

# Legislation, Justice and Constitution Committee

## Monitoring Report: July 2023

### Key points

- A second meeting of the Withdrawal Agreement Joint Committee took place on 3 July in which further decisions on implementation of the Windsor Framework were taken. The Welsh Government has consented to UK regulations implementing the Framework.
- The third meeting of the UK-EU Parliamentary Partnership Assembly took place on 3-4 July. It considered implementation of the Trade and Cooperation Agreement, Ukraine, industrial policy and foreign and security cooperation.
- The UK and EU are reported to have reached an agreement on UK association to the EU's Horizon research programme.
- The Retained EU Law (Revocation and Reform) Act received Royal Assent.
- The First Minister has announced the Welsh Government's [legislative programme](#) for 2023-24. The programme includes eight Bills in total, including two to take forward proposals on reforming the Senedd.
- The Counsel General and Minister for the Constitution has published a White Paper on [reforms of the Welsh Tribunals](#). The proposals include the creation of a First-tier Tribunal for Wales and an Appeal Tribunal for Wales.
- The Secretary of State for Justice has confirmed that the UK Government will not be proceeding with its plans to reform the Human Rights Act 1998 in a [Bill of Rights Bill](#).



### Forward look

- Legislation on Senedd Reform will be introduced after the summer recess.
- The Scottish Government’s legal challenge to the section 35 order blocking the passage of the Gender Recognition Reform (Scotland) Bill will be heard at the Court of Session in Edinburgh from 19 - 21 September.
- Following Royal Assent, UK and devolved Ministers will have until 31 October 2023 to use powers under the Retained EU Law (Revocation and Reform) Act to remove items of REUL from Schedule 1 of the Act. Any items that remain in the Schedule on 31 December will be revoked.

## Contents

<b>Introduction .....</b>	<b>4</b>
<b>1. UK-EU relations .....</b>	<b>4</b>
1.1. Retained EU Law (Revocation and Reform) Act.....	5
<b>2. Intergovernmental and interparliamentary relations.....</b>	<b>8</b>
<b>3. UK Internal Market Act .....</b>	<b>9</b>
<b>4. Legislation .....</b>	<b>10</b>
4.1. Senedd legislation .....	10
4.2. Scottish legislation .....	11
4.3. UK legislation.....	11
<b>5. Legislative consent .....</b>	<b>12</b>
<b>6. Constitution.....</b>	<b>12</b>
<b>7. Senedd reform and elections.....</b>	<b>13</b>
<b>8. Justice .....</b>	<b>14</b>
8.1. Justice in Wales.....	14

8.2. UK Parliament .....	15
8.3. Appointments .....	16
<b>9. Annex: Glossary .....</b>	<b>17</b>

## 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 6 July 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

**On 23 June, the UK and the EU signed a Memorandum of Understanding on Financial Services Cooperation.** The MoU established a new forum to discuss voluntary regulatory cooperation outside of Trade and Cooperation Agreement 'TCA'. The European Commissioner for Financial Services said the Windsor Framework opened a 'new chapter in our partnership' which allowed agreement on the MoU to be reached.

**The Joint Committee that oversees the UK-EU Withdrawal Agreement met on 3 July. This is the second time the Committee has met this year signalling increased dialogue between the parties.** The UK and EU agreed to continue to collaborate on outstanding issues related to citizens rights and to meet regularly to monitor the implementation of the Windsor Framework. The Joint Committee agreed on new EU laws and decisions to be added to Annex 2 of the Windsor Framework on sanitary and phytosanitary rules. They also agreed the annual report for 2022.

**The Welsh Government has written to the Committee notifying it of a decisions to consent to the UK Government making regulations to implement aspects of a Retail Movement Scheme agreed as part of the Windsor Framework.** The Committee agreed to write to the Welsh Government with further questions on regulations to implement the Framework on 3 July 2023.

On 28 June, the Scottish Government wrote to the Scottish Parliament to notify it of its intention to consent to five regulations implementing the Windsor Framework.

