

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Committee Room 4, Tŷ Hywel	P Gareth Williams
Meeting date: 13 March 2023	Committee Clerk
Meeting time: 14.00	0300 200 6565
	SeneddLJC@senedd.wales

1 Introductions, apologies, substitutions and declarations of interest

(14.00)

2 President of Welsh Tribunals: Annual Report 2021–22

(14.00 – 15.00)

(Pages 1 – 37)

Sir Wyn Williams, President of Welsh Tribunals

Rhian Davies Rees, Head of Welsh Tribunals Unit

Attached Documents:

LJC(6)–09–23 – Paper 1 – Annual Report 2021–22

LJC(6)–09–23 – Paper 2 – Briefing

3 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3

(15.00 – 15.05)

Made Negative Resolution Instruments

3.1 SL(6)326 – The Council Tax (Additional Provisions for Discount Disregards) (Amendment) (Wales) Regulations 2023

(Pages 38 – 39)

[Regulations](#)



Senedd Cymru
Welsh Parliament

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-09-23 – Paper 3 – Draft report

4 Instruments that raise issues to be reported to the Senedd under Standing Order 21.7

(15.05 – 15.10)

4.1 SL(6)327 – The Curriculum for Wales – Statements of What Matters Code

(Pages 40 – 43)

[The Curriculum for Wales – Statements of What Matters Code](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-09-23 – Paper 4 – Draft report

5 Inter-Institutional Relations Agreement

(15.10 – 15.15)

5.1 Correspondence from the Minister for Social Justice: Safety, Security and Migration Interministerial Group

(Pages 44 – 47)

Attached Documents:

LJC(6)-09-23 – Paper 5 – Letter from the Minister for Social Justice, 6 March 2023

LJC(6)-09-23 – Paper 6 – Written Statement by the Minister for Social Justice, 6 March 2023

5.2 Correspondence from the Counsel General and Minister for the Constitution: Inter-Ministerial Group for Elections and Registration

(Pages 48 – 49)

Attached Documents:

LJC(6)-09-23 – Paper 7 – Letter from the Counsel General and Minister for

the Constitution, 7 March 2023

LJC(6)-09-23 – Paper 8 – Written Statement by the Counsel General and Minister for the Constitution, 7 March 2023

5.3 Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd: The Sea Fisheries (Amendment) Regulations 2023

(Pages 50 – 51)

Attached Documents:

LJC(6)-09-23 – Paper 9 – Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 9 March 2023

6 Papers to note

(15.15 – 15.20)

6.1 Correspondence from the Minister for Health and Social Services to the Health and Social Care Committee: Retained EU Law (Revocation and Reform) Bill

(Pages 52 – 57)

Attached Documents:

LJC(6)-09-23 – Paper 10 – Letter from the Minister for Health and Social Services to the Health and Social Care Committee, 27 February 2023

6.2 Correspondence from the Counsel General and Minister for the Constitution to UK Government: Strikes (Minimum Service Levels) Bill

(Pages 58 – 60)

Attached Documents:

LJC(6)-09-23 – Paper 11 – Letter from the Counsel General and Minister for the Constitution to UK Government, 7 March 2023

6.3 Correspondence from the Counsel General and Minister for the Constitution to the Llywydd: Protection from Sex-based Harassment in Public Bill

(Pages 61 – 62)

Attached Documents:

LJC(6)-09-23 – Paper 12 – Letter from the Counsel General and Minister for the Constitution to the Llywydd, 7 March 2023

6.4 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: Agriculture (Wales) Bill

(Pages 63 – 81)

Attached Documents:

LJC(6)-09-23 – Paper 13 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 March 2023

6.5 Correspondence from the Gender Network: Retained EU Law (Revocation and Reform) Bill

(Page 82)

Attached Documents:

LJC(6)-09-23 – Paper 14 – Letter from the Gender Network, 8 March 2023

6.6 SL(6)325 – The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023

(Pages 83 – 84)

Attached Documents:

LJC(6)-09-23 – Paper 15 – Letter to the Minister for Climate Change, 6 March 2023

6.7 Correspondence from Finance Committee: Welsh Government Draft Budget 2023–24

(Pages 85 – 86)

Attached Documents:

LJC(6)-09-23 – Paper 16 – Letter from Finance Committee, 8 March 2023

6.8 Equality and Social Justice Committee report: women's experiences in the criminal justice system

(Page 87)

Attached Documents:

LJC(6)-09-23 – Paper 17 – Letter from the Equality and Social Justice Committee, 9 March 2023

6.9 Correspondence from the Minister for Climate Change to the Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations: Social Housing (Regulation) Bill

(Pages 88 – 89)

Attached Documents:

LJC(6)-09-23 – Paper 18 – Letter from the Minister for Climate Change to the Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations, 9 March 2023

7 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

(15.20)

8 President of the Welsh Tribunals: Consideration of evidence

(15.20 – 15.35)

9 International agreements

(15.35 – 15.45)

(Pages 90 – 92)

Attached Documents:

LJC(6)-09-23 – Paper 19 – Briefing



To:

Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee

26 January 2023

Dear Mr Huw Irranca-Davies


FOURTH ANNUAL REPORT OF THE PRESIDENT OF WELSH TRIBUNALS

I am pleased to send you my Fourth and final Annual Report. It covers the financial year 2021/2022 and also the period between April 2022 and 31 December 2022.

It has been an honour to have served as the first President of Welsh Tribunals and I will follow the further development of the devolved tribunal system in Wales with considerable interest.

Yours sincerely

SIR WYN WILLIAMS
PRESIDENT OF WELSH TRIBUNALS



President of Welsh Tribunals Fourth Annual Report April 2021 to December 2022

11 January 2023



Tribiwnlysoedd Cymru
Welsh Tribunals

Llywydd / President

Pack Page 2

Contents

1.	Introduction	3
2	Updates upon the Third Annual Report	4
3	The Law Commission report on the Welsh Tribunals	6
4	Thanks and reflections	10

1. Introduction

1.1 This is my fourth and last Annual Report. On 31 March 2023 I will retire from the role of President of Welsh Tribunals having held the role since July 2017. On 1 April 2023 Sir Gary Hickinbottom will become President. I am delighted to be succeeded by a distinguished former judge of the Court of Appeal of Wales and England. I know Sir Gary very well; we have been judicial colleagues for 20 years or thereabouts. He is dynamic and innovative and has Wales very close to his heart.

1.2 My Third Annual Report covered the year ending 31 March 2021, although it was not published until October 2021. I have deliberately delayed publishing my Fourth Report until close to my retirement date so as to avoid the need to write yet a further report after I have retired. If any event occurs or decision of consequence is made in the period 1 January 2023 to 31 March 2023 no doubt it will be noted and, if necessary, discussed in the First Annual Report published by Sir Gary.

1.3 In my First Annual Report I explained that one of the statutory duties imposed upon the President of Welsh Tribunals by the Wales Act 2017 was to represent the views of members of the Welsh Tribunals to the Welsh Ministers and to members of the (then) National Assembly for Wales. Following consultation with the First Minister and Counsel General I decided that I would discharge that duty by producing an annual report which would be presented to the First Minister and the Presiding Officer of the National Assembly. I hope that my annual reports to the First Minister and the Llywydd thus far have discharged that duty. I hope, too, that they have also fulfilled a much wider function, namely to provide a reasonably detailed and transparent account of how the Welsh Tribunals have operated over the last 5 years or so.

1.4 I am sure that readers of this report will be familiar with the tribunals which are known collectively as “the Welsh Tribunals”. For the avoidance of any doubt, however, I set them out as they are referred to in the Wales Act 2017, as amended, together with the acronyms that are often used for shorthand identification of each tribunal.

Section 59 of the Wales Act 2017 defines the phrase ‘Welsh Tribunal’ to mean:

- (a) the Agricultural Land Tribunal for Wales/Tribiwnlys Tir Amaethyddol Cymru (“ALTW”);
- (b) the Mental Health Review Tribunal for Wales/Tribiwnlys Adolygu Iechyd Meddwl Cymru (“MHRTW”);
- (c) a rent assessment committee constituted in accordance with Schedule 10 to the Rent Act 1977 (including a leasehold valuation tribunal and a residential property tribunal) (“RPTW”);
- (d) the Education Tribunal for Wales/Tribiwnlys Addysg Cymru (“ETW”);
- (e) a tribunal constituted in accordance with Schedule 3 to the Education Act 2005 (registration of inspectors in Wales: tribunals hearing appeals under section 27);
- (f) a tribunal drawn from the Adjudication Panel for Wales/Panel Dyfarnu Cymru (“APW”);
- (g) the Welsh Language Tribunal/Tribiwnlys y Gymraeg (“WLT”).

1.5 Those who are familiar with the list of Welsh Tribunals will realise that the Special Educational Needs Tribunal (SENTW) is missing from the list. That tribunal was renamed Educational Tribunal Wales (ETW) by provisions within the Additional Learning Needs and Education Tribunal (Wales) Act 2018 which came into force on 1 September 2021. ETW has jurisdiction to determine appeals about additional learning needs, special educational needs and discrimination in schools. Appeals can be brought by or behalf of nursery age children and young people from 16 to 25 years.

1.6 The Welsh Tribunals are administered by the Welsh Tribunals Unit (WTU) which is part of the civil service supporting the Welsh Government but which strives to be and appear to be as independent of Government as is practicable.

1.7 The remainder of this report consists of two main sections. In Section 2, I provide factual information (an update) about such matters as numbers of cases, recruitment and appointments, cross-ticketing as between Welsh Tribunals and with English Tribunals, Practice Directions, my engagements, the working arrangements and budget of the Welsh Tribunals Unit and the use of the Welsh language within the Tribunals. In Section 3 I describe the main features of the Law Commission's report on Welsh Tribunals which was presented to the Senedd and the response of the Welsh Government both to the Commission's report and to the Report of the Commission on Justice in Wales. There is a short section 4 which provides me with an opportunity to thank all those who have assisted me throughout my tenure and to offer a few reflections.

2. Updates on Previous Annual Reports

2.1 The number of applications received by the Welsh Tribunals in the financial year 2021-2022 and between 1 April 2022 and 31 December 2022 is set out in the Table below. The number of applications in the financial years 2019-2020 and 2020-2021 are provided for comparison purposes.

Table 1: Number of applications per tribunal

Tribunal	Financial Year 2019-2020	Financial Year 2020-2021	Financial Year 2021-2022	April – December 2022	Hearings held in Welsh April – December 2022
ALTW	22	13	20	24	0
MHRTW	1943*	1790	1840	1291	0
RPTW	112	106	113	84	0
SENTW/ ETW	172	116	151	68	3
APW	2	4	10	1	0
WLT	16	13	3	0	2

* Historically MHRTW data for annual reports was exported from a number of sources (Manual and electronic). In 2019-20 the data for applications and referrals received have been taken from MHRTW CRM records management system removing the risk of any human error. This change in reporting methods has created the appearance of a decrease in applications and referrals for MHRTW but the probability is that had the same methodology been adopted in previous years the applications and referrals would have been of a similar order to those of recent years.

2.2 Further information about the nature of the work undertaken and the membership of each tribunal is set out in each of their annual reports. All such reports are published on the website of each tribunal.

2.3 During the financial year 2021-22 the Deputy President of SENTW/ETW was appointed following an expression of interest competition organised by the President of ETW. In the financial year 2022-23 3 legal members were appointed to ETW following a competition administered by the Judicial Appointments Commission (JAC). MHRTW welcomed a total of 53 new members over the period 1 May 2021 to 31 December 2022, namely 20 lay members, 19 legal members and 14 medical members. In that same period 9 legal members were appointed to RPTW. There was much less cross ticketing during this period. In October 2021, one lay member of MHRTW was authorised to sit in APW. In January 2022, two lay members from MHRTW and APW were authorised to sit in RPTW.

2.4 It is worth noting that all legal appointments to the Welsh Tribunals are open to legal practitioners who practise in England as well as Wales. Essentially, that is because all legal practitioners in Wales and England are qualified to practice in both countries.

2.5 In November 2021 the Judicial Appointments Commission (JAC) launched a competition for 2 full time salaried legal members of MHRTW. This competition was the consequence of an evaluation made by the President of the MHRTW and I (with considerable assistance from WTU) as to whether the work of this Tribunal justified the recruitment of salaried legal members – the unanimous conclusion being that it did. It was, therefore, very disappointing that there was a very limited number of applicants for appointment and that the JAC did not consider that any of the applicants were appointable.

2.6 Although there has been a good deal of speculation about why these posts attracted so little interest, I have no reliable evidence base upon which to draw proper conclusions. Generally speaking, my experience has been that there is fierce competition for judicial appointments throughout all four countries of the UK, although I am also aware that there have been individual competitions for judicial appointments in both the Courts and tribunals of England and Wales which have failed to attract much interest.

2.7 Despite this set back, a further competition for 2 salaried members of MHRTW will be launched in the coming weeks. In this competition (unlike the last) applicants will be invited to apply for posts which will require them to hear cases relating to restricted patients as well as cases involving all other persons making applications to the MHRTW. I intend to ensure that this competition is publicised widely, and every effort will be made to ensure that applicants of suitable quality come forward.

2.8 I reached the conclusion that the salaried posts being advertised should be aimed at candidates who were suitable for appointment to hear cases relating to restricted patients (as well as carrying out all other aspects of the work of MHRTW) because over recent months, in particular, there has been very considerable strain on a few of those legal members of the Tribunal who are authorised to hear cases involving restricted patients. So much so that I recently decided to invoke the power (delegated to me by the Lord Chief Justice) to authorise existing legal members of MHRTW (who were not authorised to hear cases involving restricted patients) to hear such cases. I invited expressions of interest from all the existing legal members of MHRTW and indicated that I was contemplating authorising up to 4 members. 11 members of the Tribunal responded. I have a statutory duty to consult the Lord Chancellor upon those whom I intend to appoint and I am currently waiting for his views upon the candidates whom I have indicated to him that I would like to appoint.

