the Court of Appeal and has held numerous other roles across the judiciary, including Designated Civil Judge for Wales, Chief Social Security and Child Support Commissioner, Chief Pensions Appeal Commissioner, and Deputy Senior President of Tribunals.

The Counsel General has warned the Senedd that new powers in the Public Order Act 2023 puts “historic freedoms around peaceful protest at risk”.

In a statement, the Counsel General said that new powers granted to the police in England and Wales were “authoritarian, draconian and risked undermining trust in policing”. The UK Government has said that the Act “gives the police the tools they need to tackle dangerous and highly disruptive tactics, used by a small minority of protestors, to wreak havoc for people going about their daily lives”.

9.2. UK Government

The Victims and Prisoners Bill was introduced to the UK Parliament on 29 March 2023.

The Ministry of Justice has said that the Bill will put victims’ voices “at the heart of the justice system”, including by enshrining the principles of the Victims’ Code in law, giving ministers powers to direct the inspection of justice agencies that are failing victims, and creating better oversight of those agencies. The Bill will also overhaul the parole system, allowing minister to block the release of “the most dangerous offenders” and will stop prisoners serving whole-life orders from marrying or forming civil partnerships in prison.

The Ministry of Justice has published its response to the Legal Aid Means Test Review.

The response confirms that the UK Government will be making changes to the means test, including disregarding Council Tax from the civil legal aid means test; uprating and extending work allowance; and deducting priority debt and student loan repayments, and pension contributions up to 5% of earnings, from the disposable income test.

Sir Richard Broadbent has been appointed as chair of the HM Courts and Tribunals Service (HMCTS) Board.

The Board is responsible for overseeing the leadership and direction of HMCTS and ensures that the organisation delivers the aims and objectives set by the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals.

9.3. Scotland
















The Scottish Government has announced significant reforms to the Scottish justice system in the Victims, Witnesses and Justice Reform (Scotland) Bill.

The Bill will abolish the 'not proven' verdict in criminal trials, will reduce juror numbers from 15 to 12 and increase the jury majority required for conviction to at least two-thirds. The Bill also proposes the establishment of an independent Victims and Witnesses Commissioner for Scotland.

The Bill includes a number of measures in relation to survivors of sexual offences, including: an automatic lifelong right to anonymity for victims of sexual offences; establishing a national specialist sexual offences court; providing an automatic right to state-funded independent legal representation for complainers when applications are made about their sexual history or 'bad character'; and establishing a pilot of single judge trials for cases of rape and attempted rape.

10. 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