**The UK-EU Parliamentary Partnership Assembly (PPA) met in Brussels on 3-4 July.** The Senedd was represented by Huw Irranca-Davies MS and Luke Fletcher MS. The PPA was addressed by European Commission Vice-President Maroš Šefčovič and UK Foreign Secretary, James Cleverly MP. It discussed progress with implementing the TCA, foreign security and defence cooperation, mobility of persons, climate and energy cooperation, civil society cooperation, Ukraine and cooperation on trade and industrial policy. The PPA adopted a joint recommendation on the common effort to support Ukraine.

On **5 July, there were media reports that the UK and EU have reached agreement on UK association to the EU’s Horizon Research and Development programme and Copernicus from January 2024.** It’s reported that the ‘deal’ will be signed off by Prime Minister Rishi Sunak and European Commission President Ursula von der Leyen on Tuesday 11 July in the sidelines of the NATO Summit. Association to Horizon is a key priority for researchers in Wales.

## **1.1. Retained EU Law (Revocation and Reform) Act**

**On 29 June, the Retained EU Law (REUL) Bill received Royal Assent. The Act grants the Welsh Ministers broad powers to remove, reform or retain REUL, and introduces a new timetable for the Senedd, for which preparations are underway.**

The automatic sunset that would’ve removed the majority of REUL on 31 December is no more. It’s been replaced by a new ‘Schedule 1’ listing REUL to be revoked by 31 December 2023. EU-derived rights will still end on this date, too. UK and devolved Ministers can exempt REUL from the Schedule before 31 October 2023, thereby saving it. In devolved areas, this can be done by:

- Welsh Ministers laying regulations in the Senedd; or
- UK Ministers laying regulations in the UK Parliament, bypassing the Welsh Government and the Senedd.

This Committee received a response from the Welsh Government on 25 key questions on the Bill on 2 June.

The Committee also received correspondence from the [Secretary of State for Business and Trade, Kemi Badenoch](#), on 16 June, who said the Bill's concurrent powers are:

*not intended to influence decision making in devolved governments. Rather, it is intended to reduce additional resource pressure by enabling the UK Government to legislate on behalf of a devolved government where they do not intend to take a different position.*

She also said:

- she regrets the Senedd's decision to withhold consent for the Bill. This has happened twice, in March and June.
- The UK Government has engaged with the devolved governments and will ensure the continued implementation of international obligations.
- The UK's governments will continue to work together, including through common frameworks and the UK Internal Market Act 2020; and
- she supports the Committee's conclusion for the Welsh Government to progress its delivery plans for REUL reform.

On 26 June, the Committee agreed to [write to the Counsel General](#) again for more information ahead of his giving evidence on 10 July.

**Rural affairs minister, Lesley Griffiths, welcomed the removal of the sunset from the Bill, saying preparations for it were “on a par” with planning for a no deal Brexit. On the Act's potential to result in different food, environment and welfare standards between the Welsh and UK governments, she doesn't foresee issues with maintaining standards but acknowledges there may be “interference” from the UK Government if Welsh Ministers want to increase standards in the future.**

On 21 June, the Minister gave [evidence to the Climate Change, Energy and Infrastructure Committee](#) where she said of preparations for the sunset:

*I had to do a complete reprioritisation exercise of work that I needed and I wanted to be undertaken in my portfolio to allow officials to do this massive, massive piece of work. It was on a par—the level of work officials were having to do was on a par—with when we thought we were going to leave the EU with no deal. A huge piece of work.*

*So, it's great now that we can reprioritise again and put people back on things that are important to me as a Minister and are important to Welsh Government.*

She later clarified that the Welsh Government nevertheless “absolutely, fundamentally oppose the whole intent of the Bill” and described it as “absolutely appalling” that UK Ministers can make decisions in devolved areas without the consent of the Welsh Ministers.