2.9 On 10 March 2022 the retirement age for all tribunal members in England and Wales was raised from 70 to 75.¹ The legislation bringing that change into force applied to all the members of the Welsh Tribunals who were governed by predecessor legislation of passed by the UK Parliament.² Until 10 March 2022 all the members of the Welsh Tribunals (with certain exceptions) were required to retire at 70 but could be authorised to “sit in retirement” on an annual basis until the age of 75. It was commonly the case that members applied to sit in retirement and, subject to the business needs of their tribunal, many members were authorised to sit beyond the age of 70. The person making the decision as to sitting in retirement was the appointing authority e.g. the Lord Chancellor for members of MHRTW.

2.10 Following the coming into force of the 2022 Act the “sitting in retirement” regime applies only to legal members who are under the age of 75 at the date of their retirement. A lay or specialist member of a Welsh Tribunal cannot sit once they retire if they chose to retire prior to age 75. If a legal member of the Welsh Tribunals retires prior to age 73 he/she may apply

1 See Section 121 and Schedule 1 Public Service Pensions and Judicial Offices Act 2022.

2 Judicial Pensions and Retirement Act 1993.

to sit in retirement and the person making the decision as whether to authorise sitting in retirement is the President of Welsh Tribunals. This is a new role for the President; the power has been conferred by the UK Parliament. The Welsh Government has thought it appropriate that secondary legislation is passed to underpin sitting in retirement under the 2022 Act. These regulations are shortly to be made by the First Minister with the concurrence of the President of Welsh Tribunals – perhaps a further sign of the growing role of the President.

2.11 Following the coming into force of the 2022 Act, material provisions of the 1993 Act were repealed. They included the sitting in retirement provisions contained in the 1993 Act. At the time of repeal an application for authorisation for sitting in retirement for a lay member of MHRTW was extant but not considered by the Lord Chancellor. As a result there is no legal mechanism to enable her to sit in retirement and a very experienced Welsh speaking member of the Tribunal has been lost to it.

2.12 Since April 2021 I have attended many meetings of bodies of which I am a member by virtue of my Presidency of Welsh Tribunals. I am a member of the Tribunal Judiciary Executive Board, the Administrative Justice Council, the Welsh Committee of the Judges' Council which is chaired by the Lord Chief Justice and the newly constituted Law Council for Wales. As I explained in my last Annual Report, the Tribunal Judiciary Executive Board has judicial representation from all the constituent parts of the United Kingdom and is made up exclusively of judges. It is a very significant forum for discussions about judicial decision making in relation to the processes to be adopted within all the tribunals of the UK. Naturally, it provided invaluable sources of information about working practices which could be adopted by Welsh Tribunals so as to take account of the restrictions imposed to combat the effect of the pandemic.

2.13 The Administrative Justice Council is also a UK body. It has a wide membership consisting of judges, academic lawyers, academics in fields related to justice and administrators. The head of the Welsh Tribunals Unit, a representative of the Public Service Ombudsman for Wales and I are regular attenders at Council meetings. The Council provides a forum for detailed discussions upon topics of interest relating to the workings of tribunals as well as providing detailed insight into substantive legal issues which arise within the tribunals. The Welsh Committee of the Judges' Council is an advisory body which informs the Lord Chief Justice upon issues which relate to Wales. Its membership comprises judges at all levels from lay magistrates to Lord Lloyd-Jones in the Supreme Court. Obviously much of its time is taken up with matters arising in the courts and Welsh tribunals of England and Wales which are administered by HMCTS Wales but the Committee receives a report from me at every meeting about all important matters relating to Welsh Tribunals which sometimes provokes considerable debate. The Law Council for Wales is still in its infancy but it has begun work on projects which will, when they come to fruition, be of considerable benefit to the evolving laws and legal institutions in Wales.

2.14 Each of these bodies meets regularly and membership of each ensures that the President of Welsh Tribunals is very well placed to keep abreast of all important developments in the tribunals which exist in all four countries of the UK and in all matters concerning the administration of justice in Wales.

2.15 As and when necessary, I consult with the Presiding Judges of Wales. Most recently I have consulted with the senior presiding judge relating to members of the MHRTW who are also serving circuit judges and, whose time for sitting in MHRTW is, therefore, necessarily limited. I fear that such are the demands upon circuit judges who try criminal and family cases that they may have less and less time to sit in MHRTW. If that gloomy prediction comes to pass the Tribunal will lose legal members with invaluable experience.

2.16 I have continued to chair quarterly meetings of the judicial leads of the Welsh Tribunals. These meetings were always intended to provide the opportunity for discussing matters of concern to the judicial leads of individual tribunals and/or matters which concern all the tribunals. I have no doubt that they have succeeded in fulfilling that goal. The meetings also provide the opportunity for direct contact between the judicial leads as a group and senior members of the WTU. When invited I have also attended meetings and training days organised by individual tribunals.

2.17 On 1 November 2021 I appeared as witness before the Legislation, Justice and Constitution Committee of the Senedd. I was asked many detailed and thought provoking questions. My answers to the various questions are, of course, a matter of public record. I am grateful to the Committee for the opportunity of appearing before them and I hope and expect that I will appear before the Committee once more before I retire.

2.18 On 23rd November 2021 my Third Annual Report was the subject of a debate in a plenary session of the Senedd. This was the second occasion that an Annual Report was debated in the Senedd and as with the first occasion the contributions of members of the Senedd were not narrowly confined to the four corners of my report. The debate ranged far and wide over matters relating to justice in Wales.

2.19 My last annual meeting with the First Minister took place on 13th October 2021. As in previous years the First Minister was accompanied by the Counsel General and his private secretary; I was accompanied by the Deputy Director – Constitution and Welsh Tribunals and the head of WTU. Not surprisingly, much of the conversation was taken up with the effect of the pandemic on the work of the tribunals. However, we also discussed the possibility of appointing full time salaried legal members of MHRTW, the Commission for Justice in Wales, the Law Commission project on Welsh Tribunals, the role of the President of Welsh Tribunals and succession planning in respect of that office. My last meeting with the First Minister is scheduled to take place on 1 February 2023.

2.20 I should record that I have had very frequent discussions with the head of the WTU, more occasional discussions with other civil servants and, as and when necessary, meetings with the two Welsh Government lawyers who have been given the specific role of providing legal advice to me, the WTU and, if necessary, the individual tribunals. The support given to me by all these people has been extensive and invaluable throughout my tenure.

2.21 Finally I should mention two “one-off” meetings which have taken place in 2022. In the spring I met with Lord Wolfson KC, then a Justice Minister of the UK Government, about a proposed UK Bill of Rights. The discussion was informative and I was given the opportunity to provide my view as to the impact of such a Bill on the work of the Welsh Tribunals. In the summer, I met with the Welsh Commissioner of JAC, Dr Barry Morgan, to discuss a number of issues relating to appointments to Welsh Tribunals.

2.22 More or less since March 2020 the WTU staff have been working from home in line with Welsh government guidelines. Small numbers of staff were made key workers in order to access and deal with post at the offices as and when necessary. While a great deal of the work of the Tribunals can be conducted electronically hard copies of some documents are still sent to offices. I am extremely grateful to the individuals who have worked so flexibly with the aim of ensuring that all tribunal services have been maintained despite the difficult circumstances prevailing. The WTU was quick off the mark to find alternative hearing methods rather than face to face hearings when the restrictions were put in place last March, as I have described in previous reports.

2.23 WTU staff based at offices in Llandrindod Wells have been relocated to refurbished offices within the existing Powys County Council building. This relocation occurred in July 2021. These offices are the headquarters of ETW, ALTW and APW. No hearings take place at this location since it is not appropriate to conduct hearings in a building which is owned and, in part, occupied by Powys County Council given that it can sometimes be involved as a party in individual cases. Cases brought before ETW, ALTW and APW which require face to face hearings are heard in locations which best meets the needs of the parties and tribunal members.

2.24 In the financial year 2021-22 the budget allocated to WTU was £4,148,000.00. That budget was intended to provide for both tribunal and administrative running costs. The actual expenditure for the year was £4,092,047.00.

2.25 This is the second financial year running in which the budget has exceeded expenditure. However, the underspend in this financial year was small compared with the underspend in 2020-21. It is almost entirely a product of the continuing use of remote hearings. Such hearings are inevitably less expensive to operate with no fees payable for hearing rooms and minimal travel expenses for tribunal members and staff.

2.26 The budget allocation for 2022-23 is £4,233,000. I cannot predict whether the budget will be used in full although as with the previous year much will depend upon the ratio between remote and face to face hearings. No doubt my successor will provide appropriate details when he produces his first report.

2.27 All the Tribunals continue to offer a full Welsh language service to their users in accordance with duties imposed by the compliance notices issued by the Welsh Language Commissioner in relation to Welsh Language standards.

2.28 Whilst APW is not subject to the standards, it operates in line with the other tribunals and treats the Welsh language no less favourably than English. In each of my earlier reports I predicted that it was likely that APW would be made subject to the standards but that has not yet happened. Nonetheless, it is still expected that this will occur in the near future.

2.29 The uptake of the Welsh language service remains very low. Table 1 above shows that during the period under review the Welsh language was used in 5 hearings across all Welsh Tribunals. In 2020-21 Welsh was used in 20 cases and in 2021-22 there were 6 cases.

3. The Law Commission Report and Responses to it

3.1 On 8 December 2021 the Law Commission presented its report on Devolved Tribunals to the Senedd. No doubt the Law Commission used the phrase Devolved Tribunals (as opposed to Welsh Tribunals) because its terms of reference permitted the Commission to consider a wider body of tribunals and panels than those specified as being Welsh Tribunals in section 59 of the Wales Act 2017. As was very much to be expected, the Commission undertook a very detailed investigation. The report contains 53 recommendations. In my view, it must be read in full in order to understand its true importance.

3.2 Nevertheless it is important that I highlight what I regard as the major recommendations made by the Commission. They are:

- the Welsh Tribunals which I list above in my Introduction should be replaced by a single First-tier Tribunal for Wales, which may then be sub-divided into chambers;
- the Valuation Tribunal for Wales should become a chamber of the First-tier Tribunal;
- school exclusion appeals should be heard by ETW;
- An Appeal Tribunal for Wales should be created to hear and determine appeals from the First-tier Tribunal;
- the President of Welsh Tribunals should be the presiding judge of the First-tier Tribunal and the Appeal Tribunal;
- a Tribunal procedure Committee should be created which should be chaired by the President of Welsh Tribunals;
- A Tribunals Service for Wales should be created as a non-ministerial department;
- Welsh Ministers and others responsible for the administration of justice in Wales should be subject to a statutory duty to uphold the independence of the Welsh tribunals;
- All members of the First-tier Tribunal for Wales and the Appeal Tribunal of Wales should be required to take a judicial oath or affirmation.

3.3 Those who are familiar with my earlier reports, my responses to the draft report of the Law Commission and public statements made by me during the course of giving evidence to the Constitution Legislation and Justice Committee will know that I very much support the recommendations I have highlighted above. Nonetheless I recognise that two of those recommendations, in particular, do not command the support of all those who responded to the draft proposals upon which the Law Commission consulted. They are the proposal that the Valuation Tribunal for Wales should become part of the First-tier Tribunal for Wales and that Wales should have its own Appeal Tribunal.

3.4 I acknowledge that the Valuation Tribunal has its own structure and administration which, currently, is substantially different from the structure of the Welsh Tribunals and the WTU. I had the pleasure and honour of addressing the annual training day of the Tribunal in the autumn of 2021 in which some of its members made clear their opposition to being part of the First-tier Tribunal. Nonetheless I am convinced by the reasons advanced by the Law Commission that the Valuation Tribunal should join the family of Welsh Tribunals and not remain a stand-alone body.

3.5 I regard the creation of an Appeal Tribunal for Wales as essential. Appeal rights and routes of Appeal from the Welsh Tribunals are complicated and confusing. Having one route of appeal to an appeal tribunal which applies the same criteria for determining an appeal regardless of the particular Welsh Tribunal from which the appeal originated would be a distinct improvement to the tribunal system in Wales.

3.6 I am aware that the Welsh Government has set out its response to the recommendations contained within the Law Commission Report in a document entitled “Delivering Justice for Wales” which was published on 25 May 2022. As its title suggests the document is wide-ranging; it considers crucial issues about how justice as a whole should be administered in Wales. However, Chapter 9 is devoted to the views of Welsh Government on Tribunal reform with particular reference to the Report and recommendations of the Law Commission.

3.7 It is clear from Chapter 9 of “Delivering Justice for Wales” that the Welsh Government is supportive of many of the 53 recommendations made by the Law Commission in its report. In particular there are expressions of support for a much greater degree of independence for the WTU, the creation of a First-tier Tribunal for Wales, the creation of an Appeal Tribunal for Wales and the enhancement of the role of President of Welsh Tribunals in accordance with the recommendations of the Law Commission. Welsh Government also supports the Valuation Tribunal becoming part of the First-tier Tribunal although it recognises the need for further consultation on this issue. It is worth noting too that while the Welsh Government supports WTU having a much greater degree of independence it has not committed to creating a non-ministerial department to administer the Welsh Tribunals.

3.8 It is, of course, widely acknowledged that many of the recommendations made by the Law Commission will require legislation if they are to be brought into effect. My understanding is that the Welsh Government intends to bring forward a Tribunal Bill prior to the next Senedd elections. While it is not my place to comment on what might be described as the political aspects of devolution it seems to me to be self-evident that if the Welsh Tribunals are to flourish as devolved institutions many of the reforms suggested by the Law Commission must form the basis of that Bill. The Law Commission began its report by describing how the Welsh Tribunals evolved haphazardly. I quote:

“Most [tribunals] were created at various points in the 20th century, as thinking about tribunals and their relationship with Government was evolving. They were also created before devolution. As a result their processes and procedural rules vary significantly, and there are gaps and inconsistencies”

3.9 The Welsh Government accepts that description as being accurate. There appears to be a clear recognition that nothing short of appropriate legislation can cure the many anomalies and inconsistencies which currently exist in the Welsh Tribunal system.

4. Thanks and a Few Reflections

4.1 I should record publicly my thanks to all the members of the Welsh Tribunals and all the members of staff of the WTU for their hard work over my period in office and especially, of course, since March 2020. I have enjoyed the unstinting support of many people for which I am very grateful and I have enjoyed very good working relations with the head of WTU and her senior staff. I believe, although they may have different views, that I have enjoyed equally good working relations with the judicial leads of all the Welsh Tribunals.

4.2 All aspects of the justice systems operating in the United Kingdom have faced extraordinary challenges as a consequence of the Covid Pandemic which began in earnest in early 2020. The Welsh Tribunals, so used to all or nearly all its hearings being conducted “face to face”, adapted to remote ways of working with speed and efficiency and they have become extremely adept at hearings conducted via a video platform or telephone. No doubt one of the more important tasks of my successor together with the judicial leads over the coming months will be to strike an appropriate balance between remote and “face to face” hearings.

4.3 I wish to pay particular tribute to two judicial leads who will be giving up their roles shortly. Ms Rhiannon Walker has served for approximately 20 years as the President of SENTW and then ETW. Her contribution to solving the educational problems of very many vulnerable children and young people has been very significant. To carry out a leadership role of a tribunal for 20 years or thereabouts is an outstanding achievement. I understand that she is retiring in the true sense of the word. She will undoubtedly be greatly missed and I wish her a long and happy retirement. Ms Claire Sharp is the President of APW and she has held that position for 7 years. Under her leadership the Panel has dealt with a number of difficult cases in an exemplary fashion. Ms Sharp will not be lost to the administration of justice in Wales. She was appointed as a salaried Employment Judge based in Wales in 2021 and, understandably, she has concluded that she cannot combine a full-time salaried role as an employment judge with the leadership of APW. I wish her every success in her flourishing career.

4.4 It has been an honour to have spent the last 6 years of my judicial career engaged in a role which is concerned exclusively with Wales. That said, the role of the President of Welsh Tribunals is not and should not be introspective. I have learned a great deal about the work of tribunals from my involvement in United Kingdom bodies such as the Tribunals Judiciary Executive Board and the Administrative Justice Council and I have benefitted substantially from the willingness of colleagues in England, Northern Ireland and Scotland to share with me aspects of their ways of working. My work as President has without out doubt “opened my eyes” to the challenges of devolution and sparked a keen interest in the constitutional arrangements which govern the United Kingdom. These are topics which I will follow with great interest over the next few years.

4.5 The next 4 years will be challenging for my successor. He will need to be abreast of all aspects of tribunal reform in Wales as well as potentially significant challenges to MHRTW, if, as anticipated, the UK Parliament enacts new legislation relating to mental health. The last 6 years was a good time to have been the first President of Welsh Tribunals; I have a strong suspicion that the next 4 years will be even more interesting.

A handwritten signature in cursive script, appearing to read 'Wyn Williams'.

Sir Wyn Williams
President of Welsh Tribunals

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

Agenda Item 3.1

SL(6)326 – The Council Tax (Additional Provisions for Discount Disregards) (Amendment) (Wales) Regulations 2023

Background and Purpose

The Council Tax (Additional Provisions for Discount Disregards) (Amendment) (Wales) Regulations (“the Regulations”) amend the Council Tax (Additional Provisions for Discount Disregards) Regulations 1992 (“the Discount Disregards Regulations”) in relation to Wales.

The Regulations amend the Discount Disregards Regulations to ensure that people from Ukraine who move on from residing with, or do not reside with a sponsor under the UK Government’s Homes for Ukraine Sponsorship Scheme do not continue to be disregarded for the purposes of a discount in relation to their own council tax liability. The Regulations amends Class H of the Discount Disregards Regulations to provide that the existing disregard only applies where a person who holds permission to enter or to stay in the United Kingdom under the Homes for Ukraine Sponsorship Scheme resides with a sponsor under that scheme.

The Welsh Government’s Explanatory Memorandum provides that the Discount Disregards Regulations are amended to ensure consistent and fair treatment with other Ukraine nationals who have secured their visa by either the Ukraine Family Scheme or the Ukraine Extension Scheme, and to ensure consistent treatment in relation to refugees and asylum seekers from other countries.

Procedure

Negative.

The Regulations made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

- 1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**



In the preamble, section 116(1) of the Local Government Finance Act 1992 is cited as an enabling power. However, this appears to be incorrect as section 116(1) doesn't confer any powers that are exercised by the Welsh Ministers in the making of these Regulations.

Section 116(1) is a general interpretation section that includes a definition of "prescribed" as meaning prescribed by regulations. That information is normally only included in a footnote to aid the reader, and isn't cited in the preamble— see SIP 3.11.15 to 3.11.17, and 3.11.22.

Therefore, its citing in the preamble requires further explanation by the Welsh Government.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

1 March 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee

Pack Page 39

Agenda Item 4.1

SL(6)327 – The Curriculum for Wales – Statements of What Matters Code

Background and Purpose

The Curriculum for Wales – Statements of What Matters Code (“the Code”) places a statutory duty on maintained schools and funded settings to ensure their design and planning of a curriculum under the Curriculum for Wales Framework includes, and draws from, the key concepts (or “statements of what matters”) set out in the Code. It updates and replaces the original version of the Code published on 15 November 2021 (“the Original Code”).

The Curriculum and Assessment (Wales) Act 2021 (“the Act”) sets out the six areas of learning and experience on which maintained schools and funded settings must base their curriculum, namely expressive arts; health and well-being; humanities; languages, literacy and communication; mathematics and numeracy; and science and technology. The Code sets out 27 statements of what matters across those six areas. A curriculum designed or adopted by maintained schools and funded settings, and the associated learning and teaching, must encompass the statements of what matters in order to meet the requirements of the Act.

Procedure

Draft Negative.

The Welsh Ministers have laid a draft of the Code before the Senedd. If, within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the draft being laid, the Senedd resolves not to approve the draft Code then the Welsh Ministers must not issue the Code.

If no such resolution is made, the Welsh Ministers must issue the Code (in the form of the draft).

Scrutiny under Standing Order 21.7

The following 3 points are identified for reporting under Standing Order 21.7(i) in respect of the Code.

1. The Explanatory Memorandum to the Code confirms (at paragraph 2.1) that the Welsh Government is currently updating (in draft) the online Curriculum for Wales Framework Guidance pending issue of the revised Code. The guidance was originally published on 28 January 2020 incorporating the 27 statements of what matters as set out in the Original Code.

The Memorandum notes that the Government is updating the guidance now “to allow schools and settings greater time to draw on that advice to inform their curriculum design and planning through the 2022/23 academic year”.



2. The Explanatory Memorandum (at paragraph 2.1) indicates that the Code will be issued on 28 April 2023, subject to the draft negative Senedd procedure.

However, the Code was laid before the Senedd on 20 February 2023. Discounting periods of more than four days during which the Senedd is in recess, or scheduled to be in recess, the earliest date that the Code may be issued in accordance with the procedure set out in section 76 of the Act appears to be 29 April 2023.

3. There appear to be some inconsistencies between the English and Welsh versions of the Code, which are listed in the Annex to this report.

Government response

A Welsh Government response to the second and third reporting points is required.

Legal Advisers

Legislation, Justice and Constitution Committee

8 March 2023



Annex

1. On page 1 of the English text/page 2 of the Welsh text, in the entry for "**Related Documents**" at the bottom of the page, the word "guidance" is missing from the Welsh text. "Canllawiau" is used later in paragraph 1.5 of the Code as the Welsh translation for "guidance" in the same context.
2. In footnote (2) for the final bullet point in paragraph 1.4, the English text refers to "children" and "pupil". However, the corresponding Welsh text refers to "learners" and "learner".
3. In paragraph 1.5, there is a reference in both language texts to "pages **4** to **15** of this Code". However, there is a difference in the numbering of the English and Welsh texts, as page 1 of the English text has been numbered as page 2 in the Welsh text. Therefore, the Welsh text should say "dudalennau **5** i **16** o'r Cod hwn" if following the page numbering currently found in the Welsh text.
4. In paragraph 2.1.2, in the Welsh text, in the final paragraph, "challenges" has been translated as "ysgogi" which means "to inspire". Everywhere else in Welsh text of the Code, it has been translated as "herio" which literally means "to challenge".
5. In paragraph 2.2.5, in the Welsh text, the term "relationships" has been translated as "**cydberthnasau**" (including its mutated forms) everywhere in that paragraph other than in the opening sentence. So, it appears inconsistent to use a slightly different word "perthnasau" in that sentence and suggests to the reader of the Welsh text that it bears a different meaning.
6. In paragraph 2.3.4, in the second paragraph, the word "**pluralistic**" in the English text has been translated as "lluosieithog" in the Welsh text. However, "lluosieithog" means "**plurilingual**" and it is used with that meaning later in paragraphs 2.4.1 and 2.4.2 of the Welsh text.
7. In paragraph 2.3.4, in the final sentence of the second paragraph, "diverse" in the phrase "**diverse** history, cultural heritage,...." hasn't been included in the Welsh text.
8. In paragraph 2.3.4, there is a difference between the English and Welsh texts in the fourth paragraph. The English text includes the phrase "**in the learners' own** locality" whereas the literal meaning of the corresponding Welsh text is "locally". Therefore, it could be argued that the emphasis upon "in the learners' own" is missing from the translation unless it is viewed as being implied. There are also a few other places in the Welsh text where the word "learner" seems to be considered as being implied rather than expressly stated (such as in paragraph 2.5.4).



9. In paragraph 2.3.5, in the second paragraph, in the Welsh text, there's a typographical error in the words that correspond to the phrase "**in the** UNCRC and UNCRPD". The Welsh text states "**i** dan" for the words that correspond to "in the" which doesn't make sense. The intention may have been to state "**o** dan" (literally, "under the UNCRC and UNCRPD").
10. In paragraph 2.5.1, in the Welsh text, there is a slight inconsistency in the translation of "number system" which is used in the heading and in the first paragraph. In the heading, "system rif" has been used as the translation, but in the first paragraph "system rifo" has been used.
11. In paragraph 2.6.1, there is a difference between the English and Welsh texts. In the first paragraph, the opening words of the third sentence of the English text state "Developing and testing models...". But the corresponding Welsh text has added an adjective that means "useful" after "models" so that the meaning it conveys is "Developing and testing **useful** models....".
12. In paragraph 2.6.1, the English text refers to "regarding **the climate and nature emergency**" but the Welsh text has translated the meaning as "regarding **climate change**".
13. In paragraph 2.6.5, in the final sentence, the English text refers to "responsible citizens **of Wales and the world**". However, the words "of Wales and the world" are missing from the Welsh text.
14. In paragraph 2.6.6, in the fourth sentence, the opening words of the English text states "To create and use **digital** technologies...." but the word "digital" is missing from the Welsh text.



Agenda Item 5.1

Huw Hutt MS
Y Gweinidog Cyfiawnder Cymdeithasol
Minister for Social Justice



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: Safety, Security and Migration IMG
JH/PO/72/2023

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
SeneddLJC@senedd.wales

6 March 2023

Dear Huw,

Inter-Institutional Relations Agreement: Safety, Security and Migration Interministerial Group

I am writing further to my letter of 24 January, and in accordance with the Inter-Institutional Relations Agreement, to report on the first meeting of the Safety, Security and Migration Interministerial Group (IMG), held on 1 February. I was hoping to have had the opportunity to inform you of the agenda items prior to the meeting but, unfortunately, I did not receive the agenda until 48 hours before it was due to start, which did not allow sufficient time. I hope that as the meetings of this IMG progress, the sharing of documents in a timely manner will become the norm.

The meeting was attended by the Home Secretary, the Rt Hon. Suella Braverman KC MP, as the Chair, by the Scottish Government's Minister for Culture, Europe and International Development, Neil Gray MSP and by the Head of the Northern Ireland Civil Service, Dr Jayne Brady.

During the meeting I re-emphasised the Welsh Government's focus on crime prevention and welcomed the opportunity this IMG provides for the sharing of best practices

The meeting also provided me with an opportunity to discuss our views on the new Nationality and Borders Act and I suggested that the next IMG meeting should focus on the improvement of access to safe and legal migration routes. I expressed the Welsh

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Jane.Hutt@llyw.cymru
Correspondence.Jane.Hutt@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Government's concerns around the UK Government's current policy which prevents asylum seekers from being able to seek employment and the ongoing accommodation issues.

The next meeting is due to take place in May and I will inform you once a date has been finalised.

Further information can be found at [Interministerial Group for Safety, Security and Migration Communiqué: 1 February 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/interministerial-group-for-safety-security-and-migration-communiqué-1-february-2023).