On standards, she said:

*it's unacceptable to lower our environmental standards, our animal health and welfare standards, and I think UK Government shared that ambition; they certainly said they did. I think if you look at some of the trade agreements, that is a matter of concern, because clearly, standards are not the same in other countries, so I do have concerns about food.*

*But I think, ultimately, the UK Government share that ambition as well, and we've made it very clear that we wouldn't want to see a reduction in that.*

*So, I don't feel that that is an issue for me at the moment.*

She said she is confident that standards would be maintained but acknowledged that there may be some “interference” in future if the Welsh Government wished to increase standards in contrast to the position of the UK Government.

**On the same day ,Wales' Interim Environmental Protection Assessor, Dr Nerys Llewelyn Jones, told the climate change committee that she had prioritised publishing her report on the Bill to try to influence developments at Westminster. Dr Jones said the Bill is a “big concern” but that she does not believe assessing the REUL listed on Schedule 1 to determine its impact in Wales is part of her role, nor does she have capacity to do so. This, she says, should be done by a permanent body. Wales is the only UK nation that does not have an independent environmental permanent body post-Brexit.**

She said it took the Welsh Government six weeks to respond to her report on the Bill. For more information on Wales’ environmental governance gap, read:

- The environmental governance gap: how robust are the interim measures? (Senedd Research)
- Environmental governance following Brexit (Senedd Research)

- [Report on the operation of the interim environmental protection measures](#) (Climate Change, Environment, and Infrastructure Committee)

## 2. Intergovernmental and interparliamentary relations

**The Chair of the Culture, Communications, Welsh Language, Sport, and International Relations Committee, Delyth Jewell, guested on the House of Commons Welsh Affairs Committee in its [evidence session on broadcasting in Wales on 28 June](#).**

Ms Jewell's guest appearance on the Committee is the first instance of a Member of the Senedd appearing as a guest on the Committee.

**In his evidence to the Finance Committee to mark 10 years since the publication of the Silk Commission Report on devolution in Wales, Sir Paul Silk said he welcomed the** intergovernmental relations agreement.

Mr Silk also pointed the Committee towards his report for the Study of Parliament Group and the Hansard Society, co-authored with Paul Evans: [A new structure for interparliamentary relations in a devolved Great Britain and Northern Ireland](#). This report recommended the creation, or development through existing interparliamentary structures, of a more formal interparliamentary body to hold intergovernmental structures to account, and to provide a forum for the discussion of devolution.

**Meetings under the intergovernmental relations agreement continue:**

- The Interministerial Group (IMG) for Housing, Communities and Local Government, met for the second time on 10 May. A [communiqué](#) and a [Welsh Government statement](#) was issued.
- UK Finance Ministers met in Cardiff on 15 June to discuss the cost of living crisis. The [Welsh Government issued a statement](#), but a central communiqué doesn't appear to have been issued.

### 3. UK Internal Market Act

**The Office for the Internal Market gave evidence to the Legislation, Justice and Constitution Committee on their annual and periodic reports.**

Murdoch MacLennan, Chair of the Panel, and James Waugh, Director, talked to the Committee how the Office for the Internal Market has been engaging with the Welsh Government and other stakeholders in Wales, the findings of its annual and periodic reports, and how the UK's internal market is operating in practice.

**The Scottish Government has delayed the launch of its Deposit Return Scheme to 2024 and removed glass from its scope.**

As a result of the UK Government agreeing to a temporary exclusion from the UK Internal Market Act's market access principles that does not include glass, the Scottish Government has removed glass from its scheme and delayed its launch to align with the proposed schemes in the rest of the UK in 2024.

The Welsh Government has said that its plans to include glass in its DRS have not changed as a result of the UK Government's decision.