I am copying this letter to Jenny Rathbone MS, Chair of the Equality and Social Justice Committee.

A handwritten signature in black ink that reads "Jane Hutt". The signature is written in a cursive style with a long horizontal line above the first name.

Jane Hutt AS/MS

Y Gweinidog Cyfiawnder Cymdeithasol

Minister for Social Justice



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Safety, Security and Migration Interministerial Group**

DATE **06 March 2023**

BY **Jane Hutt MS, Minister for Social Justice**

In accordance with the Inter-Institutional Relations Agreement, I am giving notification that I attended the first meeting of the Safety, Security and Migration Interministerial Group (IMG), which took place virtually on 1 February, bringing together members of all four governments.

The meeting was attended by the Home Secretary, the Rt Hon. Suella Braverman KC MP, as the Chair, and the Scottish Government's Minister for Culture, Europe and International Development, Neil Gray MSP. In the absence of Ministers in the Northern Ireland Executive, Dr Jayne Brady, Head of the Northern Ireland Civil Service, was also in attendance.

During the meeting I re-emphasised the Welsh Government's focus on crime prevention and welcomed the opportunity this IMG provides for the sharing of best practices. I outlined my work with the Domestic Abuse Commissioner and my role as Co-Chair, with PCC Dafydd Llywelyn, of our Violence Against Women, Domestic Abuse and Sexual Violence National Partnership Board, which has a wide-ranging remit including violence in the home, the workplace and in public places. I reiterated the Welsh Government's commitment to further fund police community support officers across Wales.

I stated the need for Welsh Government officials to have early engagement with the UK Government on developments of the Nationality and Borders Act and stressed the need for immediate and continued discussions around current safe and legal migration routes into the UK. I suggested that safe and legal migration routes be a substantial agenda item at the next IMG.

I also expressed my interest in the Scottish Rural Visa Pilot.

There was a discussion about Asylum Dispersal, in which I highlighted the pressures that had been placed on Welsh Local Authorities and the negative impact the tariff reduction for the Ukrainian Resettlement Scheme had had on community cohesion. I expressed our disappointment in the UK Government's policy preventing asylum seekers from gaining employment, which is detrimental to the economy, given the ongoing labour shortages. I also explained that the Welsh Government has a strategy in place to provide transitional accommodation for those with a housing need in Wales and it would be beneficial if discussions could be held prior to the UK Government procuring hotels in Wales for emergency housing.

I welcomed the discussion on some aspects of Homeland Security.

A short joint Communiqué is published on the UK Government website at:

[Interministerial Group for Safety, Security and Migration Communiqué: 1 February 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/interministerial-group-for-safety-security-and-migration-1-february-2023)

Agenda Item 5.2

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref 2023/01/25 IGR

Huw Irranca-Davies MS,
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru

SeneddLJC@senedd.wales

7th March 2023

Dear Huw

I am writing in accordance with the inter-institutional relations agreement. My earlier letter informed you that a meeting of the Inter-Ministerial Group for Elections and Registration would be taking place on 25 January and that I would be representing the Welsh Government. I am now writing to give you an update from that meeting.

I have today issued a Written Ministerial Statement which includes an agreed Communiqué from the meeting which can be found at:

<https://www.gov.uk/government/publications/communiqués-from-the-interministerial-group-for-elections-and-registration/interministerial-group-for-elections-and-registration-communicue-25-january-2023>

Yours sincerely

Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Mick.Antoniw@llyw.cymru
Correspondence.Mick.Antoniw@gov.Wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



Llywodraeth Cymru
Welsh Government

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE Inter-Ministerial Group for Elections and Registration (IMG Elections)

DATE 07 March 2023

BY Mick Antoniw MS, Counsel General and Minister for the Constitution

In accordance with the inter-institutional relations agreement, I can report to Members of the Senedd that I represented the Welsh Government at a meeting of the Inter-Ministerial Group for Elections and Registrations on 25 January.

The meeting was held virtually and chaired by Lee Rowley MP, Parliamentary Under Secretary of State, Department for Levelling Up, Housing and Communities. Also in attendance were George Adam MSP, Scottish Government Minister for Parliamentary Business and Steve Baker MP, Minister of State, Northern Ireland Office.

This meeting was a chance to hear an update from the UK Government on the implementation of the Elections Act 2022 and the Scottish Government's consultation on electoral reform, as well as giving an update on the Welsh Government's consultation on electoral reform.

A joint [Communiqué](#) relating to the meeting was issued on 3 March 2023 (external link in English only).

We continue to work together, with meetings planned to take place on a quarterly basis with rotating chairing arrangements. I will keep Members updated.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	The Sea Fisheries (Amendment) Regulations 2023
DATE	13 March 2023
BY	Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd

The Sea Fisheries (Amendment) Regulations 2023 (“the 2023 Regulations”)

Members of the Senedd will wish to be aware I have given consent to the Secretary of State for DEFRA exercising a concurrent subordinate legislation-making power in a devolved area in relation to Wales.

Agreement was sought on 11 January 2023 by Lord Benyon, Minister for Biosecurity, Marine and Rural Affairs to make a Statutory Instrument titled the Sea Fisheries (Amendment) Regulations 2023. The 2023 Regulations apply in relation to Great Britain and Northern Ireland.

The 2023 Regulations have been made by the Secretary of State in exercise of powers conferred by section 36(1)(b) and (c) of the Fisheries Act 2020.

The 2023 Regulations amend retained EU legislation Council Regulation (EU) 2020/123 (EUR/2020/123) in respect of the regulation of Seabass fisheries, increasing the allowable bycatch in line with scientific advice, as well as aligning the closed season for both commercial and recreational fishers. Picked dogfish (spurdog) under or equal to 100cm is removed from the prohibited species list contained in Article 16 of Council Regulation (EU) 2020/123 (EUR 2020/123) to implement the outcome of the 2022 EU-UK Fisheries Consultation for fishing opportunities in 2023. Further, to implement measures agreed at the International Commission for the Conservation of Atlantic Tunas (ICCAT) Convention Area, the prohibited species list contained in Article 16 is amended to add shortfin mako shark (*Isurus oxyrinchus*) in United Kingdom and international waters of the ICCAT area.

Consent was granted as these Regulations provides for the outcome of international negotiations, undertaken collaboratively between the fisheries administrations, and discharges international obligations of the UK in relation to the Trade and Cooperation Agreement and the UKs membership of ICCAT. Further, the measures related to seabass apply to a shared fishery which operates within and beyond the Welsh zone. In order for them to be effective, they need to apply on a UK basis and apply to all vessels operating in UK waters.

The 2023 Regulations were laid before Parliament 08/03/2023 and will come into force on 01/04/2023.



Llywodraeth Cymru
Welsh Government

Russell George MS
Chair
Health and Social Care Committee

SeneddHealth@senedd.wales

27 February 2023

Dear Russell,

Thank you for your letter of 26 January in relation to the potential implications of the UK Government's Retained EU Law (Revocation and Reform) Bill for health and social care in Wales. I shall answer your questions in the order in which they were asked.

Overarching issues and identification of REUL

Question 1: What are your views on the impact of the Retained EU Law (Revocation and Reform) Bill on health and social care in Wales?

I share the Welsh Government's overall opposition to the approach being taken by the Bill. REUL generally operates effectively and provides crucial protections across different aspects of Welsh life, including workers' rights, environmental protections and public health safeguards. The Bill poses a significant distraction at a time when governments across the UK should be focused on matters of greater importance such as the cost-of-living crisis.

REUL forms an important part of the legal framework underpinning a variety of issues relevant to my portfolio. The general concerns about the potential implications of the Bill are therefore applicable to a health and social care context. Of particular concern is the deadline set by the Bill to review REUL before the sunset date of 31 December 2023, which sets an unnecessary and arbitrary timescale for reviewing an entire body of law and runs the risk of important legal protections being removed from the statute book on this date, without appropriate scrutiny.

For health and social care, REUL provides important protections which have been built up over a significant period of time. In responding to the Bill over the coming year my priority will be to ensure that key standards and protections are maintained as far as possible.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Eluned.Morgan@llyw.cymru
Correspondence.Eluned.Morgan@gov.wales

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Question 2: We note that the UK Government's REUL Dashboard only includes REUL made by UK Ministers. Could you provide us with a list of REUL made by Welsh Ministers that relates to health and social care?

The dashboard published by UK Government includes REUL relating to a number of health policy areas, including regulation of medicines, medical devices and substances of human origin, as well as a high concentration relating to food standards and safety. It is also important to note that UK Government's identification of REUL is an iterative process and therefore its dashboard is subject to ongoing review. The current list comprises examples of both reserved and devolved REUL, and my officials are continuing to work with counterparts in UK Government on this analysis and to develop more granular detail about whether instruments apply to Wales within devolved areas.

In addition to the REUL which falls to the Department for Health and Social Care (DHSC) as the lead UK Government department, it is important to note that REUL in other areas such as environmental regulation will also be of interest to my portfolio. We will look to engage in key developments from other parts of Government where there is a clear health and social care policy interest.

We recognise that significant work is also needed to ensure we identify all relevant REUL which has been made in Wales (and is therefore not captured in UK Government's dashboard). This will mostly comprise statutory instruments made by Welsh Ministers to transpose EU Directives into Welsh law. Work is progressing to identify such REUL, drawing on a variety of sources and including support from the National Archives. A full list is not yet available but I will be able to provide further information on this in due course.

Decisions on REUL

Question 3: The Counsel General told the LJC Committee on 5 December 2022 that the Welsh Government intended to implement a triage process to inform its decisions in respect of REUL. Could you identify which pieces of REUL, or which policy areas affecting health and social care (for example public health or food labelling) the Welsh Government intends to prioritise for consideration within the triage process?

REUL currently provides important protections across a range of regulatory issues. Whilst the arbitrary timescale imposed by the UK Government's Bill means there will be a need to prioritise, I am also mindful that each specific piece of REUL performs an important function in its own right. In approaching this issue my intention will be to minimise the risks of important protections being lost and to do everything we can to ensure that standards are not reduced.

Until the work referred to under Question 2 above is completed, it is too early to single out particular policy issues which will be given priority consideration. We will be in a position to prioritise effectively once we have a fuller picture and all the relevant information in place, including detail of UK Government's intentions for where it will be looking to remove or amend specific pieces of REUL. However, at this early stage I can confirm that REUL which is identified as being most closely linked to public safety will be uppermost in my mind as this work progresses over the coming months.

Question 4: Could you confirm whether the Welsh Government plans to use the powers in this Bill to preserve the standards relating to health and social care that are within competence?

In considering the REUL which is within devolved competence, my overall priority will be to ensure that we minimise risks of important legal protections falling off the statute book at the end of this year. My starting position is that the majority of REUL should be preserved / assimilated as far as possible, with clear evidence needed to justify any plans for changes. I have no plans to reduce standards in important areas of devolved regulation. Whilst I am minded to be in favour of preservation, the mechanics of precisely how that would be achieved needs to be worked through.

Notwithstanding this clear starting position, in considering individual pieces of REUL it is also important to note that Wales does not operate in a regulatory vacuum. It will therefore be important to take account of the approaches being taken in other parts of the UK. Where changes to the status quo are being considered outside Wales, it will be important to understand as far as possible the implications of either aligning with, or diverging from, positions being taken elsewhere. Whilst our ability to do this work is limited by the timing constraints imposed by the Bill, it remains an important consideration in ensuring that legal frameworks remain fit for purpose and are able to operate effectively in the future.

Question 5: How would you respond to the concerns raised by stakeholders such as the Welsh NHS Confederation, the WCVA and the Food Standards Agency that important standards and protections relating to issues such as public health and food labelling could be lost in Wales if regulations are not saved or reformed?

I broadly recognise and share the concerns raised by key stakeholders. The risks of important protections being lost, either unintentionally or as part of a wider UK Government 'deregulation' agenda, are a major part of the rationale for the Welsh Government's strong opposition to the Bill.

For health and social care, our response will be focused on mitigating the types of risks raised by stakeholders. Our intention to preserve / assimilate devolved REUL as outlined earlier in this response will be a key component of this. For the REUL which does not clearly lie within devolved competence, our preference is to maintain the REUL that applies to Wales unless there are very good reasons for not doing so, and we will continue to put forward that position in our engagement with UK Government.

In looking to minimise the risks as far as possible, we will be keen to work closely with key partners and stakeholders, for example to ensure that all the Welsh REUL within the scope of the Bill is identified and considered. The Food Standards Agency (FSA) in Wales is already actively engaged in this work due to the significant amounts of REUL within its areas of responsibility, and FSA and Welsh Government officials are continuing to work closely on the development of a specific programme of work in this policy area.

Question 6: Could you set out how the Welsh Government will consider the long term implications for population health and wellbeing when making decisions in relation to REUL?

Whilst I believe REUL generally works effectively, I accept that there may be some instances where future changes will be appropriate. However, in considering any potential changes or reforms, it is important to first have a full understanding of the implications, both in the short and long term. The timescales imposed by the UK Government's Bill as currently drafted do not sufficiently allow for this detailed work, and therefore in my view changes being driven through at speed risk having unintended consequences.

My preferred approach of initially maintaining REUL as far as possible seeks to mitigate this risk whilst also providing the flexibility to consider areas for potential future reform in a more responsible way. Consideration of regulatory reforms should not happen to an arbitrary timescale but should instead take place in a managed way and to a timescale which allows for full analysis of the potential implications to take place, with appropriate consultation with affected stakeholders.

Stakeholder engagement

Question 7: Can you outline how the health and social care sector in Wales will be involved in the processes of triaging REUL, and reaching decisions in relation to whether pieces of REUL should be saved, reformed or removed in line with the 31 December deadline set out in the Bill?

As indicated earlier in this response, my priority in responding to the UK Government's Bill will be to maintain devolved REUL as far as possible in order to reduce risks of important protections being lost from the statute book at the end of this year. This will be a pragmatic response which effectively means maintaining as much of the status quo as we can, whilst giving us the flexibility to consider future reforms over a longer period.

The timescale imposed by the UK Government's Bill is likely to constrain the amount of proactive engagement which we can undertake, and by seeking to maintain the status quo as far as possible we will be focusing on mitigating what we consider to be the greatest risk in the short term. We will of course engage with stakeholders from the Welsh health and social care sector as far as we are able to in the time available. Where we will be considering priorities for future changes, our intention would be for this to be done over a more realistic timescale which allows for much fuller involvement with the sector.

Question 8: Will you commit to engaging stakeholders and considering their views throughout this process?

My intended approach of maintaining the REUL which applies in Wales as far as possible aims to preserve as much of the status quo as we can, at least in the short term. This mitigates the greatest short-term risk of losing important protections from the statute book at the end of this year.

The timescales imposed by the UK Government Bill will inevitably constrain the amount of engagement which can take place at this stage. However, I am very happy to commit to engaging key stakeholders as far as the time available allows. Where future changes or reforms are being considered over a longer timescale, stakeholder views will be sought more fully as part of general policy development processes.

Intergovernmental working

Question 9: Could you provide information about any discussions you or your Deputy Ministers have had with other governments in the UK about the impact of the Bill on health and social care, or about how any changes to relevant REUL would be coordinated if the Bill is passed?

Outside of health, discussions are continuing between Welsh Government and UK Government on the overall concerns with the Bill in its current form. I expect these discussions will cover issues such as coordination and consent mechanisms as UK Government's intended approach becomes clearer.

Discussions to date with the UK Government's Department for Health and Social Care have focused at official level, and have included discussion around the identification of relevant REUL and consideration of the balance between reserved and devolved responsibilities. I would expect that discussions at Ministerial level will also be needed at certain points in the process.

I can also confirm that responsibility for matters relating to the FSA in Wales (which has responsibilities related to a significant volume of REUL) rests with the Deputy Minister for Mental Health and Wellbeing.

Question 10: What is your view on how the Bill might interact with other post-Brexit arrangements which affect health and social care, such as common frameworks, the Internal Market Act 2020 or trade agreements?

There are a range of potential interdependencies between REUL and other arrangements. This again demonstrates the complexity around these issues and underlines the risks of the Bill unintentionally undermining other aspects of the broader legislative, policy and regulatory landscape. These complexities reinforce my general view that substantial changes to REUL should only be considered over a longer timescale than the current UK Government Bill provides.

A number of the health policy areas with REUL currently in place are covered by UK common frameworks which were developed by the four nations following the UK's exit from the EU. Notable examples cover aspects of nutrition policy, food and feed safety, and substances of human origin. I remain fully committed to the effective implementation of these agreements, and they should provide structure for discussions between different parts of the UK about the developing approaches to REUL in these areas, including managing possible future divergence. I would emphasise that it will be crucial that the frameworks are implemented in the collaborative spirit in which they were developed, in order that all countries of the UK are equal partners in discussions.

In relation to the Internal Market Act 2020, the Counsel General has expressed concerns that the effects of this Act could have further impacts should regulatory divergence occur (for example through the UK Government amending or repealing REUL in England). This could have implications for the ability to maintain and improve standards, in effect, in REUL in Wales. These concerns have been relayed to UK Government.

A further potential interdependency relates to the international trade agreements being negotiated by the UK Government. Any obligations entered into as part of new trading relationships will need to be cognisant of existing and planned legal obligations. As a Government we continue to press UK Government to ensure that key protections and standards are not undermined through its trade negotiations.

Impact on the Welsh Government's legislative programme

Question 11: Could you explain whether any elements of the Welsh Government's legislative programme relevant to health and social care (for example the Clean Air Bill) will be affected by the Bill, and if so how.

It is too early to tell whether, and to what extent, the Bill will impact on the Welsh Government's wider activity. It is however clear that the Bill in its current form has potential to distract resources and focus from other important activity. As we respond to the Bill we will also work tirelessly to protect the delivery of our Programme for Government and legislative programme.

I hope you will find the information in this response helpful.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Agenda Item 6.2

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: CG/PO/74/2023

Kevin Hollinrake MP
Parliamentary Under Secretary of State
Department for Business and Trade
1 Victoria Street
London
SW1H 0ET
Minister.Hollinrake@beis.gov.uk

07 March 2023

Dear Kevin,

I am writing further to the First Minister's letter dated 16 January on the UK Government's Strikes (Minimum Services Levels) Bill.

We strongly oppose this Bill in Wales and note the significant opposition to it which extends beyond the Welsh Government, opposition parties and trades union. We are following the legislative scrutiny of the Bill and recognise the concerns raised by many peers during the Bill's 2nd reading in the House of Lords, including by eminent crossbenchers like Baron Judge, a former Lord Chief Justice for England and Wales. We hope the Bill will be defeated in the Lords and believe firmly that Ministers should not seek to take powers that impede the path to positive resolutions by making the right to withdraw labour illusory.

The draft Bill has already drawn criticism from the ILO and other nations and the Welsh Government deprecates in the strongest terms the attempt that is being made to impose deeply undemocratic provisions on services which are devolved to Wales. These services are overseen on the basis of mandates provided by the people of Wales and not the whim of a UK Secretary of State who is not answerable to that electorate on devolved matters. The Bill as drafted undermines the integrity of democratic devolution and should not bring devolved public services into scope.

There is no evidence the Bill will help resolve current disputes, but there is every indication it will do lasting damage to industrial relations across the UK and will interfere with devolved public services in Wales. We do not agree with your analysis that the UK Government is legislating solely within its reserved competence for employment rights and duties and industrial relations. The Bill clearly contains clauses that make provision with regard to the devolved matters of health, education, fire and rescue services and some transport matters.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Mick.Antoniw@llyw.cymru
Correspondence.Mick.Antoniw@gov.Wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The Bill also contains sweeping Henry VIII powers which allow consequential amendment to be made to legislation that concerns devolved matters. The power to make regulations enables amendment, repeal or revocation to an Act or Measure of Senedd Cymru. These matters are not merely incidental to the Bill and require the consent of the Senedd. To that end, we have laid a Legislative Consent Memorandum (LCM) in the Senedd. I am confident when the LCM is debated and voted upon in the coming weeks, we will see a clear demonstration of the Senedd's lack of consent for the Bill and its provisions with regard to devolved matters.

In many ways, your own consultation documents acknowledge the Bill makes provisions with regard to services which are fully devolved. For example, your consultation in respect of ambulance services says they are “run differently in England, Scotland and Wales and are the responsibility of the Scottish and Welsh Governments respectively” and that there are “implications of those differences for setting minimum service levels”. There is similar commentary in your consultation documents in respect of fire and rescue services and rail services. Across all these services, there are significant strategic and operational differences in Wales, and it is an affront to devolution that UK Ministers should exercise powers that will impact on these areas, without an electoral mandate or the consent of the Senedd.

The lack of detail in the Bill makes it difficult to set out with any precision the potential impact the Bill could have on services in Wales, but taking rail as an example, it's clear the options which are being looked at could see a disproportionately negative impact on some routes and areas. It's not hard to see how rail routes that are busier and viewed as more business critical will be prioritised at the expense of others, particularly those deemed to be in more peripheral parts of the UK.

As regards fire and rescue services, defining a “minimum service level” would need a full and detailed knowledge of local risks of fire and other incidents, including locations and facilities (like oil refineries, tall residential buildings and ports) which present higher or unusual risks; and of the current disposition and availability of crews, appliances and specialist assets available to respond to them. These factors vary considerably from one area to another, and indeed over time as many fire risks are seasonal. There would be particular problems in Wales given that most of the country is sparsely populated and served only by on-call firefighters who could not practically be subjected to a work notice, as they are not obliged to work in any event. It would be impossible to generalise about all of these factors at a GB-wide or indeed Wales-wide level, or to reduce it to a simple percentage of firefighting staff. Any Secretary of State who purported to make such a decision would be assuming considerable risks, including risks to life, as any such decision would be necessarily ill-informed and not reflective of local needs and capabilities.

We are not prepared to see these decisions play out in rail, in ambulance services and in fire and rescue – decisions which will ultimately be taken by a UK Minister divorced from the conditions and negotiations in Wales. Across all of the relevant services which are wholly – or partially devolved – the terms and conditions negotiated by Welsh public bodies are interwoven with the strategic and operational plans for the delivery of services which derive from programmes for government, developed on the basis of democratic devolved elections.

We are concerned that in practice, this Bill allows UK Ministers to take unpredictable decisions with far reaching consequences that could jeopardise negotiations. Any regulation that is made by a Secretary of State that interferes with industrial disputes within devolved public services could prolong action that would otherwise be resolved as a result of Wales level negotiations. The Bill only requires the Secretary of State to “consult such persons as

the Secretary of State considers appropriate” and does not stipulate any framework whatsoever to ensure that consultations are carried out with sufficient time and with the involvement of responsible parties such as employers and trades unions. Similarly, no route or role is provided for Welsh Ministers, even where they are responsible for the service in question rather than the Secretary of State.

The Welsh Government cannot take comfort from informal assurances offered by UK Ministers who may pledge to not make regulations that interfere with devolved public services. The UK Government made similar commitments in relation to the use of financial assistance powers during the passage of the UK Internal Market Bill. However, these powers are now being used on a systematic basis to allocate spending in relation to the levelling up agenda and which leaves Welsh communities and businesses severely worse off.

Given the views of the Welsh and Scottish Government’s on this Bill, I urge you to think again and to remove devolved public services from the scope of this Bill. It cannot be right that a UK Minister should be empowered to make regulations which will impact on the operations of devolved services, and which will have a deleterious impact on the partnership relationships we have, and which employers and trade unions have freely entered into.

Our strong and constructive relationships with employers and trade unions are based on good faith, mutual respect and trust, and they are essential to how we use our devolved responsibilities to run devolved services differently and in the collective interests of the people of Wales.

I am copying this letter to the Secretary of State for Wales, the Welsh Affairs Committee in the House of Commons, and the Legislation Justice and Constitution Committee in the Senedd.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style and is positioned above a short horizontal line.

Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

Ein cyf/Our ref: CG/PO/75/2023

Rt Hon. Elin Jones MS
Llywydd and Chair of the Business Committee
Senedd Cymru
Cardiff Bay
Cardiff
CF99 1SN

SeneddBusiness@senedd.wales

07 March 2023

Dear Elin,

The Protection from Sex-based Harassment in Public Bill (“the Bill”), which is a Private Member’s Bill, was introduced in the UK Parliament, the House of Commons, on 15 June 2022.

Committee Stage was held on 22 February. After engagement with UK Government, an amendment was made to the Bill to extend the application of the offence it creates to Wales. This amendment has resulted in the Bill becoming ‘relevant provision’ for the purposes of Standing Order 29. In accordance with Standing Order 29, we will lay a legislative consent memorandum (LCM).

In order to present the Senedd with our final recommendation on the Bill I have instructed officials to engage further with UK Government on outstanding matters relating to the commencement of the Bill. I acknowledge this will likely mean this LCM will be laid more than two weeks after the point at which ‘relevant provision’ has been made, but I believe this will ensure it accurately reflects the development of the Bill and will enable effective Senedd scrutiny.

I do not anticipate this process to lead to a significant delay, however I wanted to ensure you are clear on the status of this Bill and our intentions. I will ensure our LCM is laid as soon as we have a settled position. As a Private Member’s Bill, we do not envisage the Bill to change much following this stage.

Report Stage for this Bill is scheduled for 24 March. Subsequent dates are not yet available though we will ensure the Senedd is kept informed.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Mick.Antoniw@llyw.cymru
Correspondence.Mick.Antoniw@gov.Wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I am copying this letter to the Minister for Social Justice and the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely,

A handwritten signature in blue ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

Agenda item 6.4

Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair of the Legislation, Justice and Constitution Committee
Welsh Parliament

7 March 2023

Dear Huw

Thank you for the Legislation, Justice and Constitution Committee's Report published on 27 January regarding the Agriculture (Wales) Bill as part of Stage 1 scrutiny.

I am grateful to the Committee for its considered Stage 1 scrutiny. I have carefully considered the committee's recommendations and considerations of the Bill.

As outlined during the Stage 1 General Principles Debate on 7 February 2023 please find enclosed at Doc 1 my response to the set of recommendations within the Report.

Regards



Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Annex: Response to Legislation, Justice and Constitution Committee’s report on the Agriculture (Wales) Bill – March 2023

Recommendation 1. Any subsequent Agriculture Bill introduced by the Welsh Government should not be a framework Bill and as such, should not contain extensive delegated powers for the Welsh Ministers that would set out in regulations policy details that should appear on the face of the Bill.

As set out in the Programme for Government, tackling the climate and nature emergencies are a priority for this Government. The Agriculture (Wales) Bill represents the first stage of our programme of agricultural reform, and we will continue to work closely with stakeholders and farmers on our long-term proposals. Any future Agriculture Bill will have to consider matters relevant to that period including for example the implications of the UK Government REUL Bill. As and when further information on any future proposals is available, an update will be provided to the Committee.

Recommendation 2. The Minister should state clearly what policy she intends to cover in the next Agriculture Bill to be introduced into the Senedd and the likely date of introduction.