**The Deputy Minister for Mental Health and Well-being announced plans to restrict the placement and price promotion of products high in fat, sugar and salt, which could be impacted by the UK Internal Market Act 2020.**

The Deputy Minister has said that she intends to introduce secondary legislation next year to implement the changes in 2025. The proposals include volume-based promotions, such as multi-buys and restrictions on where products can be displayed. The Welsh Government will also consider measures to limit the inclusion of the unhealthiest products in temporary price promotions and meal deals.

As the proposals relate to the regulation of the sale of goods, there is potential for the effectiveness of the Welsh Government's plans to be limited by the effects of the UK Internal Market Act 2020.

## 4. Legislation

### 4.1. Senedd legislation

**There are four Bills being considered by the Senedd, two at Stage 1, one at Stage 3, and one that has completed its Senedd stages.**

- The [Agriculture \(Wales\) Bill](#) was introduced on 26 September 2022, and is at Post-Stage 4.
- The [Health Service Procurement \(Wales\) Bill](#) was introduced on 13 February 2023, and is currently at Stage 3.
- The [Environment \(Air Quality and Soundscapes\) \(Wales\) Bill](#) was introduced on 20 March 2023, and is currently going through Stage 1 scrutiny.
- The [Infrastructure \(Wales\) Bill](#) was introduced on 12 June 2023, and is currently going through Stage 1 scrutiny.

Stage 3 and 4 scrutiny of the Health Service Procurement (Wales) Bill have been postponed until after the summer recess to enable sufficient time for the Procurement Bill (a UK Bill) to be finalised. Section 2 of the Health Service Procurement (Wales) Bill amends the Procurement Bill (as drafted) so therefore requires the UK Bill to first receive Royal Assent before it can proceed.

The [Environmental Protection \(Single-use Plastic Products\) \(Wales\) Act 2023](#) and the [Historic Environment \(Wales\) Act 2023](#) received Royal Assent in June 2023.

**The First Minister has outlined the Welsh Government’s legislative programme for the year ahead.**

Over the next 12 months, the Welsh Government will introduce legislation on:

- The regulation of bus services;
- Disused coal and non-coal tips safety;
- Health and social care reforms, including eliminating private profit from the care of looked-after children and introducing direct payments for continuing health care;
- Welsh Language Education;

- Two Bills to reform the Senedd, taking forward the recommendations of the Special Purpose Committee on Senedd Reform (see Section 8);
- Electoral administration (see Section 8); and
- Local government finance, including reform of council tax and non-domestic rates

## 4.2. Scottish legislation

**The Scottish Government’s legal challenge to the UK Government’s section 35 order, that blocked the passage of the Gender Recognition Reform (Scotland) Bill, will be heard in court in September.**

The three-day hearing will take place from 19 - 21 September at the Court of Session in Edinburgh. The judge in the hearing will be Lady Haldane, who was appointed a judge at the Supreme Courts of Scotland in 2021.

## 4.3. UK legislation

**The Secretary of State for Justice, Alex Chalk MP, confirmed that the UK Government has decided not to proceed with the Bill of Rights Bill.**

In response to an oral question in the House of Commons, Mr Chalk said that having considered the Government’s legislative programme in the round, the decision had been made not to proceed with the Bill of Rights Bill. He added that the Government remains committed to “a human rights framework that is up to date, fit for purpose and works for the British people”.

**The Animal Welfare (Kept Animals) Bill was withdrawn by the UK Government on 8 June. The Welsh Government were recommending that the Senedd grant its consent to the Bill, which would have introduced various animal protection measures, including the banning of keeping primates as pets.**

The UK Government has said it now plans to take through certain provisions contained within the Bill in a series of single-issue pieces of legislation.

**Two UK Bills which engaged the legislative consent process have received Royal Assent since the last Monitoring Report:**

- The Shark Fins Bill received Royal Assent on 29 June. The Act bans the import and export of detached shark fins. The Senedd voted to give consent to the (then) Bill.

- The Retained EU Law (Revocation and Reform) Bill received Royal Assent on 29 June (see Section 1.1.). The Senedd voted twice to withhold its consent from the (then) Bill.

## 5. Legislative consent

**Since the start of the Sixth Senedd, 86 LCMs and SLCMs have been laid relating to 38 UK Bills. This is a considerable increase from the Fifth Senedd.**

**The Counsel General has criticised the UK Government’s approach to the Sewell Convention in a statement following the fourth meeting of the Inter-Ministerial Standing Committee (IMSC) on 17 May.**

The Counsel General said that increased breaches of the Sewel Convention showed that the UK Government had a “disrespectful and destructive approach to Sewel, to devolution, and to the Union”.

## 6. Constitution

**The Welsh Affairs Committee took oral evidence from the Secretary of State for Wales and the Parliamentary Under-Secretary of State for Wales.**

In a broad-ranging evidence session covering both reserved and devolved matters, the Wales Office Ministers discussed intergovernmental relations, the role of the Wales Office in policy making, health services in Betsi Cadwaladr University Health Board, policing in Wales and water quality.

Committee Members also asked about the Covid-19 Public Inquiry, the future of nuclear power and energy in Wales, investment in road building projects, higher education and the Independent Commission on the Constitutional Future of Wales.

**The Counsel General and Minister for the Constitution, Mick Antoniw MS, has accused the UK Government of taking a “unilateral and destructive approach to devolution”.**

Ahead of a speech to the Constitutional and Administrative Law Bar Association’s annual conference, the Counsel General highlighted the UK Government’s “regular breaches of the Sewel Convention” as evidence that the devolution settlement is under more strain now than ever before.

**The Finance Committee took evidence from members of the Silk Commission to mark ten years since the publication of its first report on financial powers.**

Sir Paul Silk, Chair of the Commission, gave evidence alongside two other members of the Commission, Lord Bourne of Aberystwyth and Eurfyl ap Gwilym, to look at whether its recommendations had been put into practice ten years on.

The Committee asked about the effectiveness of the Barnett Formula, the role of devolved taxes in improving accountability, the Welsh Government's borrowing powers and the potential devolution of the Crown Estate.

**The House of Commons Public Administration and Constitutional Affairs Committee has launched an inquiry into Devolution Capability in Whitehall.**

The Committee will be looking at how the UK Government has built greater devolution capacity within Whitehall departments and how well ministers and civil servants understand devolution arrangements across the UK. The Committee is accepting submissions until Friday 8 September.

## 7. Senedd reform and elections

**The First Minister announced in the legislative programme statement on 27 June that two Senedd reform bills will be introduced in the autumn. These will be:**

- A Bill to implement the majority of the Special Purpose Committee on Senedd Reform's recommendations, including expanding the size of the Senedd to 96 members and introducing a closed list proportional voting system.
- A separate Bill to introduce gender quotas for candidates for election to the Senedd.

At some point in the coming year, an Electoral Reform/Administration Bill will also be introduced, likely to include recommendations from the Electoral Administration and Reform White Paper published in October 2022, with a summary of consultation responses published in March 2023.

Provisions in the Bill are likely to include:

- The establishment of an Electoral Management Board;
- A pilot of some form of automatic registration of electors;

- The transfer of functions from the Independent Remuneration Panel for Wales to the Local Democracy and Boundary Commission for Wales.

Other elements of the White Paper, including consolidating and restating the franchise into one bilingual Act, will form part of a “longer term” programme of electoral reform, and do not form part of the Welsh Government’s legislative programme for the coming year.

### **On 28 June the Senedd considered a Plaid Cymru legislative proposal on mandatory voting.**

The proposed Bill would introduce a civic duty to vote. The Plaid Cymru member moving the motion, Adam Price, argued that such a duty could increase voter turnout dramatically, with some countries such as Australia that have mandatory voting in place recording turnout regularly above 90%. Mr Price said that the proposals would include a ‘none of the above’ option on ballot papers.

Responding to the proposals, the Counsel General and Minister for the Constitution, Mick Antoniw, said:

*the Welsh Government will be abstaining on the motion. Nevertheless, we know that mandatory turnout can work in many countries where it is applied and enforced. [...]*

*Before introducing such a fundamental change, we would need to carry out significant further consideration and consultation, and indeed, there would probably need to be a clear electoral Welsh general election mandate. I think the suggestion of further research, the possibility of a pilot, is something that is well worth exploring.*

## **8. Justice**

### **8.1. Justice in Wales**

#### **The Welsh Government published a white paper on proposed reforms to the Welsh Tribunals.**

The consultation is seeking views on a broad range of proposals, including establishing a First-tier Tribunal for Wales and an Appeal Tribunal for Wales. The Welsh Government’s plans, published in response to a report by the Law Commission, also propose a strengthened role for the President of Welsh Tribunals, greater consistency in appointments and procedures, and a duty to be

placed all those responsible for the administration of justice in Wales to uphold the independence of the Tribunals.

**The Welsh Government has published the minutes of the Cabinet Sub-Committee on Justice meeting on 11 May 2023.**

The meeting is the first attended by Dame Vera Baird, the new Expert Adviser to the Welsh Government on Justice Devolution. On the agenda was an update on the justice transformation programme, the rollout of the Family Court Pathfinder pilot, reform of the Welsh Tribunals and a presentation on Family Ties – a programme to support family and significant other ties of offenders in Wales.

**Lord Bellamy wrote to the Legislation, Justice and Constitution Committee to address questions raised by stakeholders on justice in Wales.**

Lord Bellamy, Parliamentary Under-Secretary of State for Justice, addressed issues around accessibility of digital court service, the availability of data about the justice system in Wales, and the barriers faced by people from black, Asian and other minority ethnic groups within the legal profession.

In his response, Lord Bellamy also addressed the “jagged edge” in the Welsh justice system and reiterated his position that the Ministry of Justice does not believe there are “significant practical difficulties” and that “reserved authorities and devolved authorities work extremely effectively together”.

## **8.2. UK Parliament**

**The House of Lords Constitution Commission undertook its annual evidence session with the Lord Chief Justice of England and Wales.**

Lord Burnett of Maldon appeared before the Committee for the final time as Lord Chief Justice. The Committee asked about a broad range of topics, including his position on the role of the Lord Chancellor, the backlog in court cases, strains on the family justice system, and judicial recruitment.

There were also questions about improving diversity in the judiciary, the availability of civil legal aid, and the physical estate of the courts.

Lord Burnett will leave his role as Lord Chief Justice on 30 September 2023.

**HM Prison and Probation Service gave oral evidence to the House of Lords Justice and Home Affairs Committee on Community Sentences.**

The Executive Director for Wales, Chris Jennings, joined the Chief Probation Officer for England and Wales, Kim Thorden-Edwards, for the evidence session and spoke

about schemes underway in Wales to support people on community sentences, including on mental health support in Swansea.

### **8.3. Appointments**

**Dame Sue Carr has been appointed as the new Lord Chief Justice of England and Wales.**

She will take up the post on 1 October 2023 and she will be the first woman to hold the post as the most senior judge in England and Wales. The appointment was made by His Majesty the King on the advice of the Prime Minister and the Lord Chancellor following the recommendation of an independent selection panel.

**The Most Rev Barry Morgan and Judge Greg Sinfield have been reappointed Commissioners of the Judicial Appointments Commission.**

The Most Rev Barry Morgan is Archbishop Emeritus of Wales and is an academic. He has been reappointed for a second term of two years until July 2025.
















Judge Sinfield is President of the First-tier Tribunal (Tax Chamber) and has been reappointed for a second term of three years until June 2026.

**The Honourable Mr Justice Fraser has been appointed as the new Chairman of the Law Commission for England and Wales.**

Mr Justice Fraser will take up the post on 1 December 2023 for a period of three years. He sits as both a judge of the Technology and Construction Court and the Commercial Court.

## 9. 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