As set out in the Programme for Government, tackling the climate and nature emergencies are a priority for this Government. The Agriculture (Wales) Bill represents the first stage of our programme of agricultural reform, and we will continue to work closely with stakeholders and farmers on our long-term proposals including the content of the next Agriculture Bill. Any future Agriculture Bill will have to consider matters relevant to that period including for example the implications of the UK Government REUL Bill. As and when further information on any future proposals is available, an update will be provided to the Committee.

Recommendation 3. The Minister must provide a more definitive view of how the Bill will be impacted by the Retained EU Law (Revocation and Reform) Bill by the start of Stage 3 proceedings (subject to the Senedd agreeing the general principles).

Accepted in principle

The Welsh Government is considering how it will respond to the situation, in effect, imposed by the UK Government on reviewing Retained EU law.

We will continue to review the progress of the UK Government’s Retained EU Law (Revocation and Reform) Bill (REUL Bill), and will, if possible, provide a more definitive view by the start of the stage 3 proceedings.

The Welsh Government fundamentally opposes the intent of the REUL Bill. The way that UK Government has constructed the Bill would remove essential economic, social and environmental protections.

Recommendation 4. The Minister should explain why the Welsh Government did not take the opportunity, on the face of the Bill, to save, reform or remove law in the field of agriculture that is currently contained in retained EU law.

Accepted

As currently drafted the REUL Bill has powers which the Welsh Government could exercise to preserve REUL in areas of devolved competence.

The Welsh Government is considering how it will respond to this Bill and will work with the UK Government to identify all devolved retained EU law including those instruments made by the UK Government and Parliament.

The purpose of the Agriculture Bill is to create a long term made-in-Wales sustainable land management provision that will not rely upon retained EU law.

Recommendation 5. The Minister should state clearly whether the effectiveness in Wales of any of the Bill's provisions (should it be passed and enacted) will be dependent on, or affected by, any of the requirements of the United Kingdom Internal Market Act 2020.

Accepted

As was made clear throughout the passage of the Environmental Protection (Single-Use Plastics Products) (Wales) Bill, the Welsh Government's position is that the Senedd can legislate free from the requirements of the UK Internal Market Act.

Therefore, the effectiveness of this Bill in Wales will not be dependant, or affected by, the provisions of that Act.

Recommendation 6. The Minister should table amendments to the Bill to insert overview sections into Parts 1, 2 and 3 of the Bill as a means of explaining clearly the purpose of each Part and what it is seeking to achieve.

Not Accepted

The inclusion of overview provisions for Parts 1, 2, and 3 of the Bill was considered as part of the Bill's development, recognising overview provisions can be useful to aid accessibility, particularly where provisions are dense by their nature, for example when amending existing legislation (as with Parts 4 and 5 of this Bill).

For this Bill, an overview (for Parts 1, 2 and 3) was considered unnecessary as they would add little or nothing to the Bill contents and might have unintended consequences. The Explanatory Memorandum, however, will be reviewed and updated, as appropriate, to provide further clarity.

Recommendation 7. The Minister should table an amendment to section 1 of the Bill to provide a Wales-specific definition of sustainable land management.

Not Accepted

Sustainable Land Management (SLM) is clearly and precisely described in the Bill by the four SLM objectives and the SLM duty (sections 1 to 3). The objectives set a clear and ambitious framework for agricultural policy in Wales, focussing action to contribute to sustainable food production, to address the urgent nature and climate emergencies, to conserve and enhance the countryside and cultural resources and improve access to them and to promote and sustain the Welsh language. The SLM objectives provide a made in Wales, for Wales, approach which focusses on the outcomes the agricultural sector should be providing for those who work our land and for the wider population of Wales. I want SLM to be actionable and for it to deliver for Wales.

The SLM duty determines how the objectives will be applied and sets a high threshold so the Welsh Ministers must exercise relevant functions in the way they consider best contributes to achieving the objectives (so far as consistent with the proper exercise of the function). In this way, the objectives and the duty do not expand the powers of the Welsh Ministers, but rather focus the exercise of certain functions, such as, for example, the power to provide support, to contribute to achieving particular outcomes.

The duty and the objectives apply to a very wide range of functions and address complex, fundamentally important and ongoing issues. It is appropriate, as the SLM provisions do, to establish clear objectives to address those issues, alongside a strong duty that focusses action in a balanced and ambitious way.

I am pleased to note that although there were a number of detailed comments and suggestions for amendments, the ETRA committee report explains that the four SLM objectives “were generally welcomed” by stakeholders (paragraph 76) and has not recommended a definition of sustainable land management on the face of the Bill.

The SLM objectives and the duty establish a bespoke Wales-specific approach that has been informed (amongst other things) by the UN definition, developed in the specific legislative context in Wales, in particular the Well-being of Future Generations (Wales) Act 2015 (“WFG Act”) and the Environment (Wales) Act 2016 (“Environment (Wales) Act”), and through extensive stakeholder consultation and engagement.

Importantly, the SLM provisions support and are consistent with the WFG Act and the Environment (Wales) Act. In particular, the provisions are consistent with the definition of the sustainable management of natural resources (section 3, Environment (Wales) Act) which proceeds by reference to the objective specified at section 3(2) of that Act. The approach also compliments and is consistent with the WFG Act, including in particular section 3(2) of that Act, which requires public bodies to set and publish objectives (“well-being objectives”) that are designed to maximise their contribution to achieving each of the well-being goals when carrying out sustainable development.

Recommendation 8. The Minister should review Part 1 of the Bill to consider whether it would benefit from more detail explaining how the new system of sustainable land management will operate in practice and in conjunction with Part 2, with a view to tabling amendments that will make the legislation more accessible to stakeholders.

Accepted in principle

The SLM provisions apply to a very wide range of functions and address complex, fundamentally important and ongoing issues. These include food production, the urgent nature and climate emergencies and the Welsh language. The provisions provide a clear and ambitious framework with a strong duty on the Welsh Ministers to take action they consider best contributes to achieving the objectives. It is not possible to legislate to define in further detail how the provisions may operate in practice across the wide range of agricultural functions to which they will apply, and in the wide range of circumstances that may arise. The provisions have also been designed to enable the Welsh Ministers to provide timely and effective support, which is able to respond to the changing needs of the farming industry and its supply chains.

The Explanatory Memorandum will be reviewed and updated, as appropriate, to provide further clarity on the relationship between Part 1 and Part 2 of the Bill for stakeholders.

The principal delivery mechanism for SLM; the Sustainable Farming Scheme is still being designed and will go out for consultation this year. This consultation will provide further clarity as to how the scheme will operate and in turn how it will contribute to achieving of the sustainable land management objectives.

Recommendation 9. The Minister should, before the start of Stage 3 proceedings, provide to this Committee and the Economy, Trade and Rural Affairs Committee a list of the organisations she would intend to consult regularly under section 5(3)(b) of the Bill.

Accepted

Section 5(3)(b) states that the Welsh Ministers must consult “any other persons they consider appropriate” (that is, in addition to the Future Generations Commissioner for Wales (section 5(3)(a)). Consultees may change over time, for example as land management changes and/or depending on the outcomes of the SLM reports.

The Welsh Ministers will engage with those organisations best placed to offer advice on preparing and revising indicators and targets. The setting, and subsequent reviewing, of the SLM indicators and targets will be an iterative

process meaning that it may be necessary to consult with different organisations at different times.

The following list provides a non-exhaustive indication of the organisations I intend to consult as part of the process of preparing SLM indicators and targets under sections 4 and 5 of the Bill along with an indication of the type of indicator and target I would ask them to consult on:

- Office of the Chief Veterinary Officer (OCVO) – in relation to animal health and disease control.
- Natural Resources Wales (NRW) – general advice, checking and monitoring, SoNaRR and ERAMP support.
- Welsh Language Commissioner – general and in relation to Welsh language provision.
- Cadw – cultural resources and heritage considerations
- Information Commissioners Office (ICO) – data collection and GDPR considerations
- Academic institutions – for specific advice and research support
- Sector representative bodies – in relation to sector specific subjects.

As noted above, this list will change from time to time depending on the SLM indicators and targets being considered and as circumstances require.

Recommendation 10. The Minister should table an amendment to section 8 of the Bill setting out the full basis on which support would be provided and the objectives she is aiming to meet in providing that support.

Not Accepted

The purposes as set out in section 8 provide examples of the priority areas where support may be provided.

It is not considered to be appropriate to create an exhaustive list of purposes as this could restrict the scope for which support could be provided and not provide the flexibility needed to allow for unexpected events such as a new exotic disease outbreak or war or other market crisis. It could also potentially prevent support being provided in the future in response to advances in agricultural practices, policy development or the inevitable consequences of climate change.

The purposes set out in section 8 provide an indication of the type and range of support that is being proposed, for example supported under the SFS. It is intended that the SFS initially will be the main support scheme created under the power to provide support, but it may not be the only support scheme as the power allows for the provision of support by multiple schemes or otherwise.

The power of support provision provides the flexibility to provide support (financially or otherwise) where required for or in connection with agriculture and ancillary activities. It would, therefore, not be possible for the provision to detail the full basis of support.

Recommendation 11. The Minister should table an amendment to section 10 of the Bill, setting out the purpose of requiring specified information to be provided and the criteria or limitations that apply to exercising the regulation-making power.

Not Accepted

An amendment to section 10 of the Bill setting out the purpose of requiring specified information to be provided, is unnecessary. Section 10(1) to (3), along with the detailed explanation provided within the Explanatory Memorandum at paragraphs 3.100 to 3.103, already provides sufficient detail, to ensure the appropriate accountability and transparency of the provision.

The Explanatory Memorandum at paragraph 3.101, provides examples of the type of information to be published, as is currently published under existing agricultural support schemes. For example, the trading name of the business, the first four digits of their postcode, and is only applicable where support received has exceeded a specific amount, which is currently set at £1,250.

The Explanatory Memorandum also explains what section 10 is not intended to capture, for example, it is not the intent to publish data about the total amounts paid out under the power to provide support, on the basis that the Annual Report will provide this information.

Any resulting regulations will be subject to robust Senedd scrutiny, as the regulation-making power is subject to the affirmative procedure.

Recommendation 12. The Minister should explain why more detail is included on the face of the Bill about regulations to be made in respect of monetary penalties under section 31 than is contained in respect of the regulations to be made about monetary penalties under section 11.

Accepted

I intend to bring forward a Government amendment to section 11, which is “*for recovery of amounts due in respect of monetary penalties, including provision for interest, set-off and security for payment;*”. This amendment seeks to build upon the existing provision in 11(2)(i) and provides that the regulation making provision in respect of checking eligibility for support, etc, is broad enough to enable the recovery of any amounts due against monetary penalties

However, in respect of the detail in section 31, it is the Welsh Government view that this detail is not necessary for the purpose of section 11. Section 31(3)(a) is quite distinct due to the specific nature of the data collection provisions. It focuses on the enforcement of information requirements for non-compliance and the provision of imposing monetary penalties therein. This differs from the enforcement in relation to the provision for checking eligibility for support, which relates to compliance.

Recommendation 13. The Minister should table amendments to the Bill to provide more detail about the policies that underpin the subject matter of section

11 (including, setting out the purpose of checking eligibility for support), as well as any criteria or limitations that should apply to the making of regulations (including for example in respect of powers of entry and monetary penalties).

Not Accepted

It is not appropriate or necessary to table an amendment for the provision of policy detail within section 11 of the Bill. The supporting documentation of the Bill and the schemes created under the Bill will detail the policies underpinning section 11. The policies which underpin the subject matter of section 11 may vary according to each support scheme established under section 8. To apply an amendment would have the potential of restricting our ability to respond effectively to changing conditions and the possible need for flexible mechanisms of support.

The co-design and consultation process for the main delivery scheme, the SFS, is still ongoing and will go through a period of consultation later this year. The detail about the policies which underpin the subject matter of section 11, including setting out the purpose of checking eligibility for support will be set out in the consultation and ultimately in the scheme documentation.

Regulations made under section 11 will be subject to the affirmative procedure.

Recommendation 14. The Minister should table amendments to sections 6, 8, 10, 11 and 13 of the Bill to include a duty on the Welsh Ministers to consult on the making of regulations in each case.

Not Accepted

The sections referred to in the recommendation are listed in section 47(7) as subject to the affirmative procedure (pursuant to section 47(6)), which requires approval by the Senedd before any regulations are made. This process provides sufficient scrutiny which is proportionate and appropriate for the powers in question.

For each of the sections referred to, a duty on Welsh Ministers to consult on the making of regulations is also considered unnecessary due to the scope of each provision. The Bill contains detailed and comprehensive monitoring and reporting provisions to ensure accountability and facilitate ongoing scrutiny of the implementation of the SLM duty and progress against the objectives.

Section 6(10) refers to the reporting period for the SLM reports. It is not considered necessary to include a provision to consult on amending the reporting period, on the basis that any changes to the reporting period will likely be technical in nature to ensure that the SLM reporting periods are aligned with the Impact Reports (section 13) in so much as the Impact Report precedes the SLM Report, and is considered as one of the key reports which provides information towards achieving the SLM objectives. Furthermore, Section 6 of the Bill relates to the preparation of the SLM reports with provisions that include (among other things) reporting on the cumulative progress made towards achieving the SLM objectives, whether a target

has been achieved during the reporting period, and reporting on the key priorities, risks and opportunities in relation to achieving those objectives.

I believe these provisions provide significant accountability and transparency and that there is no need for a requirement to consult, particularly given that Welsh Ministers are required to consult on the setting of the targets and indicators (section 5) which will very much set the tone and direction of the reports detailed under section 6. It is not clear, if there were to be a regulation making power to consult on the report itself what, if any, additional actions we would be consulting on.

Section 8 refers to the power to provide support, with 8(4) providing a regulation making power to add, remove or amend or alter the purposes in subsection 8(2). Subsection 8(2) is a non-exhaustive list of purposes for which support may be provided for or in connection with. It is unnecessary to add a provision to consult on any amendments, additions or removal of the non-exhaustive list of purposes, the inclusion of a consultation may lead to the delay in Welsh Ministers being able to respond swiftly to changes in government or sectoral priorities.

Section 10 refers to the power to make provision about publication of information about support. This section is primarily about providing the appropriate accountability and transparency on the spend of public money. Section 10(1) is subject to the affirmative procedure which provides the appropriate level of scrutiny, without the need for a consultation.

Section 11 concerns the ability of Welsh Ministers to check eligibility for support. An important process which helps to ensure that outcomes are met and provides accountability for public money. Section 11 is already subject to the affirmative procedure as set out above and wider consultation on such a necessary and technical issue would be inappropriate.

Section 13 refers to the Welsh Ministers preparing an impact report in relation to each reporting period. The purpose of having a regulation power to amend the reporting period for the Impact report which does not include a duty on the Welsh Ministers to consult on amending the reporting period, currently set for every five years following the first reporting period, is so that it remains aligned with the SLM report. If the timetable for the SFS is changed or if there is a change to the contract periods of farmers then this could affect the timing of the impact reports, which could mean they fall out of alignment potentially lessening the usefulness of the reports.

Recommendation 15. The Minister should explain, in respect of sections 15 and 16, why the provisions identified as being part of the Agriculture Act 2020 in Table 1 have not been included in the Bill. The explanation should set out what could be achieved by the Welsh Ministers under the regulation-making powers in section 15 and 16 that could not be achieved using the powers in paragraphs 2, 3 and 4 of the Schedule 5 to the 2020 Act.

Accepted

The list of purposes given in Schedule 5 of the Agriculture Act 2020 was not required as the Bill contains broad powers which incorporate these purposes. The Bill's broad powers in sections 15 and 16 have been drafted to capture all eventualities and to ensure the Welsh Ministers are not restricted in their modification powers in the way that they are in the 2020 Act.

In respect of paragraph 3(2) and (3) of Schedule 5 to the Agriculture Act 2020, these were no longer needed as the necessary changes were made by the Direct Payments to Farmers and Rural Affairs (Miscellaneous Amendments etc.) (Wales) (EU Exit) Regulations 2020 which came into force on 17 December 2020.

Recommendation 16. The Minister should explain why the regulation-making power under section 18 of the Bill is subject to the negative procedure, when the equivalent power under paragraph 6 of Schedule 5 to the Agriculture Act 2020 is subject to the affirmative procedure.

Accepted

I agree this should be consistent and I will bring forward an amendment so the regulation-making power under section 18 is subject to the affirmative procedure.

Recommendation 17. The Minister should table amendments to the Bill setting out the purposes for which the regulation-making powers under sections 15, 16, 17 and 18 of the Bill are to be exercised.

Not Accepted

I do not agree this would be appropriate or possible to do without compromising our ability to respond quickly and positively to changing situations, for example, even the recent unexpected events such as the COVID pandemic and the war in the Ukrainian could not have been planned for, especially in legislation.

The acceptance of recommendation 18, to amend the regulation-making power to be subject to the affirmative procedure, should provide further reassurance.

Recommendation 18. If recommendation 17 is not accepted and / or limitations are not applied to the exercise of the regulation-making powers in sections 15, 16, 17 or 18 of the Bill, the Minister should table an amendment applying the affirmative procedure to the regulation-making powers in these sections.

Accepted

I will bring forward an amendment so the affirmative procedure is applied to the regulation-making powers in sections 15,16, 17 and 18.

Recommendation 19. Recommendations 17 and 18 should be read as applying to each section individually.

Accepted

The recommendations have been considered individually. In respect of sections 15, 16, 17 and 18, it was not considered appropriate to proceed with an amendment as set out in recommendation 17.

It was considered appropriate that an amendment to the regulation-making power as set out at recommendation 18 should be applied to each section. I will bring forward an amendment to section 47(7) for each of the sections 15, 16, 17 and 18 respectively.

Recommendation 20. The Minister should confirm whether there are any circumstances in which regulations under sections 15, 16, 17 and 18 of the Bill could amend primary legislation and, if so, why the affirmative procedure should therefore not apply.

Accepted

The affirmative procedure will apply as I am accepting recommendation 16.

Recommendation 21. The Minister should table amendments to sections 15, 16, 17 and 18 of the Bill requiring a duty on the Welsh Ministers to consult on the making of regulations in each case.

Not Accepted

I have accepted recommendation 18 to bring forward an amendment so regulations made under these sections are subject to the affirmative procedure. This will provide for the appropriate level of scrutiny by the Senedd, therefore, it is not necessary to apply a duty to consult on the making of the regulations for each of the sections 15, 16, 17 and 18.

Recommendation 22. The Minister should table an amendment to the Bill to include an end date for transitioning to the new system of agricultural support under chapter 1 of Part 2 of the Bill. If provision is included to allow an end date to be amended by regulations, such regulations should be subject to the affirmative procedure.

Not Accepted

I have previously stated that we will not sunset BPS in the Bill. The ETRA committee listened to evidence from stakeholders on transition plans and a sunset provision for the Bill. Whilst farming unions and environmental organisations agreed that there should be no cliff edge in financial support, there was varying views on the need to legislate for a transition or 'sunset' period. In its conclusion on the topic, ETRA does not advocate a sunset provision.

Section 15 of the Bill enables Welsh Ministers to amend BPS, which would allow for the tapering of payments during a transition period, providing the flexibility needed to ensure that changes to the BPS will not be made until the new scheme is ready.

Further detail on how the transition to the new system of agricultural support will form part of the final SFS consultation.

Recommendation 23. The Minister should clarify: ▪ how she intends to amend section 22 and commit to ensuring relevant policy detail is included on the face of the Bill regarding changes she proposes in relation to the ending of public

intervention and reform of private storage aid schemes; ▪ why it was not possible for this detail to be included in the Bill on its introduction.

Not Accepted

The policy detail of how the Welsh Government intends to modify retained EU legislation governing Public Intervention and Private Storage Aid in the short term will accompany a Statutory Instrument which is intended to be laid in the Senedd , using powers in the Agriculture Act 2020.

Policy development considering further reforms to the retained EU legislation governing these schemes is ongoing, so further detail on the face of the Bill would not be appropriate at this time.

Recommendation 24. The Minister should explain why provisions contained in paragraphs 9(1), 9(2) and 9(3) of Schedule 5 to the Agriculture Act 2020 have not been transferred to section 22 of the Bill and, as a consequence, what effect this has on the exercise of the regulation-making power in that section.

Accepted

The wording of the provisions contained in paragraphs 9(1), 9(2) and 9(3) of Schedule 5 to the Agriculture Act 2020 was unclear and difficult to interpret, so the text has been simplified for clarity. The purpose of the provisions are to allow the Welsh Ministers to amend or cease the effect of retained EU legislation governing Public Intervention and Private Storage Aid.

Recommendation 25. The Minister should table an amendment to the Bill setting out the purposes for which the regulation-making power under section 22 is to be exercised.

Not Accepted

The regulation-making power in section 22 provides flexibility for the Welsh Ministers when making regulations to deal with a range of urgent and potentially unpredictable circumstances. Any list of purposes could have the effect of restricting the Welsh Ministers' powers should a scenario not covered by that list arise.

Recommendation 26. If recommendation 25 is not accepted and / or limitations are not applied to the exercise of the regulation-making power, the Minister should table an amendment to the Bill applying the affirmative procedure to the regulation-making power under section 22.

Accepted

I agree and will bring forward an amendment to change this to the affirmative procedure.

Recommendation 27. The Minister should table an amendment to section 22 of the Bill to include a duty on the Welsh Ministers to consult on the making of regulations under that section.

Not Accepted

We do not consider there should be a duty to consult on every regulation-making provision within the Bill. Welsh Ministers risk challenge on procedural impropriety if we do not consult in accordance with the public law principles and our own guidance. Regulations under this section will be made under the affirmative procedure, allowing additional scrutiny by the Senedd.

Recommendation 28. The Minister should table an amendment to section 29 of the Bill to set out an indication of what a person can expect to be included in a draft of the requirement referred to in section 29(1)(a)(i).

Not Accepted

The data collection provisions are broad, spanning the breadth of the Bill, enabling for data to be collected across two distinct yet complementary areas, namely from those connected to an agri-food supply chain 24(1) and those undertaking a relevant activity 26(1). Data can only be collected in furtherance of one or more of a specific and limited list of purposes which are set out in the Bill, such as helping to increase productivity, promoting transparency or fairness in agri-food supply chains or monitoring supply sources for food.

The anticipated information to be captured by virtue of the data collection provisions in this area may range from the number of nurseries across Wales, to details on the level of peat used in fertilizers, etc. The requirement will, therefore, vary according to the purpose for which it is needed as well as from whom the data is to be collected.

The provision already provides that a draft of the requirement must be published. This will state the purpose or purposes for which the data will be processed (which are limited to those purposes set out in section 28(4)) information on whom the requirement will be applied, and also for a period of at least four weeks for comment prior to requirement being imposed. Any regulations, under the data collection provisions, made by the Welsh Ministers imposing obligations to provide information can only be made using the affirmative Senedd procedure, giving significant scrutiny powers to Senedd members.

Recommendation 29. The Minister should table amendments to section 31 of the Bill to provide more detail about the policies that underpin the enforcement of information requirements, as well as any limitations or criteria that should apply to the making of regulations under this section.

Not Accepted

It is not considered appropriate or necessary to table an amendment for the provision of more detail than already exists within section 31 of the Bill. The supporting documentation of the Bill provides information about the policies which underpin the enforcement of the information requirements which may vary according to the purpose for the collection of data, and in each instance a specific requirement will need to be laid out.

Whilst it is important to have compulsory data collection, any enforcement of the requirements needs to be proportional, and needs to be mindful of the financial

strain that is likely to be experienced by businesses in such situations, so penalties with a greater impact on businesses would not be appropriate.

To apply an amendment would therefore have the potential of restricting our ability to respond proportionately and effectively to changing conditions and the possible need for flexibility.

The enforcement of the information requirements will be subject to the affirmative procedure giving significant scrutiny powers to Senedd members.

Recommendation 30. The Minister should table an amendment to the Bill expressly prohibiting the selling of data which is provided in accordance with the requirements of the Bill.

Not Accepted

This is not considered to be a necessary amendment to the Bill, for reasons previously stated. Under existing UK GDPR, it is not a requirement to state what will not be done with any data, only what will be done with that data.

Furthermore, the data collection and sharing provisions within the Bill are very detailed and include several limitations and safeguards relating to the purposes for which data can be collected and how the data is to be processed. For example, data can only be used in furtherance of one or more of a specific and limited number of purposes, such as helping to increase productivity, promoting transparency or fairness in agri-food supply chains or monitoring supply sources for food.

It continues to be both the policy and wider Welsh Government intent to not sell data on to third parties. In the case of this Bill there is no express provision allowing data to be sold to third parties and so selling that data would be outside the scope of the powers.

As per our statutory obligation to consult with the Information Commissioners Office (ICO), as the UK Regulator (Article 36(4)) when drafting legislation which impacts upon the processing of personal data, officials have consulted with the ICO on the data provisions within the Bill. This is part of ongoing engagement on all aspects of data collection and data protection regarding the Bill. The ICO ensures the provisions are compliant with the data protection principles enshrined in the UK GDPR and the Data Protection Act 2018. This statutory consultation process with the ICO provides an additional level of safeguarding.

I understand Members and stakeholders are concerned over the UK Government's decision to possibly abolish the UK GDPR, however, as I have stated previously in my letter to the Chair of the ETRA Committee, Welsh Government officials have been working with UK Government officials on the draft Data Protection and Digital Information (DPDI) Bill. Accordingly, I and my officials continue to work on the basis the UK GDPR and other existing overarching data protection legislation remains in force until such time as it is amended or replaced by the UK Government. Any proposed replacement of the UK GDPR will need to be carefully considered once the detail is known.

Recommendation 31. The Minister should table an amendment to the Bill replicating the provision about data protection contained in paragraph 19 of Schedule 5 to the Agriculture Act 2020.

Not Accepted

It is not considered necessary for an equivalent provision to paragraph 19 of Schedule 5 to be incorporated in the Agriculture (Wales) Bill as it fails to add anything substantively to the data sharing provisions. This is a Bill for Wales and we do not need to legislate in the same way as the UK Government.

The data sharing provisions in this Bill will still need to comply with overarching data protection legislation, therefore, that protection still exists without the need to directly legislate for this purpose using provisions within the Agriculture (Wales) Bill.

Recommendation 32. The Minister should table amendments to the Bill to provide more detail about the policy that underpins the subject matter of section 32 (Marketing standards) and section 33 (Carcass classification), as well as any limitations or criteria that should apply to the making of regulations (including for example in respect of powers of entry and monetary penalties).

Not Accepted

The development of marketing standards and carcass classification legislation, which underpins this section, is explained in the Explanatory Memorandum to the Bill. Part 2 of Section 33 provides an inexhaustive list of what enforcement provisions the powers could be used for.

The consideration of future policy changes for carcass classification is ongoing, so not available for inclusion in this Bill.

Regulations over marketing standards or carcass classification must be made using the affirmative procedure to allow for Senedd scrutiny at that time.

Recommendation 33. The Minister should explain why more detail is included on the face of the Bill about regulations to be made in respect of monetary penalties under section 31 than is contained in respect of the regulations to be made about monetary penalties under sections 32 and 33.

Accepted

Section 31 is specifically to do with the area of enforcement of information requirements which differ significantly from enforcement in relation to product standards. It is Welsh Government view that further detail is not necessary in relation to section 32 and 33.

Recommendation 34. The Minister should table amendments to sections 32 and 33 to include a duty on the Welsh Ministers to consult on the making of regulations under each section.

Not Accepted

The Welsh Ministers have always consulted on any Statutory Instruments made in the areas in section 32 and 33, unless the changes are technical in nature.

There are a wide range of areas on which the Welsh Ministers consult and we do not consider that there should be a duty on every provision within the Bill. The Welsh Ministers risk challenge on procedural impropriety if they do not consult in accordance with the public law principles and their own guidance.

Recommendation 35. The Minister should explain why Schedule 1 to the Bill makes cross-references to tables included in Annexes to the CMO Regulation, rather than replicating the tables themselves.

Accepted

Replicating the tables would be extensive and would not improve accessibility sufficiently to justify doing so. The cross references are considered sufficient and in line with other legislation which refers to the Common Market Organisation.

Recommendation 36. The Minister should table amendments to Schedule 1 to the Bill to include the relevant detail of the tables currently referred to in that Schedule, in order to aid accessibility for readers of the Bill.

Not Accepted

Replicating the tables would be extensive and would not improve accessibility sufficiently to justify doing so. The cross references are considered sufficient and in line with other legislation which refers to the Common Market Organisation.

Recommendation 37. In order to ensure the accessibility of Part 4 of the Bill, we recommend that the equivalent of Annex 4 to the Explanatory Memorandum is re-published, and amended if required, if and when the Bill is passed by the Senedd and receives Royal Assent.

Accepted

The Explanatory Memorandum will be updated and published along with its Annexes to reflect all amendments at the end of each of the relevant stages and after Royal Assent.

Recommendation 38. The Minister should clarify whether a free-standing 'forestry-related' Bill was considered and why such an approach was not adopted.

Accepted

The amendments to the Forestry Act 1967 being proposed are cohesive to the scope of the Bill. The amendments enable better protection against environmental harm during felling operations, in line with the third SLM objective of the Bill relating to maintaining and enhancing the resilience of ecosystems. Forestry and forestry management is an integral part of delivering sustainable land management outcomes in our response to climate change. It relates directly to our action to mitigate and adapt to climate change in the second SLM objective of the Bill.

The Bill provides a suitable and timely mechanism for their introduction which was recognised in stakeholder responses to the White Paper.

Recommendation 39. The Minister should table an amendment to the Bill to require a review of Part 4 of the Bill to be undertaken by the Welsh Government within three years of its commencement.

Not Accepted

We have made the commitment to conduct a post implementation review of the legislation within 3 years of commencement of amendments to the Forestry Act 1967. This is set out in the Explanatory Memorandum.

Undertaking a post implementation review is a normal part of introducing primary legislation.

Recommendation 40. In order to ensure the accessibility of Part 5 of the Bill, we recommend that the equivalent of Annex 4 to the Explanatory Memorandum is re-published, and amended if required, if the Bill is passed by the Senedd and receives Royal Assent.

Accepted

The Explanatory Memorandum will be updated and published along with its Annexes to reflect all amendments at the end of Stage 2, stage 3 and again after Royal Assent.

Recommendation 41. The Minister should clarify whether a free-standing 'wildlife-related' Bill was considered and why such an approach was not adopted.

Accepted

Introducing a ban on the use of snares is a Programme for Government commitment and as such is a priority for this government term.

A separate free-standing 'wildlife-related' Bill was considered in the development of the Agriculture Bill. However, Wildlife law is wide-ranging and complicated, spanning many pieces of legislation, Welsh Ministers have competence in most but not all areas. The consolidation of wildlife law is something officials are considering but bringing forward a Wildlife Bill in this Senedd would not be possible.

To have these powers in this Bill will ensure this important change will be brought forward at the earliest legislative opportunity in an important step forward in animal welfare standards in Wales.

Recommendation 42. The Minister should table an amendment to the Bill to apply the affirmative procedure to regulations made under section 46 which modify primary legislation (as permitted by section 46(2)).

Not Accepted

It is unnecessary to table an amendment for this purpose. Section 47(8) of the Bill ensures that any modification to primary legislation is already subject to the affirmative procedure.

Recommendation 43. In respect of section 50 of the Bill, the Minister should: ▪ clarify why the power is needed; ▪ clarify why an exceptionally broad power is being taken when the Welsh Government has no plans to use it at present; ▪ provide specific examples of how the definition of agriculture and ancillary activities could be amended; ▪ clarify why regulations would be a more appropriate vehicle for a future government to make potentially significant policy changes rather than primary legislation.

Accepted in principle

Section 50 provides the power to amend sections 48 and 49 by regulations to enable Welsh Ministers to be responsive to the future challenges and opportunities in the sector. Where emerging, novel and good practice is identified in the sector, we would not wish to see it excluded from the powers in the Bill and our farmers not being supported.

As a government we need to be able to respond to changing agricultural practices to ensure support may be provided if required.

This is an ambitious and transformational Bill and the definition includes activities relevant to the modern day farmer (such as Controlled Environmental Agriculture). As land management changes in the future, including as a result of practices enabled by this Bill, this power provides the ability to ensure the definition can be amended and support, if suitable, provided.

Regulations are considered to be a more appropriate vehicle for future Governments to amend the definition. If changes do need to be made to existing definitions, then there could be a lengthy wait for an appropriate primary legislative vehicle to effect that change whereas changes by regulations using existing powers can be made much more quickly to respond to those changes. See also the response to recommendation 44 below.

Recommendation 44. If the Minister decides to retain section 50, she should table an amendment to the Bill applying a super-affirmative procedure to the regulation-making power to include a requirement: ▪ for consultation (and a minimum period for that consultation), including with Senedd committees, and ▪ to make a statement before any such Regulations are made, detailing the outcome of the consultation (including areas of agreement and disagreement with stakeholders) and accordingly how the Regulations have taken account of engagement with stakeholders.

Accepted in principle

Section 50 is to be retained for the reasons outlined above in response to recommendation 43.

Please also note the response to the ETRA committees' recommendation 2 which covers similar ground in respect to section 50.

Officials are engaging with government drafters to explore the best way to apply a super-affirmative procedure to section 50. There is no fixed template for super-affirmative procedure statutory instruments and so a range of options is being explored. This could include a requirement to consult with the Senedd before any amendment to sections 48 and 49 are formally laid as part of the affirmative procedure. The current policy intent is that any amendment to the section 50 process will contain details of the type and length of consultation to be undertaken. This will provide for additional scrutiny and discussion around any changes to sections 48 and 49. Consideration of a bespoke super-affirmative procedure is ongoing.

To: Minister for Social Justice, Jane Hutt MS
Cc: Chair of the Legislation, Justice and Constitution Committee, Huw Irranca-Davies MS
Chair of the Equality and Social Justice Committee, Jenny Rathbone MS

8 March 2023

Dear Minister,

Retained EU Law (Revocation and Reform) Bill

I am writing to you on behalf of the Gender Network, a policy forum of 50 organisations, activists and academics that aim to strengthen women's rights and gender equality for all women and girls in Wales.

In advance of the Senedd's debate and vote on the Legislative Consent motion on the UK Government's Retained EU Law (Revocation and Reform) Bill, I would like to highlight the discussion at the most recent Gender Network meeting, held on 1 March 2023.

At this meeting, members of Gender Network were unanimous in expressing profound concerns about the Retained EU Law (Revocation and Reform) Bill and the absolutely devastating impact it would have on the protection of women's rights and gender equality in the UK and Wales. Members highlighted that losing protections related to equal pay, family-friendly policies, pregnancy and part-time working, among others, would mark a significant backward step for women's rights and gender equality. There was agreement that individuals and organisations within the Network needed to mobilise urgently with a view to, ultimately, preventing the passage of this deeply damaging bill.

Given the forthcoming vote, I believed it was essential for me to write to you directly to express the views of the Network.

Yours sincerely,



Jessica Laimann

Policy and Public Affairs Manager, Women's Equality Network (WEN) Wales

Julie James MS
Minister for Climate Change

6 March 2023

Dear Julie

The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023

At our meeting this week we considered your letters dated 1 March 2023 and 14 February 2023 in relation to The Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 (the Regulations).

We note that these Regulations replace a version laid before the Senedd on 24 January 2023, which were subsequently withdrawn before they were formally considered and reported on by my Committee. We also note that the Regulations fall under the scope of the Resources and Waste Common Framework.

We welcome your letter of 1 March drawing our attention to errors that you have identified in the Regulations. However despite this transparency our overriding concern is that, once again¹, the Welsh Government appears to be inviting the Senedd to approve regulations with known defects.

We also understand from Senedd Commission lawyers currently reviewing the Regulations for the purpose of informing our draft report that multiple technical reporting points may arise from our consideration.

Given that you have already identified errors in the Regulations, and while we have yet to formally consider the Regulations (which we will do at our meeting on 13 March, ahead of the debate on the

¹ See The Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022 and The Food and Feed (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022.

Regulations currently scheduled to take place on 14 March), I would invite you to evaluate whether you should proceed with the Regulations in their current state.

I am copying this letter to the Llywydd in her capacity as Chair of the Business Committee, and to the Counsel General.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair

Chair, Children, Young People, and Education Committee
Chair, Climate Change, Environment, and Infrastructure Committee
Chair, Culture, Communications, Welsh Language, Sport, and International Relations Committee
Chair, Economy, Trade, and Rural Affairs Committee
Chair, Equality and Social Justice Committee
Chair, Health and Social Care Committee
Chair, Legislation, Justice and Constitution Committee
Chair, Local Government and Housing Committee

8 March 2023

Dear Committee Chairs,

Scrutiny of the Draft Budget 2023-24: Evidence provided by the Welsh Government

In our [report](#) on the scrutiny of the [Welsh Government Draft Budget 2023-24](#), we made several recommendations relating to budget presentation improvements. We also agreed to consult Committees on the documentation provided by the Welsh Government alongside its Draft Budget proposals, concluding that:

"Conclusion 1. We welcome the Minister's willingness to consider ways in which budget documentation can be improved. While we have reflected our views above, the Committee has decided to consult Senedd committees on their experiences of scrutinising this year's budget documentation and ways in which improvements can be made."

As a result, in reflecting on this year's budget scrutiny experience and in seeking improvements to the budget documentation provided by the Welsh Government at the 2024-25 Draft Budget and beyond, I would be grateful for the views of your committee in response to the following question:

What improvements would you like to see in the Welsh Government's Draft Budget documentation and subsequent ministerial written evidence?

Please make reference to the timeliness, quality and usefulness of any documentation and/or evidence received in your response.

We would appreciate responses by **Friday 28 April 2023**. Your views will then be collated and fed back to the Minister for Finance and Local Government, for her consideration in advance of the Budget Priorities 2024-25 Plenary debate that will be led by the Finance Committee and take place before summer recess.

Yours sincerely,



Peredur Owen Griffiths MS
Chair, Finance Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Huw Irranca-Davies
Chair, Legislation, Justice and Constitution Committee

9 March 2023

Dear Huw

Equality and Social Justice Committee report: women's experiences in the criminal justice system

Thank you for inviting Members of the Equality and Social Justice Committee to join your evidence session with Lord Bellamy on 5 December 2022.

We have now published our report on women's experiences in the criminal justice system, which can be found using the following links:

English: <https://senedd.wales/media/rdxhi4s4/cr-ld15713-e.pdf>

Welsh: <https://senedd.cymru/media/nskikukb/cr-ld15713-w.pdf>

I hope you may find it of interest.

Yours sincerely,



Jenny Rathbone MS
Chair, Equality and Social Justice Committee
Welsh Parliament

Agenda Item 6.9

Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/0703/23

Michael Gove MP
Secretary of State for Levelling Up, Housing &
Communities and Minister for Intergovernmental Relations
2 Marsham Street
London
SW1P 4DF

psmichaelgove@levellingup.gov.uk

9 March 2023

Dear Michael,

I am writing to express my disappointment at the time afforded for Senedd scrutiny of the amendments tabled at House of Commons Report Stage of the Social Housing (Regulation) Bill.

I understand that our respective officials worked together to ensure at least a small amount of time was made available for consideration of amendments published on 10 February. However, there was no opportunity for me to consider the detail of amendments published on 27 February and bring forward a legislative consent memorandum before the consent debate, which was required to take place on 28 February prior to Report stage on 1 March.

As a result, a further consent debate has been scheduled for 28 March on these latest amendments, possibly just days before Royal Assent. This timeframe does not allow for meaningful debate in the Senedd and does not reflect the intended operation of the Sewel Convention.

It is very disappointing that following some good engagement in earlier stages, the late stage amendments effectively meant the Senedd was not able to consider the complete Bill in an acceptable timeframe when making its decision on consent.

Limited timescales for considering amendments seriously undermine the ability of the Senedd to effectively scrutinise legislation which will have an impact in Wales. These issues are only further exacerbated when the amendments come so late in the passage of a Bill.

I trust that you and your colleagues in UK Government will consider the impacts of late stage amendments on the legislative consent process, and seek to ensure substantive amendments on Bills are kept to a minimum.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I will be sharing a copy of this letter with the Llywydd and the Chair of the Senedd's Legislation, Justice and Constitution Committee.

Yours sincerely,

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Agenda Item 9

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted