Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:
Virtual – Video conference via Zoom
Meeting date: 11 September 2023
Meeting time: 13.30

For further information contact:
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1 Introductions, apologies, substitutions and declarations of interest

(13.30)

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

(13.30 – 13.40)

Made Negative Resolution Instruments

2.1 SL(6)370 – The Traffic Signs (Amendment) (Wales) Regulations and General Directions 2023

(Pages 1 – 6)

Regulations and General Directions

Explanatory Memorandum

Attached Documents:

LJC(6)-23-23 – Paper 1 – Draft report

2.2 SL(6)371 – The Valuation Tribunal for Wales (Amendment) Regulations 2023

(Pages 7 – 8)

Regulations

Explanatory Memorandum

Attached Documents:

LJC(6)-23-23 – Paper 2 – Draft report

2.3 SL(6)373 – The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023

(Pages 9 – 19)

Order

Explanatory Memorandum

Attached Documents:

LJC(6)-23-23 – Paper 3 – Draft report

LJC(6)-23-23 – Paper 4 – Letter from the Minister for Climate Change, 21 July 2023

LJC(6)-23-23 – Paper 5 – Letter from the Minister for Climate Change to the Climate Change, Environment, and Infrastructure Committee, 21 July 2023

LJC(6)-23-23 – Paper 6 – Written Statement by the Minister for Climate Change, 21 July 2023

2.4 SL(6)375 – The Education (Student Loans) (Repayment) (Amendment) (No. 2) Regulations 2023

(Pages 20 – 21)

Regulations

Explanatory Memorandum

Attached Documents:

LJC(6)-23-23 – Paper 7 – Draft report

Affirmative Resolution Instruments

2.5 SL(6)367 – The Welsh Language Standards (No. 9) Regulations 2023

(Pages 22 – 26)

Regulations

Explanatory Memorandum

Attached Documents:

LJC(6)-23-23 – Paper 8 – Draft report

LJC(6)-23-23 – Paper 9 – Letter from the Culture, Communications, Welsh Language, Sport, and International Relations Committee to the Minister for Education and Welsh Language, 30 June 2023

2.6 SL(6)368 – The Environmental Permitting (England and Wales) (Amendment) Regulations 2023

(Pages 27 – 28)

Regulations

Explanatory Memorandum

Attached Documents:

LJC(6)-23-23 – Paper 10 – Draft report

3 Instruments that raise reporting issues under Standing Order 21.7

(13.40 – 13.45)

Draft Negative Resolution Instruments

3.1 SL(6)374 – School Admission Appeals Code

(Pages 29 – 30)

Code

Explanatory Memorandum

Attached Documents:

LJC(6)-23-23 – Paper 11 – Draft report

4 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3 – previously considered

(13.45 – 13.50)

4.1 SL(6)364 – The Animal By-Products, Pet Passport and Animal Health (Fees) (Wales) (Amendment) Regulations 2023

(Pages 31 – 32)

Attached Documents:

LJC(6)-23-23 – Paper 12 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 3 August 2023

5 Inter-Institutional Relations Agreement

(13.50 – 14.05)

5.1 Correspondence from the Deputy Minister for Climate Change: Transport Inter-Ministerial Standing Committee

(Pages 33 - 34)

Attached Documents:

LJC(6)-23-23 - Paper 13 - Letter from the Deputy Minister for Climate Change, 6 September 2023

LJC(6)-23-23 - Paper 14 - Letter from the Deputy Minister for Climate Change, 11 July 2023

5.2 Written Statement and correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Validating Alternative Methods for Salmonella Typing (Amendment) Regulations 2023

(Pages 35 - 38)

Attached Documents:

LJC(6)-23-23 - Paper 15 - Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 17 July 2023

LJC(6)-23-23 - Paper 16 - Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 18 July 2023

5.3 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Persistent Organic Pollutants (Amendment) Regulations 2023

(Pages 39 - 40)

Attached Documents:

LJC(6)-23-23 - Paper 17 - Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 18 July 2023

5.4 Written Statement and correspondence from the First Minister: Intergovernmental Relations Report

(Pages 41 - 97)

Attached Documents:

LJC(6)-23-23 - Paper 18 - Intergovernmental Relations Report

LJC(6)-23-23 - Paper 19 - Letter from the First Minister, 18 July 2023

LJC(6)-23-23 - Paper 20 - Written Statement by the First Minister, 18 July 2023

5.5 Written Statement and correspondence from the First Minister: British-Irish Council Summit

(Pages 98 - 100)

Attached Documents:

LJC(6)-23-23 - Paper 21 - Written Statement by the First Minister, 19 July 2023

LJC(6)-23-23 - Paper 22 - Letter from the First Minister, 19 July 2023

5.6 Written Statement and correspondence from the Counsel General and Minister for the Constitution: Inter-Ministerial Group for Elections and Registration

(Pages 101 - 102)

Attached Documents:

LJC(6)-23-23 - Paper 23 - Written Statement by the Counsel General and Minister for the Constitution, 19 July 2023

LJC(6)-23-23 - Paper 24 - Letter from the Counsel General and Minister for the Constitution, 19 July 2023

5.7 Written Statement from, and correspondence with, the Minister for Rural Affairs and North Wales, and Trefnydd: Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023

(Pages 103 - 117)

Attached Documents:

LJC(6)-23-23 - Paper 25 - Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 6 September 2023

LJC(6)-23-23 - Paper 26 - Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 6 September 2023

LJC(6)-23-23 - Paper 27 - Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 21 July 2023

LJC(6)-23-23 - Paper 28 - Letter to the Minister for Rural Affairs and North Wales, and Trefnydd, 7 July 2023

5.8 Written Statement and Correspondence from the Minister for Rural Affairs, and Trefnydd: The Windsor Framework (Retail Movement Scheme) Regulations 2023

(Pages 118 - 123)

Attached Documents:

LJC(6)-23-23 - Paper 29 - Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 10 August 2023

LJC(6)-23-23 - Paper 30 - Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 10 August 2023

LJC(6)-23-23 - Paper 31 - Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 1 August 2023

5.9 Written Statement and correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Windsor Framework (Enforcement etc.) Regulations 2023

(Pages 124 - 130)

Attached Documents:

LJC(6)-23-23 - Paper 32 - Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 6 September 2023

LJC(6)-23-23 - Paper 33 - Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 6 September 2023

LJC(6)-23-23 - Paper 34 - Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 9 August 2023

5.10 Written Statement and correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Windsor Framework (Plant Health) Regulations 2023

(Pages 131 - 134)

Attached Documents:

LJC(6)-23-23 - Paper 35 - Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 5 September 2023

LJC(6)-23-23 - Paper 36 - Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 9 August 2023

5.11 Written Statement and correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023

(Pages 135 - 140)

Attached Documents:

LJC(6)-23-23 - Paper 37 - Written Statement by the Minister for Rural Affairs and North Wales, and Trefnydd, 5 September 2023

LJC(6)-23-23 - Paper 38 - Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 5 September 2023

LJC(6)-23-23 - Paper 39 - Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 31 August 2023

5.12 Correspondence from the Counsel General and Minister for the Constitution: Inter-Ministerial Group on Justice

(Page 141)

Attached Documents:

LJC(6)-23-23 - Paper 40 - Letter from the Counsel General and Minister for the Constitution, 30 August 2023

5.13 Correspondence from the Minister for Climate Change: The Fluorinated Greenhouse Gases (Amendment) Regulations 2023

(Pages 142 - 143)

Attached Documents:

LJC(6)-23-23 - Paper 41 - Letter from the Minister for Climate Change, 1 September 2023

5.14 Correspondence from the Minister for Economy: Inter-Ministerial Group on Trade

(Page 144)

Attached Documents:

LJC(6)-23-23 - Paper 42 - Letter from the Minister for Economy, 5 September 2023

5.15 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Persistent Organic Pollutants (Amendment) (No. 2) Regulations 2023

(Pages 145 – 146)

Attached Documents:

LJC(6)-23-23 – Paper 43 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 5 September 2023

5.16 Correspondence from the Minister for Finance and Local Government: Finance: Interministerial Standing Committee

(Pages 147 – 148)

Attached Documents:

LJC(6)-23-23 – Paper 44 – Letter from the Minister for Finance and Local Government, 7 September 2023

6 Papers to note

(14.05 – 14.20)

6.1 Correspondence from the Children, Young People and Education Committee to the Minister for Education and Welsh Language: The Welsh Government's Elective Home Education Guidance

(Pages 149 – 181)

Attached Documents:

LJC(6)-23-23 – Paper 45 – Letter from the Children, Young People and Education Committee to the Minister for Education and Welsh Language, 12 July 2023

6.2 Correspondence from the Minister for Climate Change: Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023

(Page 182)

Attached Documents:

LJC(6)-23-23 – Paper 46 – Letter from the Minister for Climate Change, 13 July 2023

6.3 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd to the Business Committee: The Environment (Air Quality and Soundscapes) (Wales) Bill

(Page 183)

Attached Documents:
LJC(6)-23-23 - Paper 47 - Letter from the Minister for Rural Affairs and North Wales, and Trefnydd to the Business Committee, 13 July 2023

6.4 Correspondence from the Equality and Social Justice Committee: Legislative Consent Memorandum on the Victims and Prisoners Bill

(Page 184)

Attached Documents:
LJC(6)-23-23 - Paper 48 - Letter from the Equality and Social Justice Committee, 14 July 2023

6.5 Correspondence from the Minister for Economy to the Economy, Trade and Rural Affairs Committee: Ministerial scrutiny

(Pages 185 - 188)

Attached Documents:
LJC(6)-23-23 - Paper 49 - Letter from the Minister for Economy to the Economy, Trade and Rural Affairs Committee, 24 July 2023

6.6 Correspondence from the First Minister to the Culture, Communications, Welsh Language, Sport, and International Relations Committee: Council of Europe Convention on an Integrated Safety, Security and Service Approach to Football Matches and Other Sporting Events

(Pages 189 - 190)

Attached Documents:
LJC(6)-23-23 - Paper 50 - Letter from the First Minister to the Culture, Communications, Welsh Language, Sport, and International Relations Committee, 25 July 2023

6.7 Correspondence from the First Minister to the Llywydd: The Environmental Protection (Single-use Plastic Products) (Wales) Act 2023

(Page 191)

Attached Documents:

LJC(6)-23-23 - Paper 51 - Letter from the First Minister to the Llywydd, 27 July 2023

6.8 Written Statement by the Counsel General and Minister for the Constitution: Statement on the progress of the Independent Commission on the Constitutional Future of Wales

(Page 192)

Attached Documents:

LJC(6)-23-23 - Paper 52 - Written Statement by the Counsel General and Minister for the Constitution, 28 July 2023

6.9 Letter from the Counsel General and Minister for the Constitution: 10 July correction to the record

(Page 193)

Attached Documents:

LJC(6)-23-23 - Paper 53 - Letter from the Counsel General and Minister for the Constitution, 2 August 2023

6.10 Correspondence from the First Minister: International agreements: UK/Switzerland: Agreement on Recognition of Professional Qualifications

(Pages 194 - 197)

Attached Documents:

LJC(6)-23-23 - Paper 54 - Letter from the First Minister, 7 August 2023

LJC(6)-23-23 - Paper 55 - Letter to the First Minister, 12 July 2023

6.11 Correspondence from the Minister for Finance and Local Government: Welsh Government response to the Committee's report on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 6) on the Procurement Bill

(Pages 198 - 213)

Attached Documents:

LJC(6)-23-23 - Paper 56 - Letter from the Minister for Finance and Local Government, 8 August 2023

6.12 Correspondence from the Minister for Social Justice and Chief Whip: Victims and Prisoners Bill

(Pages 214 - 216)

Attached Documents:

LJC(6)-23-23 - Paper 57 - Letter from the Minister for Social Justice and Chief Whip, 11 August 2023

6.13 Written Statement and correspondence from the Minister for Education and Welsh Language to the Children, Young People and Education Committee: Tertiary Education and Research (Wales) Act 2022 (Commencement No. 2 and Transitory Provision) Order 2023

(Pages 217 - 224)

Attached Documents:

LJC(6)-23-23 - Paper 58 - Written Statement by the Minister for Education and Welsh Language, 22 August 2023

LJC(6)-23-23 - Paper 59 - Letter from the Minister for Education and Welsh Language to the Children, Young People and Education Committee, 22 August 2023

6.14 Written submissions: UK - EU Governance inquiry

(Pages 225 - 349)

Attached Documents:

LJC(6)-23-23 - Paper 60 - Written submission by Charles Whitmore

LJC(6)-23-23 - Paper 61 - Written Submission by Tanja Buzek, Chair on behalf of the EU Domestic Advisory Group

LJC(6)-23-23 - Paper 62 - Written submission by Cillian Lohan, Chair of the EU-UK Follow-up Committee

6.15 Correspondence from the Minister for Climate Change: Welsh Government response to the Committee's report on the Environment (Air Quality and Soundscapes) (Wales) Bill

(Pages 350 - 361)

Attached Documents:

LJC(6)-23-23 - Paper 63 - Letter from the Minister for Climate Change, 1 September 2023

6.16 Correspondence with the Counsel General and Minister for the Constitution: Ministerial scrutiny

(Pages 362 - 371)

Attached Documents:

LJC(6)-23-23 - Paper 64 - Letter from the Counsel General and Minister for the Constitution, 4 September 2023

LJC(6)-23-23 - Paper 65 - Letter to the Counsel General and Minister for the Constitution, 24 July 2023

6.17 Correspondence from the First Minister: Welsh Government response to the Committee's report on the Welsh Government's Legislative Consent Memoranda on the Data Protection and Digital Information (No. 2) Bill

(Pages 372 - 376)

Attached Documents:

LJC(6)-23-23 - Paper 66 - Letter from the First Minister, 5 September 2023

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

(14.20)

8 Legislative Consent Memoranda on the Energy Bill

(14.20 - 15.05) (Pages 377 - 458)

Legislative Consent Memorandum

Supplementary Legislative Consent Memorandum (Memorandum No. 2)

Supplementary Legislative Consent Memorandum (Memorandum No. 3)

Attached Documents:

LJC(6)-23-23 - Paper 67 - Legislative Consent Memorandum

LJC(6)-23-23 - Paper 68 - Supplementary Legislative Consent Memorandum (Memorandum No. 2)

LJC(6)-23-23 - Paper 69 - Supplementary Legislative Consent Memorandum (Memorandum No. 3)

LJC(6)-23-23 - Paper 70 - Letter from the Minister for Climate Change, 1 September 2023

LJC(6)-23-23 - Paper 71 - Letter from the Minister for Climate Change to the Llywydd, 25 July 2023

LJC(6)-23-23 - Paper 72 - Letter from the UK Government, 24 July 2023

LJC(6)-23-23 - Paper 73 - Letter to the UK Government, 12 July 2023

LJC(6)-23-23 - Paper 74 - Draft report

9 International agreements

(15.05 - 15.15) (Pages 459 - 470)

Attached Documents:

LJC(6)-23-23 - Paper 75 - Briefing paper

10 Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Non-Domestic Rating Bill

(15.15 - 15.25) (Pages 471 - 482)

Attached Documents:

LJC(6)-23-23 - Paper 76 - Legal Advice Note

LJC(6)-23-23 - Paper 77 - Draft report

SL(6)370 – The Traffic Signs (Amendment) (Wales) Regulations and General Directions 2023

Background and Purpose

The Traffic Signs (Amendment) (Wales) Regulations and General Directions 2023 (**the TSRGD 2023**) amend the Traffic Signs Regulations and General Directions 2016 (**the TSRGD 2016**) in relation to Wales. The TSRGD 2016 sets out what traffic signs in Great Britain must look like, what they mean and how they may be placed and illuminated.

These amendments are consequential on and supplementary to the Restricted Roads (20 mph Speed Limit) (Wales) Order 2022, which will reduce the general speed limit for restricted roads in Wales from 30mph to 20mph when it comes into force on 17 September 2023.

The amendments made by the TSRGD 2023 include:

New road safety signs

For example, this new sign to warn of a speed camera and remind drivers of the 20mph speed limit:



Removal of existing signs

For example, this sign (which warns of the end of a 20mph zone and indicates that the national speed limit applies) will no longer be needed when the general speed limit for restricted roads is reduced to 20mph:



New temporary signs

For example, this new temporary sign indicating the commencement point of a new 20mph speed limit (which may be placed during the first 12 months that the 20mph is in force):



Procedure

Negative.

The TSRGD 2023 was made by the Welsh Ministers before it was laid before the Senedd. The Senedd can annul the TSRGD 2023 within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date it was laid before the Senedd.

Technical Scrutiny

The following 5 points are 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

Regulation 3(1)(b) introduces Welsh text to accompany the following sign:



The Welsh text to be used with this sign is "Ysgol", "Hebryngwr", "Maes chwarae", "Plant anabl", "Plant dall" or "Plant byddar".

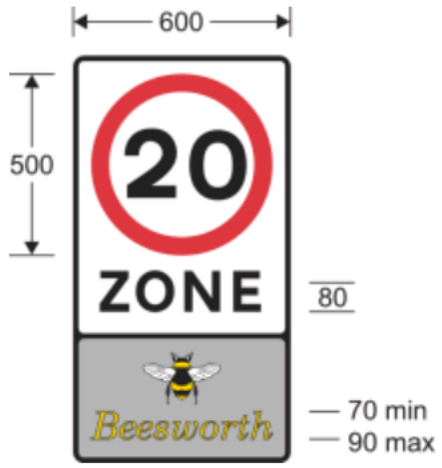
The English-language general description given for this sign in the TSRGD 2023 is "children going to or from school or playground area". However, in the TSRGD 2016, the general description that accompanies this sign is "children going to or from school or playground ahead". As a result, following the coming into force of regulation 3(1), this sign will have a different description in Wales than it does in England.

We would welcome clarification as to whether the change from "playground ahead" to "playground area" is intended and, if it is intended, what difference does that make to the placing and effect of this sign?

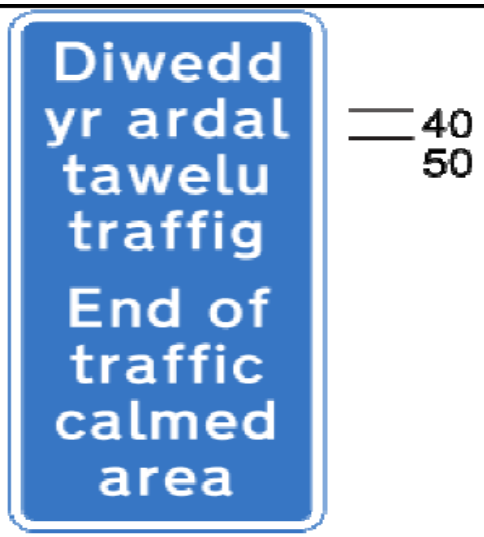
2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Because the TSRGD 2023 applies in relation to Wales, some existing road signs that apply in England and Wales need to apply in England only (i.e. Wales needs to be carved out from the application of some signs in the TSRGD 2016). The TSRGD 2023 achieves this by inserting the words "In relation to England" in respect of some signs in the TSRGD 2016. The words are to be inserted "at the beginning" of the relevant column, but it is unclear precisely where those words should be inserted.

For example, regulation 4(a) of the TSRGD 2023 suggests that the words (i.e. the red text below) will be inserted as follows, **before** the diagram number:

In relation to England, Diagram 674 Entrance to a zone where a maximum speed limit of 20 mph is in force	

However, where the TSRGD 2023 introduces a new sign for Wales, the words "In relation to Wales" are placed **after** the diagram number. For example, regulation 5 of the TSRGD 2023 includes this new entry:

Diagram 883.1 In relation to Wales, end of traffic calmed area	

We would be grateful for clarity as to where the words "In relation to England" should be inserted in the TSRGD 2016. We add that consistency in approach to issues such as this are important to the clarity and accessibility of legislation.

3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

In general direction 9 of the TSRGD 2023, the new paragraph 2 begins with the words "This sign…". However, this is inconsistent with the drafting of the existing paragraph 2 and of all the other paragraphs in Part 4 of Schedule 10 to TSRGD 2016 which begin with the words "The sign…".

4. Standing Order 21.2(i) – that there appears to be doubt as to whether it is intra vires; Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

In relation to Part 3 of the TSRGD 2023, we raise the following points:

- The preamble does not state which enabling powers the Welsh Ministers are relying on to make Part 3. While we believe the Welsh Ministers do have the powers to make Part 3 under the Road Traffic Regulation Act 1984, those powers should be cited in the preamble. The enabling powers for Parts 1 and 2 have been cited in the preamble.

- The preamble confirms that the consultation requirements set out in the Road Traffic Regulation Act 1984 have been complied with as regards Parts 1 and 2, but there is no mention of consultation on Part 3. We note that the Road Traffic Regulation Act 1984 requires consultation **before regulations can be made** and **before general directions can be given**. We therefore ask the Welsh Government whether any of the consultation requirements in the Road Traffic Regulation Act 1984 apply to Part 3 and, if they do, whether such consultation was carried out before the TSRGD 2023 was made.

- Parts 1 and 2 expressly include provisions to state that they commence on 17 September 2023. However, Part 3 does not include a commencement provision. While it appears from the overall context that Part 3 is also intended to commence on 17 September 2023, there should be express provision stating when Part 3 comes into force.

- It is unclear how Part 3 should be cited. Regulation 1(1)(a) states that Part 1 may be cited as the Traffic Signs (Amendment) (Wales) Regulations 2023. Regulation 1(1)(b) states that **Part 1 together with Part 2** may be cited as the Traffic Signs (Amendment) (Wales) Regulations and General Directions, i.e. the TSRGD 2023. However, it appears to us that Part 3 is also part of the TSRGD 2023, not least because the name of the instrument as a whole is The Traffic Signs (Amendment) (Wales) Regulations and General Directions 2023.

5. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

The numbering of the provisions of the TSRGD 2016 begin with "1" at the beginning of both the regulations in Part 1 and the general directions in Part 2. However, the numbering in the TSRGD 2023 does not re-commence from "1" at each Part; instead, the numbering continues through Parts 1, 2 and 3.

We also note that the provision at 11(4) in Part 3 refers to itself as a "regulation". However, general directions 9 and 10 are also referred to as "regulations" (see general direction 8 in Part 2).

This further adds to the confusion as to the citation of various provisions of the TSRGD 2023.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

6. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

Part 3 of the TSRGD 2023 contains transitional and saving provisions; as the Explanatory Memorandum says:

> *Once the TSRGD 2023 is in force, a number of traffic signs and road markings currently in use will no longer be necessary and will therefore not be permitted in Wales. These transitional and savings provisions effectively provide a 'grace' period for certain traffic signs and road markings allowing traffic authorities additional time after the TSRGD 2023 comes into force to ensure the correct traffic signs and road markings are in place and non-compliant/redundant traffic signs and road markings are removed*.

We would be grateful if the Welsh Government could explain what this means for the enforcement of road traffic offences during the 'grace' period.

Welsh Government response

A Welsh Government response is required to each of the reporting points.

Legal Advisers
Legislation, Justice and Constitution Committee
9 August 2023

SL(6)371 – The Valuation Tribunal for Wales (Amendment) Regulations 2023

Background and Purpose

The Valuation Tribunal for Wales Regulations 2010 (the "**2010 Regulations**") provide for the establishment, membership and administration of the Valuation Tribunal for Wales ("VTW"), as well as the procedures for council tax appeals.

The VTW is an independent tribunal resolving disputes relating to the valuation of property for non domestic rates, council tax and drainage rates.

These Regulations (the "**2023 Regulations**") amend the 2010 Regulations and make changes in relation to the administration of the VTW's Governing Council, its membership terms and the administration of council tax appeals.

The purpose of the 2023 Regulations, as explained in the Explanatory Memorandum, is to help the VTW to modernise its administrative practices and maintain a sustainable tribunal membership.

Procedure

Negative.

The Regulations were 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 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. **Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

Regulation 11 purports to omit a provision from regulation 46(11) of the 2010 Regulations.

The provision which is to be omitted is incorrectly identified as "paragraph (a)". However, it should be correctly described as "sub-paragraph (a)".

2. **Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

Regulation 12(b) purports to amend paragraph 12(a) of Schedule 2 to the 2010 Regulations.

The location of the amendment is incorrectly identified as being "*at the end of paragraph 12(a)*". Paragraph 12(a) also encompasses paragraphs 12(a)(i) and 12(a)(ii). Therefore, the "end" of paragraph 12(a) is, in fact, at the end of paragraph (ii).

The long em dash which the amendment appears to be attempting to identify is found "in paragraph 12(a), at the end of the words before paragraph (i)" *(see Writing Laws for Wales 7.11(3))*.

Merits Scrutiny

The following two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

3. **Standing Order 21.3(vi) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

A Regulatory Impact Assessment ("RIA") was undertaken in respect of the 2023 Regulations. The RIA is contained in the Explanatory Memorandum and identifies the following benefits of making the 2023 Regulations:

> *[…] the maintenance of sustainable tribunal membership and the retention of experience. This will help to ensure VTW service delivery is not compromised […].*
>
> *The VTW Governing Council will operate more effectively, with changes to help prevent vacancies and absences from hindering routine business and appointments. Enabling any member to be considered for election as a national representative will help to ensure future appointments are not unduly restricted.*
>
> *Arrangements for council tax appeal hearings will benefit from improvements already made in relation to NDR, ensuring a consistency of approach where appropriate. The ability to hold fully virtual hearings is an important area for consistency, with respect to modernising the operations of the VTW.*

4. **Standing Order 21.3(vi) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

The 2023 Regulations came into force on 02 August 2023, during the Senedd's summer recess.

Welsh Government response

A Welsh Government response is required in respect of the two technical reporting points only.

Legal Advisers
Legislation, Justice and Constitution Committee
01 September 2023

SL(6)373 – The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023

Background and Purpose

The UK Emissions Trading Scheme ("ETS") was established by the Greenhouse Gas Emissions Trading Scheme Order 2020 ("the principal Order") as a UK-wide greenhouse gas emissions trading scheme to encourage cost-effective emissions reductions from the power, industry and aviation sectors. It was designed jointly by the Governments of the UK, Scotland, Wales and the Northern Ireland Executive. It contributes to the UK's emissions reduction targets and net zero goal, as well as the emissions reduction pathway in Wales.

The principal Order set up the UK ETS to be operational from 1 January 2021 and to run for ten scheme years. The scheme works by requiring operators of energy intensive industrial installations, power generators, and aircraft operators to monitor, report on, and surrender "allowances" equivalent to their greenhouse gas emissions in each scheme year. Some participants receive an allocation of allowances free of charge, details of which are published in allocation tables.

This Order contains a series of technical amendments that seek to regularise the operation of the UK ETS. The Explanatory Memoradum provides that the main changes made by this Order are intended to:

- Respond to impacts on the scheme operation brought about by the Covid-19 pandemic;
- Strengthen the existing provisions to help improve the effectiveness of the scheme while making it more flexible for participants; and
- Clarify the existing legislation to improve certainty and consistency for scheme participants and regulators.

Procedure

Negative.

This Order in Council was made by His Majesty before it was laid before the Senedd, the UK Parliament, the Scottish Parliament and the Northern Ireland Assembly on 21 July 2023. Any one of those legislatures may annul the Order, in accordance with the negative resolution procedures that apply in those legislatures.

Technical Scrutiny

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

1. **Standing Order 21.2(ix) – that it is not made or to be made in both English and Welsh**

   We note that the Order in Council was made by His Majesty and was laid before each of the four legislatures in the United Kingdom, and is therefore in English only.

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 not required.

Legal Advisers
Legislation, Justice and Constitution Committee
22 August 2023

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/1687/23

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

21 July 2023

Dear Huw,

I am writing to update you on the UK Emissions Trading Scheme (UK ETS) Authority Government Response to the "Developing the UK Emissions Scheme" consultation, which was published on 3 July. This update follows my oral statement, delivered on 4 July 2023. As I set out, the key change within the Government Response is the reduction of the UK ETS cap to bring it in line with net zero targets. Within the Response, the UK ETS Authority (formed of Welsh Government, UK Government, Scottish Government, and Northern Ireland Executive) committed to implementing a new cap by January 2024. It is the Authority's aim to pursue a legislative programme in line with the decisions and intentions made in the Government Response, including for the cap.

Changes to the cap, (maximum amounts of reportable emissions available under the Greenhouse Gas Emissions Trading Scheme Order 2020 ("the 2020 Order")) would ordinarily have been made through regulations under an enabling power within the Climate Change Act 2008 ("the 2008 Act"). Such regulations would be in the form of a statutory instrument ("SI") laid within each of the four legislatures of the United Kingdom as an Order in Council. The SIs would be subject to the affirmative procedure, as they would contain provision, making the overall requirements of a trading scheme "significantly more onerous". However, due to the absence of a Northern Ireland Executive and sitting Assembly, it is not possible to make affirmative procedure legislation, in all legislatures in parallel.

With no clear date on when a Northern Ireland Executive will be formed and with time criticality on the changes required, the UK ETS Authority have been assessing alternative options.

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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 agreed alternative is for the UK Government to amend the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 ("the Auctioning Regulations") by way of an enabling power within the Finance Act 2020 ("the 2020 Act"), until the changes can be made under the 2008 Act.

The enabling power under section 96(3) of the 2020 Act provides that:
The Treasury may make schemes about the conduct and terms of allocations of emissions allowances in return for payment (the schemes having effect subject to any regulations under this section).

The Auctioning Regulations are part of the UK ETS framework and are used to determine the share of allowances which can be brought to auction each year. This amendment will set the auction share and therefore the number of allowances that enter circulation in line with the proposed net zero cap. This will mean that the number of allowances available to the market is in line with a lower cap consistent with net zero. The amendments to the Auctioning Regulations do not change the cap as set out in the 2020 Order, and legislation amendments made through an enabling power under the 2008 Act will be needed to deliver policy in the long term. However, reducing the share of allowances available to auction, will have the desired effect, until the legislation amendments made through the 2008 Act enabling power, can be made. Namely, limiting the emissions of participants by reducing the number of allowances available.

In accordance with the UK ETS Common Framework, the Welsh Government's stance on the UK ETS is that the financial elements are simply the mechanism by which the ultimate goal of the system – environmental protection via incentivising decarbonisation – is achieved. As the amendment to lower the auctioning allowances is being made to the Auctioning Regulations, and not primary legislation, a Legislative Consent Motion is not relevant. The amendment is being made by an SI to subordinate legislation. As the subordinate legislation being amended is not retained direct principal EU legislation under paragraph 4 of part 1 under schedule 8 of the European Union (Withdrawal) Act 2018, the procedure to be applied before the Senedd is not what would apply to that legislation as if it were amending an enactment contained in primary legislation. An SI Consent Memorandum is therefore unnecessary, as per the Standing Orders of the Welsh Parliament[1]. However, proceeding with the proposal to modify the Auctioning Regulations potentially eliminates the opportunity for the Senedd (and other Parliaments) to assess the proposed changes. Consequently, I am cautious about using this approach.

Nevertheless, reducing the UK ETS cap is time critical. Without an agreed legislative route, the Government Response with the commitment to implement the cap by 2024 could not have been published. Failing to do this would have delayed the implementation of the cap and therefore posed significant risks to both our climate targets and the participants of the UK ETS. Delaying implementation of the cap will only result in a steeper cap (and decarbonisation) trajectory later in this decade, placing greater pressure on our industries. In recognition of the urgency and importance of this proposal and the need to respect the political and legislative process in Northern Ireland, I have agreed with the other Portfolio Ministers across the Authority for the amendments to be made in this way. We have also committed via an exchange of letters to legislate under the 2008 Act to lower the UK ETS cap as soon as practicably possible. To avoid delaying the publication of the Government Response and therefore the implementation of the new cap, the scrutiny process will be carried out as normal across the four legislatures when the cap is legislated for, through the enabling power under the 2008 Act. Moving forward, I will continue to seek the Senedd's approval where relevant.

[1] Standing Orders of the Welsh Parliament (senedd.wales)

Of the other proposals within the Government Response, some will be made through an SI, subject to the negative procedure, pursuant to the 2008 Act, amending the 2020 Order. This will make a number of operational changes to the scheme which will be applied UK-wide, such as the inclusion of benchmarks into UK law. It is still possible to lay legislation under negative resolution procedure in Northern Ireland. Once laid, the SI will come into force on the specified commencement date. However, on their return, if the NI Assembly passes a resolution of annulment within the statutory period (being a period comprising at least 10 days on which the Assembly has been sitting, but not in any event less than 30 calendar days during one or more than one session of the Assembly) then that rule will be void from the date of that resolution.

Other changes will be made through an SI, subject to the affirmative procedure, which will apply only to Great Britain, for example, capping aviation free allocation at 100% of an operator's emissions. As there are currently no operators in Northern Ireland who would be affected by the provisions in this SI, the Authority have agreed that a GB-only SI would be acceptable in the short term.

I am copying this letter to Llyr Gruffydd, Chair of the Climate Change, Environment and Infrastructure Committee.

Yours sincerely,



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

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/1687/23

Llyr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

21 July 2023

Dear Llyr,

I am writing to update you on the UK Emissions Trading Scheme (UK ETS) Authority Government Response to the "Developing the UK Emissions Scheme" consultation, which was published on 3 July. This update follows my oral statement, delivered on 4 July 2023. As I set out, the key change within the Government Response is the reduction of the UK ETS cap to bring it in line with net zero targets. Within the Response, the UK ETS Authority (formed of Welsh Government, UK Government, Scottish Government, and Northern Ireland Executive) committed to implementing a new cap by January 2024. It is the Authority's aim to pursue a legislative programme in line with the decisions and intentions made in the Government Response, including for the cap.

Changes to the cap, (maximum amounts of reportable emissions available under the Greenhouse Gas Emissions Trading Scheme Order 2020 ("the 2020 Order")) would ordinarily have been made through regulations under an enabling power within the Climate Change Act 2008 ("the 2008 Act"). Such regulations would be in the form of a statutory instrument ("SI") laid within each of the four legislatures of the United Kingdom as an Order in Council. The SIs would be subject to the affirmative procedure, as they would contain provision, making the overall requirements of a trading scheme "significantly more onerous". However, due to the absence of a Northern Ireland Executive and sitting Assembly, it is not possible to make affirmative procedure legislation, in all legislatures in parallel.

With no clear date on when a Northern Ireland Executive will be formed and with time criticality on the changes required, the UK ETS Authority have been assessing alternative options.

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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 agreed alternative is for the UK Government to amend the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 ("the Auctioning Regulations") by way of an enabling power within the Finance Act 2020 ("the 2020 Act"), until the changes can be made under the 2008 Act.

The enabling power under section 96(3) of the 2020 Act provides that:
The Treasury may make schemes about the conduct and terms of allocations of emissions allowances in return for payment (the schemes having effect subject to any regulations under this section).

The Auctioning Regulations are part of the UK ETS framework and are used to determine the share of allowances which can be brought to auction each year. This amendment will set the auction share and therefore the number of allowances that enter circulation in line with the proposed net zero cap. This will mean that the number of allowances available to the market is in line with a lower cap consistent with net zero. The amendments to the Auctioning Regulations do not change the cap as set out in the 2020 Order, and legislation amendments made through an enabling power under the 2008 Act will be needed to deliver policy in the long term. However, reducing the share of allowances available to auction, will have the desired effect, until the legislation amendments made through the 2008 Act enabling power, can be made. Namely, limiting the emissions of participants by reducing the number of allowances available.

In accordance with the UK ETS Common Framework, the Welsh Government's stance on the UK ETS is that the financial elements are simply the mechanism by which the ultimate goal of the system – environmental protection via incentivising decarbonisation – is achieved. As the amendment to lower the auctioning allowances is being made to the Auctioning Regulations, and not primary legislation, a Legislative Consent Motion is not relevant. The amendment is being made by an SI to subordinate legislation. As the subordinate legislation being amended is not retained direct principal EU legislation under paragraph 4 of part 1 under schedule 8 of the European Union (Withdrawal) Act 2018, the procedure to be applied before the Senedd is not what would apply to that legislation as if it were amending an enactment contained in primary legislation. An SI Consent Memorandum is therefore unnecessary, as per the Standing Orders of the Welsh Parliament[1]. However, proceeding with the proposal to modify the Auctioning Regulations potentially eliminates the opportunity for the Senedd (and other Parliaments) to assess the proposed changes. Consequently, I am cautious about using this approach.

Nevertheless, reducing the UK ETS cap is time critical. Without an agreed legislative route, the Government Response with the commitment to implement the cap by 2024 could not have been published. Failing to do this would have delayed the implementation of the cap and therefore posed significant risks to both our climate targets and the participants of the UK ETS. Delaying implementation of the cap will only result in a steeper cap (and decarbonisation) trajectory later in this decade, placing greater pressure on our industries. In recognition of the urgency and importance of this proposal and the need to respect the political and legislative process in Northern Ireland, I have agreed with the other Portfolio Ministers across the Authority for the amendments to be made in this way. We have also committed via an exchange of letters to legislate under the 2008 Act to lower the UK ETS cap as soon as practicably possible. To avoid delaying the publication of the Government Response and therefore the implementation of the new cap, the scrutiny process will be carried out as normal across the four legislatures when the cap is legislated for, through the enabling power under the 2008 Act. Moving forward, I will continue to seek the Senedd's approval where relevant.

[1] Standing Orders of the Welsh Parliament (senedd.wales)

Of the other proposals within the Government Response, some will be made through an SI, subject to the negative procedure, pursuant to the 2008 Act, amending the 2020 Order. This will make a number of operational changes to the scheme which will be applied UK-wide, such as the inclusion of benchmarks into UK law. It is still possible to lay legislation under negative resolution procedure in Northern Ireland. Once laid, the SI will come into force on the specified commencement date. However, on their return, if the NI Assembly passes a resolution of annulment within the statutory period (being a period comprising at least 10 days on which the Assembly has been sitting, but not in any event less than 30 calendar days during one or more than one session of the Assembly) then that rule will be void from the date of that resolution.

Other changes will be made through an SI, subject to the affirmative procedure, which will apply only to Great Britain, for example, capping aviation free allocation at 100% of an operator's emissions. As there are currently no operators in Northern Ireland who would be affected by the provisions in this SI, the Authority have agreed that a GB-only SI would be acceptable in the short term.

I am copying this letter to Huw Irranca-Davies, Chair of Legislation, Justice and Constitution Committee.

Yours sincerely,



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

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Legislative routes to implement changes to UK Emissions Trading Scheme**
DATE	**21 July 2023**
BY	**Julie James MS, Minister for Climate Change**

As I set out in my oral statement, delivered on 4 July 2023, the UK Emissions Trading Scheme (UK ETS) Authority – formed of Welsh Government, UK Government, Scottish Government, and Northern Ireland Executive – have now published the Government Response to the "Developing the UK ETS" consultation.

In the statement I outlined the strategic and technical changes contained within the Government Response and what they mean for Wales. The key strategic change I announced is the reduction of the UK ETS cap to bring it in line with net zero targets. The Authority has publicly committed to implement this new cap from January 2024 and aims to pursue a legislative programme in line with the decisions and intentions made in the Government Response, including for the cap.

Most of the changes resulting from the Government Response are technical and/or operational in nature and will be implemented through a statutory instrument (SI), subject to the negative procedure, amending the Greenhouse Gas Emissions Trading Scheme Order 2020 ("the 2020 Order") pursuant to the Climate Change Act 2008 (the 2008 Act"). This will enable a number of operational changes to the scheme which can be applied UK-wide, such as the inclusion of benchmarks into UK law. It is still possible to lay legislation under negative resolution procedure in Northern Ireland. Once laid, the SI will come into force on the specified commencement date. However, on their return, if the NI Assembly passes a resolution of annulment within the statutory period (being a period comprising at least 10 days on which the Assembly has been sitting, but not in any event less than 30 calendar days during one or more than one session of the Assembly) then that rule will be void from the date of that resolution.

Other more significant changes, such as the cap, would ordinarily have been made through SIs in the form of Orders in Council, subject to the affirmative procedure, laid in all legislatures of the UK in parallel, pursuant to the 2008 Act. However, due to the absence of a Northern Ireland Executive and sitting Assembly, it is not possible to make UK-wide legislation, through the affirmative procedure.

Most of these significant changes can, and will, be implemented through an SI, subject to the affirmative procedure, which will apply only to Great Britain, for example capping aviation free allocation at 100% of an operator's emissions. As there are currently no operators in Northern Ireland who would be affected by the provisions in this SI, the Authority have agreed that a Great Britain-only SI would be acceptable in the short term.

Changes to the cap however, cannot apply to Great Britain only as it affects the UK as a whole. With no clear date on when a Northern Ireland Executive will be formed and with timing critical to implement the changes required, an alternative to laying an SI in all legislatures of the UK in parallel is therefore required.

The solution agreed is for the UK Government to amend the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 (the "Auctioning Regulations") through an enabling power under the Finance Act 2020, until the changes can be made under the 2008 Act.

The Auctioning Regulations are part of the UK ETS Framework and are used to determine the share of allowances which can be brought to auction each year. This amendment will set the auction share, and therefore the number of allowances that enter circulation, in line with the new net zero cap. This will mean the number of allowances available to the market is in line with a lower cap, consistent with net zero. It is important to note that the amendments to the Auctioning Regulations do not lower the cap as set out in the 2020 Order. Legislation amendments, via an enabling power under the 2008 Act will be needed to deliver policy in the long term. However, this interim change will have the desired effect until the legislation under the 2008 Act can be made; namely limiting the emissions of participants by reducing the number of allowances available.

As you will be aware, in accordance with the UK ETS Common Framework, the Welsh Government's stance on the UK ETS is that the financial elements are simply the mechanism by which the ultimate goal of the system – environmental protection via incentivising decarbonisation – is achieved. As the amendment to lower the auctioning allowances is being made to the Auctioning Regulations, and not primary legislation, a Legislative Consent Motion is not relevant. The amendment is being made by an SI to subordinate legislation. As the subordinate legislation being amended is not retained direct principal EU legislation under paragraph 4 of part 1 under schedule 8 of the European Union (Withdrawal) Act 2018, the procedure to be applied before the Senedd is not what would apply to that legislation as if it were amending an enactment contained in primary legislation. An SI Consent Memorandum is therefore unnecessary, as per the Standing Orders of the Welsh Parliament[1]

Modifying the Auctioning Regulations, without making the necessary changes through the enabling power under the 2008 Act, potentially eliminates the opportunity for the

[1] Standing Orders of the Welsh Parliament (senedd.wales)

Senedd (and other Parliaments) to assess the proposed changes. Consequently, I am cautious about using this approach.

Nevertheless, reducing the UK ETS cap is time critical. Without an agreed legislative route, the Government Response with the commitment to implement the cap by 2024 could not have been published. Failing to do this would have delayed the implementation of the cap and therefore posed significant risks to both our climate targets and the participants of the UK ETS. Delaying implementation of the cap will only result in a steeper cap (and decarbonisation) trajectory later in this decade, placing greater pressure on our industries.

While I am committed to ensuring that the Senedd has the right and ability to assess provisions which fall within its legislative competence, it is important that the process in Northern Ireland is respected. Therefore, in recognition of the urgency and importance of this change, I have agreed with the other Portfolio Ministers across the Authority for the amendments to be made in this way. To avoid delaying the publication of the Government Response and therefore the implementation of the new cap, the scrutiny process will be carried out as normal across the four legislatures when the cap is legislated for, through the enabling power under the 2008 Act.

I have written to the Chairs of the Climate Change, Environment, and Infrastructure Committee and the Legislation, Justice, and Constitution Committee to inform them of the circumstances and the process which will be used. Furthermore, I and the other Portfolio Ministers across the Authority have also committed via an exchange of letters to legislate under the 2008 Act to lower the UK ETS cap as soon as practicably possible. Moving forward, I will continue to seek the Senedd's approval where matters fall within the competence of the Senedd.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

SL(6)375 – The Education (Student Loans) (Repayment) (Amendment) (No. 2) Regulations 2023

Background and Purpose

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 ("the 2009 Regulations"), which make provision for the repayment of income-contingent student loans in England and Wales.

Regulation 2 makes provision for a temporary reduction of the interest rate on undergraduate loans specified in regulations 21A and 21C, and postgraduate degree loans specified in regulation 21B, of the 2009 Regulations. The interest rate is set at 7.3% for the period beginning with 1 September 2023 and ending with 30 November 2023 and, in practice, applies to Plan 2 and Plan 3 borrowers. After that date, the interest rate will revert to the original rate specified in the 2009 Regulations, unless further regulations are brought into force.

The Explanatory Memorandum explains (at paragraph 4.2) that, without intervention, loan interest rates would increase to between 12.91% and 15.91% for Plan 2 borrowers, and to 15.91% for Plan 3 borrowers.

Procedure

Composite Negative.

The Regulations were made by both the Welsh Ministers and the Secretary of State, before being laid before both the Senedd and the United Kingdom Parliament.

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. The United Kingdom Parliament can also annul the Regulations, in accordance with the rules for annulment that apply to the United Kingdom Parliament.

Technical Scrutiny

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

1. Standing Order 21.2(ix) – that it is not made or to be made in both English and Welsh

These Regulations have been made as a composite instrument, meaning the Regulations have been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the Senedd and the United Kingdom Parliament. As a result, the Regulations have been made in English only.

The Explanatory Memorandum explains that:

"The 2009 Regulations were made as composite regulations by the Welsh Ministers (in relation to Wales) and the Secretary of State. They govern repayments of student loans by borrowers who have taken out income-contingent loans for courses which begin on or after September 1998. The 2009 Regulations contain provisions (not devolved to the Welsh Ministers) which are made by the Secretary of State in relation to England and Wales which concern the tax system operated by Her Majesty's Revenue and Customs (HMRC). Some other provisions are made by the Welsh Ministers in relation to Wales and the Secretary of State in relation to England.

As the Regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually. Therefore, the 2023 Regulations are made in English only."

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 not required.

Legal Advisers
Legislation, Justice and Constitution Committee
11 August 2023

Agenda Item 2.5

SL(6)367 – The Welsh Language Standards (No. 9) Regulations 2023

Background and Purpose

The Welsh Language (Wales) Measure 2011 ("the 2011 Measure") makes provision for the specification of standards of conduct in relation to the Welsh language ("standards"). These replace the system of Welsh language schemes provided for by the Welsh Language Act 1993.

Section 26 of the 2011 Measure enables the Welsh Ministers to specify standards, and section 39 enables them to provide that a standard is specifically applicable to a person by authorising the Welsh Language Commissioner ("the Commissioner") to give a notice to that person requiring compliance with the standard (a "compliance notice").

These Regulations specify standards in relation to the conduct of water and sewerage undertakers set out in Schedule 4 to the Regulations (which are referred to in the Regulations as "bodies"). Water and sewerage undertakers are appointed under section 6 or by a variation of an appointment under section 7 of the Water Industry Act 1991.

Because the bodies which these standards relate to are within Schedule 8 to the 2011 Measure, section 37 of the 2011 Measure provides that only service delivery standards and record keeping standards can be made specifically applicable to them. A service delivery standard only applies to the extent that it relates to the provision by the body of a service specified in column 2 of the body's entry in Schedule 8 to the 2011 Measure. In the case of the water and sewerage undertakers falling within Schedule 4 to these Regulations, the specified services are services provided to the public in the exercise of the functions of water undertaker or sewerage undertaker (as appropriate) for the whole or any part of Wales.

These Regulations use the Welsh alphabet. This affects paragraphs 26(3), 26(4), 33 of Schedule 1. This style is different to the usual numbering style adopted in subordinate legislation made by the Welsh Ministers. The same style was adopted within The Welsh Language Standards (No. 1) Regulations 2015 and subsequent Regulations specifying Welsh language standards.

The title of these Regulations is The Welsh Language Standards (No. 9) Regulations 2023. If passed by the Senedd, these will be the eighth Welsh Language Standards Regulations to be made. Usually a number in the name of one of a series of Statutory Instruments refers to the number made in the particular year, however it is intended that all the Regulations made under section 26 of 2011 Measure will be made in a series, in the same way as commencement orders.

Procedure

Draft Affirmative

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. **Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.**

In these Regulations a "body" means a person falling within one or both of the categories of persons listed in Schedule 4. Schedule 4 lists persons who provide the public with water or sewerage services and who, by virtue of an appointment under section 6 of the Water Industry Act 1991 or by virtue of a variation of such an appointment under section 7 of that Act, are water or sewerage undertakers for the whole or any part of Wales. A member of the public reading these Regulations cannot easily identify the bodies that fall within Schedule 4. Whilst it is recognised that Schedule 4 replicates the wording in the 2011 Measure and that the bodies falling within Schedule 4 can change, it would allow for greater accessibility if the bodies currently falling within Schedule 4 were listed by name, either in the Regulations themselves or in the Explanatory Memorandum.

2. **Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.**

The Welsh Ministers held a public consultation on a draft version of these Regulations between 15 February 2023 and 5 April 2023. It is noted in the 'Consultation - summary of response' document published in June 2023, that as this was the second consultation on draft standards for water and sewerage undertakers, the Welsh Ministers consulted for a shorter than usual period of 7 weeks.

Welsh Government response

Merit Scrutiny Point 1:
The decision not to list the current companies that fall within Schedule 4 to the Regulations by name, was made in order to ensure the longevity of the Regulations. Listing companies by name might have required amendment Regulations to be made and/or caused ambiguity if a new water and/or sewerage undertaker started providing services; a named company stopped

providing services to the public in Wales; a company adopted a new name, or if a company merged with another company.

In addition, it is only once a body has to comply with the compliance notice given by the Welsh Language Commissioner, that any duties or rights arise. At that point the public would be made aware by the Welsh Language Commissioner of which bodies have to comply with standards. Whilst the Welsh Government does not accept that the Draft Regulations present any issue in respect of accessibility of the law, the Explanatory Memorandum has been amended so as to include a list of all the bodies currently captured by the definition at Schedule 4 to the Regulations.

Legal Advisers
Legislation, Justice and Constitution Committee
20 July 2023

Pwyllgor Diwylliant, Cyfathrebu, y Gymraeg, Chwaraeon, a Chysylltiadau Rhyngwladol

—

Culture, Communications, Welsh Language, Sport, and International Relations Committee

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Jeremy Miles MS
Minister for Education and Welsh Language
Welsh Government

Copied to: Huw Irranca-Davies MS,
Chair
Legislation, Justice, and Constitution Committee

30 June 2023

Re: Draft Welsh Language Standards (No.9) Regulations 2023

Dear Jeremy,

Thank you for your letter dated **27 June 2023**, advising of your intention to lay the draft Welsh Language Standards (No.9) Regulations 2023 ("the Regulations") before the Senedd.

We discussed your letter at our meeting on Thursday, 29 June 2023. We note that you laid the Regulations before the Senedd on 27 June 2023. I am writing to confirm that the Committee does not intend to scrutinise and report on these Regulations.

Whilst the Committee has opted not to undertake scrutiny of these specific Regulations, the Committee would welcome the opportunity to consider and undertake scrutiny of future Welsh Language Standards regulations. We ask that sufficient time is provided in future to allow the Committee to undertake such scrutiny and to allow the Committee to publish a report. The Welsh Government has previously provided advanced notice of such regulations being laid and has offered to take into account the Committee's consideration of such regulations when arranging the date for a Plenary debate. We would be grateful if this could be factored into the introduction of future Welsh Language Standards regulations.

Yours sincerely,



Delyth Jewell MS
Committee Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

SL(6)368 – The Environmental Permitting (England and Wales) (Amendment) Regulations 2023

Background and Purpose

The Environmental Permitting (England and Wales) (Amendment) Regulations 2023 ("these Regulations") amend Part 2 of Schedule 9 to the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154). That Part requires operators of materials facilities to notify the regulator if they receive waste material of 1,000 tonnes or more. Operators must sample the waste entering and leaving the facility, and record and report the information to the regulator.

By virtue of these amendments (and in particular the definition of "waste material" in regulation 2(4)), the type of waste material to which the threshold for notification to the regulator applies will include waste material of a single type, rather than only material of two or more kinds mixed together.

Sampling requirements are amended, both in respect of waste material received at a materials facility (regulation 2(7)) and waste material leaving that facility (regulation 2(8)), to extend the types of material that is required to be identified, including types of packaging.

Regulation 2(9) amends the arrangements for record-keeping to reflect the new sampling requirements and to require the identification of the supplier of each batch of waste material received at the materials facility. Regulation 2(11) makes corresponding amendments to the arrangements for reporting to the regulator.

The period during which records are required to be kept for information recorded after the coming into force of these Regulations is extended from four to seven years (regulation 2(10)).

Information obtained by the regulator may be shared with the administrator for a scheme for producer responsibility for disposal costs (regulation 2(12)).

All materials facilities within scope will be required to comply with these Regulations by 1 October 2024 and report the first quarter's data to the regulator by 1 January 2025.

Procedure

Composite Draft Affirmative

A draft of the Regulations has been laid before the Senedd and the United Kingdom Parliament.

The Welsh Ministers and the UK Ministers cannot make the Regulations unless the Senedd and the UK Parliament approve the draft Regulations.

Technical Scrutiny

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

1. Standing Order 21.2(ix) – that it is not made or to be made in both English and Welsh

The Committee notes that these Regulations are composite in nature. The Explanatory Memorandum states at paragraph 5 of Part 1 thereto:

> *"As the Regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually."*

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd

These Regulations relate to common frameworks. A commitment to notify the Senedd when legislation relates to a common framework was previously given to the Committee.

A letter from Julie James, the Minister for Climate Change, dated 26 June 2023 states as follows:

> *"I am writing to inform you that The Environmental Permitting (England and Wales) (Amendment) Regulations 2023 which will shortly be laid before the Senedd fall under the scope of the Resources and Waste Common Framework."*

Welsh Government response

A Welsh Government response is not required.

Legal Advisers
Legislation, Justice and Constitution Committee
17 August 2023

SL(6)374 – School Admissions Appeals Code

Background and Purpose

The School Admission Appeals Code, which was issued in 2013, has been revised to reflect the changes made by the Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2023 ("the 2023 Regulations") that came into force on 3 May 2023.

The 2023 Regulations amended the Education (Admission Appeals Arrangements) (Wales) Regulations 2005 ("the 2005 Regulations") to include an option for admission appeals to be undertaken remotely, as well as in person, or a mixture of both. They codify certain temporary arrangements that were introduced in response to the coronavirus pandemic.

The 2023 Regulations apply to both types of admission appeal hearings dealt with under the 2005 Regulations; namely appeals against an admission authority's refusal to admit a child and appeals by governing bodies against a local authority's decision to admit a child who has been permanently excluded from two or more schools.

This Code also includes some technical amendments which reflect legislative changes since the previous code was issued in 2013.

For information, this Code was initially laid on 10 May 2023. The LJC report that was circulated on 17 May 2023 identified a substantial number of errors in the instrument, and the Code was subsequently withdrawn by the Welsh Government on 26 May 2023. It was re-laid on 7 August 2023.

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 points are identified for reporting under Standing Order 21.7 in respect of this code:

1. In paragraph 3.3, there is a statement regarding people *"…who have experience in the conduct of **enquiries** or disciplinary hearings"* [***emphasis added***]. Given the context, it appears that it should refer to "***i**nquiries*" rather than "***e**nquiries*". This assessment is reinforced by the fact that, in the Welsh text, the statement refers to "*inquiries*" rather than "*enquiries*" by using the word "*ymchwiliadau*" rather than "*ymholiadau*".

2. In paragraph 4.23, there is a statement in parentheses regarding the appellants waiving "*their right to a period of **14 days' notice** of their appeal*" followed by a signpost to the paragraph in which that right to notice is set out (paragraph 4.4). However, paragraph 4.4 provides that the appellants must be given "*at least **10 working days written notice** of the date of their appeal hearing*". This inconsistency is likely to cause confusion for the reader, and as such paragraph 4.23 should be amended to correctly reference what is set out in paragraph 4.4.

3. In paragraph 7.3, in the Welsh text, it might be more appropriate to use a different term such as "*cyflwyno*" for the translation of "*lodged*". The existing term "*cofrestru*" suggests that the date on which the appeal panel will meet is to be no later than the 15th school day after the day on which an appeal has been **registered** rather than the day on which it is presented or received.

4. In Annex A, in paragraph A.20, in the Welsh text, the words "*as a pupil*" are missing from the translation of the phrase "*admit a child **as a pupil***" [***emphasis added***].

Government response

A Welsh Government response is required.

Legal Advisers
Legislation, Justice and Constitution Committee
30 August 2023

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

Llywodraeth Cymru
Welsh Government

3 August 2023

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

Dear Huw

The Animal By-Products, Pet Passport and Animal Health (Fees) (Wales) (Amendment) Regulations 2023

I made the commitment in plenary on 4 July to write to the Committee outlining the changes we have made to the Animal By-Products, Pet Passport and Animal Health (Fees) (Wales) (Amendment) Regulations 2023 prior to making. The following changes were made in relation to the scrutiny points reported by the Committee:

Technical Scrutiny point 1:	Regulation 3(2) has been corrected in the English text by the insertion of ", in the appropriate places in alphabetical order" after "regulation 2", and in the Welsh text by the insertion of ", yn y lleoedd priodol yn nhrefn yr wyddor" after "rheoliad 2".
Technical Scrutiny point 2:	The preamble has been corrected in the English text by deletion of the words "("the 1984 Act")" after "the Animal Health and Welfare Act 1984", and in the Welsh text by deletion of the words "("Deddf 1984")" after "Ddeddf Iechyd a Lles Anifeiliaid 1984".
Technical Scrutiny point 3:	Regulation 2(5)(a) and (b)(iii) has been corrected in the English text by inserting "Column 2" and "Column 3" at the head of the columns in the first row, and in the Welsh text by inserting "Colofn 2" and "Colofn 3".

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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.

Technical Scrutiny point 4:	In the English text only, regulation 3(8)(a)(iii)(aa) has been corrected by the insertion of “, in the first place it occurs,”. This insertion was only necessary in the English text as the equivalent Welsh text does not give rise to the same issue.
Technical Scrutiny point 5:	In both the English and Welsh texts the closing quotation marks in regulation 3(11)(c) have been moved to the end of the regulation.
Merit Scrutiny point 7:	The enabling powers referred to in the preamble have been corrected. In the English text "(1) and (3)(c)" has been inserted after "section 10". And in the Welsh text "(1) a (3)(c)" has been inserted after "adran 10".
Merit Scrutiny point 8:	Reference to paragraph 12 of Schedule 7 of the European Union (Withdrawal) Act 2018 has been added to the relevant footnote. In the English text, “Paragraph 1(8) of Schedule 7 applies to regulations under Schedule 4 by virtue of paragraph 12(3) of Schedule 7 to the 2018 Act.” has been inserted at the beginning of the footnote. In the Welsh text, “Mae paragraff 1(8) o Atodlen 7 yn gymwys i reoliadau o dan Atodlen 4 yn rhinwedd paragraff 12(3) o Atodlen 7 i Ddeddf 2018.” has been inserted at the beginning of the footnote.

Some very minor drafting and formatting issues identified informally by the Senedd lawyer and by the SI Registrar were also corrected at the same time. These changes included correcting formatting in the footnotes, correcting two minor drafting errors in the footnotes and in the Explanatory Note, and correcting some minor punctuation errors (e.g. inserting a semi-colon rather than full stop at the end of a sub-paragraph).

Yours sincerely



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

Lee Waters AS/MS
Y Dirprwy Weinidog Newid Hinsawdd
Deputy Minister for Climate Change

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Welsh Government

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
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6 September 23

Inter-Institutional Relations Agreement: Transport Inter-Ministerial Standing Committee

I am writing in accordance with the inter-institutional relations agreement to notify you of the next meeting of the Transport Inter-Ministerial Standing Committee, which will take place on 13 September.

The meeting will be chaired by the Scottish Government's Minister for Transport and will cover minimum service levels, rail reform, and the zero-emission vehicle mandate.

I will provide an update after the meeting.

I am also copying this letter to Mick Antoniw MS, the Counsel General and Minister for the Constitution; the Rt Hon Elin Jones MS, the Llywydd; the Climate Change, Environment, and Infrastructure Committee.



Lee Waters AS/MS
Y Dirprwy Weinidog Newid Hinsawdd
Deputy Minister for Climate Change

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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.

Lee Waters AS/MS
Y Dirprwy Weinidog Newid Hinsawdd
Deputy Minister for Climate Change

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Welsh Government

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

11 July

Inter-Institutional Relations Agreement: Transport Inter-Ministerial Standing Committee

Further to my letter of 9 May ahead of the Transport Inter-Ministerial Standing Committee on 24 May, a joint communique has been issued summarising the discussions on active travel and data sharing at the meeting. It has been published at: Interministerial Group for Transport Matters Communiqué: 24 May 2023 - GOV.UK (www.gov.uk)

I am also copying this letter to Mick Antoniw MS, the Counsel General and Minister for the Constitution; the Rt Hon Elin Jones MS, the Llywydd; the Climate Change, Environment, and Infrastructure Committee.



Lee Waters AS/MS
Y Dirprwy Weinidog Newid Hinsawdd
Deputy Minister for Climate Change

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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.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **The Validating Alternative Methods for Salmonella Typing (Amendment) Regulations 2023**

DATE **17 July 23**

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

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

Agreement was sought by The Rt Hon Lord Benyon, Minister for Biosecurity, Marine and Rural Affairs to make a Statutory Instrument (SI) titled The Validating Alternative Methods for Salmonella Typing (Amendment) Regulations 2023.

The above titled SI was made by the Secretary of State on 13 July, in exercise of the concurrent plus powers conferred by Article 4(1) of Regulation (EC) 2160/2003, on the control of salmonella and other specified food-borne zoonotic agents.

The SI amends the following 4 pieces of retained EU legislation, concerned with targets for the various requirements for sampling and testing for Salmonella.

- **Regulation 1190/2012** (concerning a Union target for the reduction of Salmonella Enteritidis and Salmonella Typhimurium in flocks of turkeys)
- **Regulation 517/2011** (as regards a Union target for the reduction of the prevalence of certain Salmonella serotypes in laying hens of Gallus gallus)
- **Regulation 200/2012** (concerning a Union target for the reduction of Salmonella enteritidis and Salmonella typhimurium in flocks of broilers)

- **Regulation 200/2010** (as regards a Union target for the reduction of the prevalence of Salmonella serotypes in adult breeding flocks of Gallus gallus)

The minor amendment to the regulations, to include a reference to typing method ISO – 16140-6, will enable the Animal and Plant Health Agency (APHA) to use Whole Genome Sequencing (WGS) as a stand-alone typing method for Salmonella in Poultry.

WGS provides much more information than conventional serotyping and facilitates the link between human and animal disease, which is key for aiding in epidemiological outbreak investigations.

The Regulations were laid before Parliament on 13 July and come into force on 4 August 2023.

Members will wish to note that the Regulations do not transfer any functions to the Secretary of State.

The Welsh Government's general principle is law relating to devolved matters should be made and amended by the Welsh Ministers. However, on this occasion, it is considered appropriate given the substance of the amendments, for a GB-wide SI (made by the UK Government) to apply to Wales as there is no policy divergence between the Welsh and UK Government in this matter. This ensures a coherent and consistent statute book, with the Regulations being accessible in a single instrument. Additionally, the Regulations make changes which are minor and technical in nature. Consequently, I consider legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes, nor a prudent use of Welsh Government resources given other important priorities.

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

Llywodraeth Cymru
Welsh Government

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

SeneddLJC@senedd.wales

18 July 2023

Dear Huw,

I refer to my letter to you of 3 April. I am writing to inform the Committee I have given my consent to the Secretary of State to make The Validating Alternative Methods for Salmonella Typing (Amendment) Regulations 2023 in relation to Wales. I have laid a Written Statement which can be found at Senedd Cymru.

The above titled SI was made by the Secretary of State, in exercise of the concurrent plus powers conferred by Article 4(1) of Regulation (EC) 2160/2003, on the control of salmonella and other specified food-borne zoonotic agents. The Regulations were laid before Parliament on 13 July and come into force on 4 August 2023.

Members will wish to note that the Regulations do not transfer any functions to the Secretary of State.

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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.

The Welsh Government's general principle is law relating to devolved matters should be made and amended by the Welsh Ministers. However, on this occasion, it is considered appropriate given the substance of the amendments, for a GB-wide SI (made by the UK Government), to apply to Wales as there is no policy divergence between the Welsh and UK Government in this matter. This ensures a coherent and consistent statute book, with the Regulations being accessible in a single instrument. Additionally, the Regulations make changes which are minor and technical in nature. Consequently, I consider legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes, nor a prudent use of Welsh Government resources given other important priorities.

Yours sincerely,



Lesley Griffiths AS/MS
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Chair,
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18th July 2023

Dear Huw,

The Persistent Organic Pollutants (Amendment) Regulations 2023

I refer to my letter to you of 28 June 2023. I am writing to inform the Committee I have given my consent to the Secretary of State to lay the Persistent Organic Pollutants (Amendment) Regulations 2023 in relation to Wales. I have issued a Written Statement which can be found at Written Statement: The Persistent Organic Pollutants (Amendment) Regulations 2023 (3 July 2023) | GOV.WALES.

This SI amends retained Regulation (EU) 2019/1021 of the European Parliament and of the Council on Persistent Organic Pollutants (recast) (the "POPs Regulation"). This extends the expiry date from 4 July 2023 to 3 December 2025 for a derogation for the manufacturing, placing on the market and use of Perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds for textiles for oil and water-repellency for the protection of workers from dangerous liquids that comprise risks to their health and safety. The Regulations extend to England, Scotland and Wales.

This Statutory Instrument was made under articles 2A, 15(1) and 18(1) of the POPs Regulation was subject to the negative resolution procedure and was laid before the UK Parliament on 29 June 2023.

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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.

The Welsh Government's general principle is the law relating to devolved matters should be made and amended in Wales. On this occasion, it is considered appropriate for the substance of the amendments to apply to Wales as there is no policy divergence between the Welsh and UK Government in this matter. This ensures a coherent and consistent statute book with the regulations being accessible in a single instrument. Furthermore, the Regulation being amended is GB-wide, so any amendments to it can only be made in English.

Yours sincerely,



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

Llywodraeth Cymru
Welsh Government

PUBLICATION

Inter-Institutional relations agreement between the Senedd and the Welsh Government: report on intergovernmental relations covering the period 2021 to 2023

Overview report covering the period April 2021 to March 2023.

First published: 18 July 2023

Last updated: 18 July 2023

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Introduction

1. This overview report covers the period April 2021 to March 2023, and is published in the context of the **inter-institutional relations agreement between the Senedd and the Welsh Government** in 2019. The positions outlined within this report may have changed and/or progressed since this reporting period. Therefore, the report is provided alongside the regular Welsh Government updates to the Senedd in plenary and committee, and via statements and correspondence, which are available on the **Senedd website**.

Summary

2. The Welsh Government has continued to benefit from strong relationships with the other devolved governments and with British-Irish Council member administrations outside the UK during this period.

3. There have been areas in which constructive joint work and dialogue has been possible with the UK Government, for example in relation to aspects of responding to the COVID-19 pandemic, and in relation to Ukraine.

4. However, the UK government's attempts to undermine the devolution settlement and its continued disrespect for the Welsh Government and the Senedd during much of this period has impaired intergovernmental working and damaged the union of the United Kingdom. The UK government's Shared Prosperity Fund and its repeated breaches of the Sewel Convention are particular illustrations of this.

5. However more recently, the agreement reached in late March to develop 2 freeports in Wales shows what is possible when the UK government seeks to work openly and jointly.

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6. A notable strategic development during the period was the publication of the Review of Intergovernmental Relations in January 2022. Following this, there were positive early indications of improvements, utilising the robust intergovernmental machinery collectively developed by the UK government and the devolved governments. Sixteen of the proposed 20 portfolio-level interministerial groups have been established, and the middle tier Interministerial Standing Committee and the Finance Interministerial Standing Committee have met, albeit irregularly. The first meeting of the Prime Minister and Heads of Devolved Governments Council was held in November 2022.

7. However, given the instability of the UK government over this period and frequent UK ministerial changes, progress and momentum in implementing the new ways of working and mechanisms agreed as part of the review were slower than anticipated. Sadly, the summer and early autumn of 2022 represented a particular low point in engagement from the UK government.

8. The Welsh Government wants to see a strong Wales in a successful UK. The structures and mechanisms arising from the Intergovernmental Relations Review can provide a step towards a reformed and strengthened UK, where all the governments work together for mutual benefit. The Welsh Government will continue to work constructively to this end, but progress is only possible where the behaviours and mindset of the UK government facilitate this.

9. In the longer term, we hope that the work of the Independent Commission on the Constitutional Future of Wales, which published its interim report in December 2022, will provide an important foundation for constitutional change and for improved intergovernmental relationships.

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Intergovernmental relations

Constitution and devolution

10. The circumstances arising from the UK's exit from the EU and also COVID-19 have improved knowledge and understanding within the UK government of the Senedd, and Welsh Government's roles and responsibilities and have highlighted the need to strengthen devolution to secure the future of the Union. The response to COVID-19 brought devolution to the fore in Wales and elsewhere. People across the UK now have a wider appreciation of what having 4 governments and legislatures really means, and how the powers of our institutions interact.

11. During 2021 and 2022, Welsh Government continued to use our powers with strength and confidence to mitigate the worst effects of the pandemic on our citizens, our public services and our economy. This highlighted our ability to pursue our own approach, as well as our desire to co-operate with others. Devolution is now well established, endorsed by our citizens, and its permanence enshrined in law.

12. The content of the UK government's legislative programme and their engagement with the Sewel convention have brought particular strains during this period. On some UK government Bills, work between the governments has been timely and constructive. Such collaborative working has, in some instances, allowed the Welsh Government to recommend that the Senedd consent to UK legislation in some devolved areas, in line with Welsh Government principles.

13. However, the wider picture on UK Legislation is not positive. Late engagement from Bill teams in UK government, alongside unwillingness to share information and drafting, are symptoms of a disregard for the legitimate interest the Welsh Government and Senedd have in UK legislation which touches on

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devolved issues. As a result, of the UK Bills introduced during 2022 the Senedd refused consent to the Northern Ireland Protocol Bill; the Genetic Technology (Precision Breeding) Bill; the Trade (Australia and New Zealand) Bill; the Procurement Bill (in part) and the Retained EU Law Bill. The UK government has proceeded to ignore the Senedd's clear refusal of consent in breach of the Sewel convention – the Precision Breeding and Trade Bills are now law.

14. As of 31 March, the Welsh Government has also recommended consent be withheld in relation to the Strikes (Minimum Service Levels) Bill, the Illegal Migration Bill and the majority of the Levelling-up and Regeneration Bill. Consent has not yet been recommended in relation to several other introduced Bills, including the Data Protection and Digital Information (No. 2) Bill.

15. More widely, the constitutional structures of the United Kingdom have been fundamentally tested. The UK government's decision to use s35 of the Scotland Act to prevent legislation passed by the Scottish Parliament in relation to gender recognition from becoming law marked a dangerous moment. Meanwhile, the lack of an executive in Northern Ireland has left one part of the United Kingdom without functioning ministerially-led devolved government. These pressures have prompted more general public discussion about the proper functioning of the constitution of the United Kingdom as a whole.

16. In the autumn of 2021, the Welsh Government established the Independent Commission on the Constitutional Future of Wales, which forms part of the Co-Operation Agreement with Plaid Cymru. The commission has been tasked with developing options for the fundamental reform of the UK's constitutional structures, and with considering and developing options to strengthen Welsh democracy and deliver improvements for the people of Wales. The commission published its **interim report** in December 2022. The commission highlighted the fragility of intergovernmental relations as a key pressure point in the current constitutional arrangements. They note in their interim report that the machinery for intergovernmental relations operates at the discretion of the UK government, and its reduced engagement in recent years has coincided with its willingness to

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override conventions. This enables unilateral decision-making which does not contribute to the best outcomes for citizens.

17. The work of the commission was referenced in the report published by Gordon Brown's Commission on the Future of the United Kingdom, which made a series of radical proposals for constitutional reform. The commission has commenced the next phase of its work and is expected to produce its final report by the end of 2023.

The review of intergovernmental relations

18. Following years of intensive work by Ministers and officials during the joint Review of Intergovernmental Relations, the Welsh Government, along with the UK government, the Scottish Government, and the Northern Ireland Executive, agreed to use the package of reforms that emerged from the Review as the basis for the conduct of intergovernmental relations.

19. The package was published in January 2022 and is available at: **Review of intergovernmental relations** on GOV.UK

20. Since the publication of the Review variable progress has been made in the establishment of its machinery. Following each meeting a short joint Communique is published, however Welsh Ministers have worked to provide more information in Written Statements or detailed letters to the relevant Senedd committees:

- 16 IMGs have been established and are operational.
- The inaugural Prime Minister and Heads of Devolved Government Council met on 10 November 2022, focusing on cost of living and the NHS (**Written Statement: Prime Minister and Heads of Devolved Governments Council**).
- The Interministerial Standing Committee met 3 times during this period

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(March and June 2022 and February 2023) and focused on cross-cutting issues such as UK legislation, the ongoing situation in Ukraine, and the rise in the cost of living, amongst other issues (Inter-Ministerial Standing Committee **Written Statement 1**, **Written Statement 2**).

- The FISC met 4 times during this period (March, June and October 2022 and February 2023); and discussed key issues such as COVID-19 recovery, Net Zero, and the rise in cost of living (**Interparliamentary Finance Committee Forum** on senedd.wales).
- Progress was made towards the establishment of an independent IGR Secretariat.

21. The Intergovernmental Relations Review sets out best practice for intergovernmental working, and provides escalation routes where disagreement arise. Dispute avoidance is built into the machinery established, with **dispute avoidance and resolution mechanisms** available as a last resort where needed. We have continued to press our concerns on relevant intergovernmental topics (for example, in relation to the UK government's legislative programme, and the Shared Prosperity Fund) with the UK government at every opportunity, using the full suite of machinery in place, and stand ready to escalate where appropriate.

British-Irish Council

22. In this reporting period there have been 4 British Irish Council summits, including one hosted in Wales.

Northern Ireland summit: 11 June 2021

23. The Northern Ireland Summit focused on priorities for COVID-19 recovery. The council had a constructive and informative discussion on the topic covering the potentially long-lasting impacts of Covid-19, and sustainable approaches to

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recovery (**Written Statement: 35th Meeting of the British-Irish Council** on GOV.WALES).

Welsh summit: 19 November 2021

24. The Welsh summit was hosted at St Fagan's National Museum of History in Cardiff. The Welsh Government was keen to ensure that the summit showcased the vibrancy of Wales and Welsh culture. A particular focus for the summit was supporting Minority, Indigenous and Lesser-Used Languages, with specific reference to early years and childcare policy. In leading this item, we showcased the Welsh Government's pioneering work on early years language education (**A detailed oral statement on the summit** on senedd.wales).

Guernsey summit: 7 and 8 July 2022

25. The Guernsey summit focused on collaborative spatial planning. The council reflected on recent political developments and took the opportunity to engage on a number of topics of mutual interest. The council also held a thematic discussion on the contribution of spatial planning to town revitalisation and the decarbonisation agenda (**Written Statement: British-Irish Council Summit in Guernsey** on GOV.WALES).

Blackpool summit: 10 and 11 November

26. The Blackpool summit focused on Sustainable Growth and Regeneration. The council focused on efforts underway across BIC member administrations to stimulate and support sustainable economic growth, the development of more inclusive communities, and pressures on housing in particular (**Written Statement: British-Irish Council Summit in Blackpool** on GOV.WALES).

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Commemoration of late Queen Elizabeth II

27. Following the sad death of Her Majesty, Queen Elizabeth in September 2022 there was a period of national mourning to reflect on Her Majesty's reign. There were tributes across the UK and King Charles and the Queen Consort visited all UK nations, including Wales, welcomed by the First Minister.

28. These events were successfully and respectfully delivered through close working and coordination across the 4 nations. This coordination was enabled and ably supported through effective 4 nation strategic and operational governance structures, from planning phase through to delivery.

COVID-19

29. During 2021-2022 Welsh Government continued to focus on the response to the most significant public health emergency of our time. The Welsh Government continued to lead a careful and evidence informed response to the pandemic in Wales, working in partnership with the other UK nations and working closely with our partners, leading on our substantial devolved responsibilities.

30. Engagement with UK government on COVID-19 has been mixed, and while there are positives to draw on and close engagement across the 4 nations in some areas, there have also been long periods of only minimal contact with UK ministers and too often developments have emerged through the press and stakeholders before UK government has engaged on an intergovernmental level with Welsh Government.

31. In the early stages of the pandemic, the First Minister and Minister for Health and Social Services attended COBR meetings. COBR brings together senior ministers and officials from UK government departments and the devolved

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governments to provide high-level co-ordination and decision making in response to the pandemic. The last COBR meeting the Minister for Health and Social Services attended was 1 January 2021.

32. Routine meetings between ministers remained in place during 2021/2022 but following the peak of the Omicron wave in January we saw a divergence in transition arrangements and timing of removal of legal restrictions across nations during 2022. Funding discussions for 2022/2023 were challenging with UK government due to a significant reduction in funding and intergovernmental arrangements as emphasis moved to nations developing their own transition arrangements and plans for living with COVID-19 focusing on protecting the most vulnerable. Changes in Ministers in UK government has also impacted the level of engagement.

33. Welsh Government officials from across all departments engaged regularly with their counterparts in UK government and the other devolved governments and predominantly these relationships have continued to be constructive.

Ukraine

34. There has been significant intergovernmental working on the Homes for Ukraine visa scheme since its launch in March 2022. UK government has led a 4-nation approach, with weekly senior officials meetings and a regular pattern of interministerial engagement.

35. For the first 6 months, discussions were focused on operational issues to ensure the scheme was rolled out and worked across all the devolved administrations, taking into account different approaches on issues in non-devolved areas such as safeguarding, transport and education. This engagement has been maintained as the scheme developed and the numbers of arrivals increased sharply during the summer months.

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36. Ongoing ministerial engagement has focused on parity of support for different cohorts arriving under various visa routes, funding for integration tariffs and hosts and the longer-term plans for the programme. These discussions escalated from December 2022 following the UK government's decision to cut integration tariff funding from 1 January 2023.

37. With the exception of the funding cuts mentioned above, the intergovernmental working on the Ukraine Response has been a good example of how the UK government and the Welsh Government can work constructively to support the integration of migrants in our communities. We are encouraging the UK government to replicate the respect for devolution, the access to data and constructive engagement we have had through this scheme in relation to schemes relating to Afghanistan, Hong Kong, the asylum system and refugee resettlement.

Other protection-based migration

38. Our engagement with UK government in relation to other protection-based migration schemes has been less positive. There is regular engagement between Welsh Government and Home Office/Department for Levelling Up officials in respect of Afghanistan and Hong Kong BNO schemes but the Welsh Government is frequently not provided with sufficient data or advance notice of proposed policy changes to enable the most effective delivery possible.

39. In relation to the asylum system, the Welsh Government is provided with very little data and there is no regular bilateral engagement between ministers or officials to ensure policy changes are understood and likely devolution impacts are understood in advance. The Interministerial Group (IMG) on Security, Safety and Migration has only met once and the Minister for Social Justice and Chief Whip has separately had just one meeting with the current Minister for Immigration, Robert Jenrick MP.

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40. The asylum system continues to rely heavily on devolved public services, including healthcare services, education services and local government, but the Welsh Government is not consulted adequately to understand and prepare for changes and appropriate funding is not made available by UK government.

41. Welsh Ministers are now notified of Home Office intentions to procure asylum accommodation with 24 hours' notice. This is a limited improvement on previous circumstances, but often Welsh Government questions about proposals cannot be answered by Home Office counterparts in a timely manner.

42. Welsh Ministers have laid legislative consent memoranda in relation to the Nationality and Borders Act 2022 and the Illegal Migration Bill but Home Office ministers have restated their position that the legislation relates to reserved matters only. This is despite Senedd Cymru agreeing with Welsh Ministers that the provisions in the Nationality and Borders Act 2022 were within devolved competence and voting to withhold consent for the UK Parliament to legislate. Senedd Cymru will debate with provisions in the Illegal Migration Bill in June 2023.

43. Whilst the immigration and asylum system is reserved, the responsibility for integrating those residing in Wales rests with the Welsh Government. UK government departments with equivalent responsibilities (Department for Education; Department of Health; Department for Levelling Up) are engaged in cross-Whitehall planning for integration support but such engagement is not offered to the Welsh Government.

Statistics and analysis

44. An updated **concordat on statistics** was published in October 2021 which sets out the framework for co-operation across the UK on statistical matters. The concordat was signed by the then Welsh Government Permanent Secretary, along with the National Statistician and Permanent Secretaries from each UK

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administration.

45. The concordat has operated well since its update, with intergovernmental relations largely coordinated at official level between Chief Statisticians and the National Statistician. The Welsh Government's Chief Statistician has been proactive in taking forward the spirit of the concordat, working constructively and collaboratively with statisticians in the UK government and other devolved governments. Particular attention has been given to improving the comparability and coherence of statistics across the UK, with a recent focus on health statistics where the Welsh Government has played an active role.

Procurement

Public Procurement Common Framework

46. Divergence in public procurement policy between the 4 administrations already existed preceding Brexit and continues post Brexit. However, the Common Framework for Public Procurement has firmed up the commitment from each administration to share information on domestic and international policy issues regarding procurement, including any proposals to legislate, which might impact upon the rest of the UK. Despite being non-legislative, this commitment has been maintained during the period covered by this report and though policy divergence continues to exist between the administrations, it is now implemented in a more considered way.

47. At a meeting between senior officials from the 4 administrations, hosted by the Welsh Government in March of this year, it was unanimously agreed that the Common Framework promotes a positive working relationship which has delivered benefits beyond the scope of the framework including joined-up discussion of policy ideas and exploring common approaches.

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Procurement legislation

48. Relations with the UK Cabinet Office on the development of the Procurement Bill and its secondary legislation have been largely positive during this period.

49. Throughout the development of the Procurement Bill, the Welsh Government and the UK Government have worked closely at both Ministerial and Official level to ensure maximum alignment and to minimise the risk of any divergence in the legislation as it would apply in Wales and England.

50. Before the Bill was introduced to Parliament, 2 members of the Welsh Government Procurement Reform Team were seconded to the UK Cabinet Office for 3 days a week. Through this, and the positive engagement between officials generally, the Welsh Government has been able to extensively influence the content of the Bill to ensure appropriate policies are reflected in the Bill's provisions. This is essential to ensure we maintain consistency for suppliers who participate in cross-border procurements.

51. This engagement has also received recognition in achieving 'highly commended' in the Government Commercial Function's (GCF) Collaboration and Partnership award.

52. There were matters of concern which needed to be resolved as the Bill made its journey through Parliament. Officials and ministers have been able to resolve all these issues aside from those relating to Trade (as detailed below). Relations with the Cabinet Office at both official and Ministerial level continue to be positive.

53. A key area of collaboration between the Welsh Government and the UK government is the development of the learning package that will be made available to the public sector to support the implementation of the Procurement Bill. In association with the Welsh Government, the Cabinet Office is creating a

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comprehensive funded learning and development (L&D) programme to support everyone operating within the new procurement regime to understand what is changing from the current systems in place.

54. Welsh Government officials are actively involved in the development of the learning content to ensure that the small amount of policy divergence between different jurisdictions of the UK is appropriately reflected in the L&D materials. The Welsh Government is represented on both the Transforming Public Procurement L&D Working Group and the Transforming Public Procurement L&D Programme Board, which provides for a more diverse range of views from a wider range of stakeholders to be considered in the development of the learning. Furthermore, stakeholders from across the Welsh public sector are engaged as “superusers” who represent their individual organisation / sector as part of the ongoing UK government’s Communities of Practice (CoP) activities.

55. Linked to this, but in a separate move, the Department for Health and Social Care in England (DHSC) decided to introduce a new procurement regime for the sourcing of health services in England, known as the ‘Provider Selection Regime’ (PSR). In order to do this, the UK government have included a disapplication provision within the Procurement Bill that would allow them to effectively ‘carve out’ health services in England from the requirements and processes being brought in under the Procurement Bill. The intention of the PSR is to move away from competition as a default, into a more flexible and collaborative procurement regime to source clinical health services.

56. As the PSR and the disapplication provision would apply only to England, this meant health service procurement in Wales would remain under the existing Public Contracts Regulations 2015 regime and the forthcoming new Procurement Bill regime. This would have resulted in 2 distinctly separate NHS health services procurement regimes in operation between Wales and England.

57. NHS Wales provided feedback that the introduction of the PSR in England could adversely impact the procurement of ‘clinical’ health services in Wales by

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inadvertently distorting the supplier market. It could also impact the ability to commission health services on a co-compliant / collaborative basis between the NHS England and NHS Wales and negate any associated cost and resource benefits. As a result, Welsh Ministers considered how best to mitigate those risks, it was decided to bring forward similar legislation in Wales to provide an option to align with the PSR.

58. The **Health Service Procurement (Wales) Bill**; introduced in February 2023 and now at Stage 3 in its Senedd scrutiny; seeks to remedy this situation and provide the necessary powers for Welsh Ministers to disapply the provisions in the Procurement Bill for health services in Wales, in the same way as that which has been provided for DHSC. It also provides for a regulation-making power to be inserted into the National Health Services (Wales) Act 2006 to provide for a bespoke health service procurement regime in Wales. These powers will provide an option to align health service procurement regimes between Wales and England by mirroring the PSR, as far as is appropriate and necessary, whilst also providing the flexibility to diverge from the PSR where it is not in line with wider Welsh Government policies.

59. Welsh Government officials are in regular contact with their counterparts in DHSC to ensure early understanding of how the PSR proposals, regulations and guidance are being developed.

Trade and procurement

60. Monthly UK government and Devolved Government Forum meetings have been held throughout 2021-2023 with Welsh Government Trade, Legal and Procurement officials present to discuss ongoing details to be included in procurement chapters within draft Free Trade discussions and these have been mostly positive.

61. Relations have been negatively affected by the Concurrent Powers included

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in the Trade (Australia and New Zealand) Bill and the Concurrent Powers included in the Procurement Bill relating to Trade and the refusal to amend these.

62. During the final stages of March 2023, it was decided that Welsh Government would make and lay their own SI for amendments relating to details included in the Australia and New Zealand FTA's, which needed to be reflected in Domestic Procurement Regulations. This will be taken forward after the period covered by this report.

Elections

63. The Welsh Government has attended and hosted the Interministerial Group for Elections and Registration, which met 4 times in 2021-2023 (**Communiqués from the Interministerial Group for Elections and Registration** on GOV.UK), and officials' working groups. These fora have become key points of contact for identifying shared issues interdependences, and best practice solutions.

64. The Welsh Government undertook extensive discussions with the UK government on the Elections Act 2022 throughout its journey into legislation, at both Ministerial and official level. On 9 September 2021 the Welsh Government laid a Legislative Consent Memorandum not recommending consent to the Bill as introduced, preferring some of the issues to be explored through Senedd legislation.

65. Amendments to the Bill were laid in the later stages to carve Wales out of provisions. These ensured that the Act better recognised devolved powers.

66. Despite this disagreement on competence relating to digital imprints and intimidation, a legislative consent motion recommending consent was agreed by the Senedd on 29 March 2022.

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67. Ongoing work is being undertaken to manage the implications arising for the differences in approach taken by the Welsh and UK governments. A divergence working group is examining the practical effects of the Elections Act 2022 changes, in particular on postal vote applications, and how to best avoid voter confusion.

68. Given this concern, Welsh Ministers and Welsh Government officials engaged with UK government counterparts to reduce the risk of devolved and reserved elections coinciding or being combined in future. Welsh Ministers welcomed the UK government's response to this: a November 2021 Dispatch Box commitment that a Prime Minister would look to avoid holding elections under different arrangements simultaneously or in close proximity.

European transition

69. Throughout the period covered by this report, the Welsh Government sought to engage constructively with the UK government in respect of the work following the end of the transition period, given the complex overlap of devolved and reserved responsibilities. Welsh Ministers continued to attend meetings of the former XO Committee (the UK Cabinet Committee which oversaw matters relating to post-transition, latterly renamed as the Global Britain (Operations) Committee) where matters of direct relevance to the devolved governments were discussed. The Interministerial Group on UK-EU Relations was established as part of the Intergovernmental Relations Review and is now in operation.

70. Following the UK's exit from the EU and the end of the transition period, the Welsh Government has been working jointly with the Scottish Government, the Northern Ireland Executive and the UK government on policy areas where powers returned from the EU and intersect with devolved competence, by developing UK Common Frameworks. This is a significant development in the way the governments of the UK work together in the long term. Provisional frameworks were agreed at the end of the transition period, in December 2020.

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Since then these have been functioning as agreements at official level and have been undergoing scrutiny by legislatures, which will be completed when the Northern Ireland Assembly reconvenes. **UK government publications relating to the UK Common Frameworks programme** on GOV.UK.

71. The UK Internal Market Act received Royal Assent without the consent of the Senedd or Scottish Parliament. The Act is problematic for devolution and has the potential to undermine the progress made through the Common Frameworks programme. The Welsh Government subsequently initiated legal action challenging parts of the Act and its purported impact on the devolution settlement. The Supreme Court - dismissed this action on the basis that it was premature in the absence of any practical examples in the form of Senedd legislation against which to test the issues under consideration. However, the Welsh Government maintains its position advanced in the litigation and will continue to monitor opportunities for further challenges in the future. The UK Government's use of the financial assistance powers within the Act nevertheless continue to undermine devolution and represent poor value for money for the taxpayer.

72. Throughout 2021/2022 discussions with the UK government with regards to its plans and proposals for communications related to the EU Settlement Scheme (EUSS) continued and this avenue continued to be utilised to share resources and related communication assets. The engagement with the Welsh Government with regards to the EUSS has been both forthcoming and of a collaborative nature with a collective objective to deliver the best outcomes for EU citizens.

73.The Welsh Government continued to provide funding for EUSS advice services throughout 2021/2022 and into 2022/2023 for the continuation of such services in Wales. In parallel, the UK government announced further funding for EUSS advice services, though this announcement was at a very late stage in their funding term and resulted in a number of Welsh stakeholders in Wales voicing concerns that this approach had left them with a high level of uncertainty

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about future delivery.

74. As with previous years, there has been no prior engagement with devolved governments regarding proposed changes to the immigration system and no opportunity for devolved governments to feed into the autumn and spring amendments.

75. In general, the UK government's engagement regarding immigration has improved somewhat and the Future Borders and Immigration System forum proved a very useful mechanism for information sharing.

76. In terms of a new borders regime, the Welsh Government continues to work with the other nations, while maintaining respect for the devolution settlement. This is key to avoid potential confusion for businesses and to maintain a consistent regime of import health controls across Great Britain. In the design of the new Target Operating Model its key principles are supported by all 3 administrations. The governance bodies for animal and plant health risk assessment are also UK-wide.

77. The Welsh Government continued to work with the other governments of the UK to establish the Safety, Security and Migration Inter-ministerial Group, with extensive progress being made in this area and the first meeting of this IMG being held in February 2023.

78. Engagement with the Migration Advisory Committee (a sponsored body of the UK government) has been very positive and the Committee's recruitment of a Welsh representative in 2022 shows its commitment to engagement with devolved governments.

79. The EU Exit Statutory Instruments (SIs) deemed to be required by the end of transition, to make further corrections to retained EU law to ensure an operable statute book and to implement the Withdrawal Agreement and related agreements, were delivered on schedule. A small number of these SIs continued

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to be made by the Welsh Ministers, and with consent being given to UK SIs in devolved areas, as the power to make them expired at the end of 2022.

80. The UK government's Retained EU Law (Revocation and Reform) Bill was introduced in Parliament in September 2022. The Welsh Government is strongly opposed to the Bill and has made this clear to the UK government, while the Senedd withheld legislative consent for it in March 2023, but there has been engagement with the UK government on the implications for retained EU law under the Bill, both centrally and in policy areas, as set out later in this report.

81. The UK government's digital regulation is continuing, most notably with the Online Safety Bill, the Data Protection and Digital Information(No.2) Bill and the Digital Markets, Competition and Consumer Bill. Some aspects of these are devolved and there is an inconsistent approach taken to sharing early drafts of Bills. This is resulting in a lack of agreement on devolved matters during the passage of Bills, and also puts undue pressure on policy and legal teams.

International relations

82. The Welsh Government's International Relations team has received regular briefings from the UK government departments, including the Cabinet Office, FCDO and Home Office, on the UK Presidency of the G7 and from the Cabinet Office on the Integrated Review of Security, Defence, Development and Foreign Policy.

83. The FCDO has cascaded information from the UK government in response to international crises such as the UK's withdrawal from Afghanistan and the humanitarian issues following Russia's invasion of Ukraine. During the evacuations from Afghanistan in August 2021, the International Relations team was the main point of contact with the FCDO. Officials obtained key intelligence and shared it with other Welsh Government departments, including those who were developing policy on resettlement. Following the Russian invasion of

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Ukraine in February 2022, officials liaised with the FCDO and shared daily information/sitreps with the WG Preparedness and Risk Coordination Group. Humanitarian sitreps continue to be provided on a fortnightly basis along with a fortnightly economic dashboard which sets out the effects of the conflict on the Russian and Ukrainian economies.

84. Regular senior official level meetings between the FCDO and devolved governments have also been set up, to discuss the full range of international issues.

Free trade agreements

85. The Welsh Government has continued to work with lead policy departments in the UK government on the UK-EU Trade & Cooperation Agreement (TCA) Specialised Committees. Each committee has been established along slightly different lines depending on the lead UK government policy department with Welsh Government involvement ranging from an initial discussion of agendas, through attending the committees as observers, to attending the committees with a full participatory role. Generally, the engagement with the lead policy departments of UK government has been positive. Agreement regarding how the devolved governments will be involved in the committees that have been set up as a result of Free Trade Agreements (FTAs) with the Rest of the World has been reached. These arrangements will mirror the arrangement put in place for TCA committees, with officials engaging on the committees and the option to discuss attendance where we have a particular interest.

86. The relationship with the Department for International Trade (DIT) (Department of Business and Trade since February 2023) on Rest of the World negotiations remained largely positive. Information sharing in areas considered ‘devolved’ by the UK government is good and there have been some improvements in how information is shared during the end stages of negotiations. Broader improvements in information sharing were also put in

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place in early 2023 and officials now see most of the information needed for them to be able to engage fully in different stages of the negotiations. Officials have already seen the benefit of this in some of the newer negotiations, such as with the Gulf Co-operation Council and Canada.

87. There have been 2 formal meetings (in July and January) of the Ministerial Forum for Trade (which now forms part of the wider IGR structure as the Inter-Ministerial Group for Trade) during 2021/2022, in addition to regular ministerial bilateral meetings. We have had the opportunity to comment on matters relating to all of the on-going trade negotiations, including the final stages of negotiations with Australia and New Zealand and mandate setting for new upcoming negotiations, such as India. Whilst adequate information was not always shared with us during the end stages of negotiations with Australia, improvements were made during the negotiations with New Zealand and, despite concerns about the deal itself, the process for engagement ran more smoothly. We hope to see continued progress in this area.

88. Engagement on the accession to the Comprehensive and Progression Agreement for Trans-Pacific Partnership (CPTPP) has differed from the negotiations for new FTAs, partly driven by the fact that the UK will be acceding to an existing agreement. However, engagement on the deal improved over 2022 and into early 2023.

Finance

89. From April 2021 to December 2022, 7 meetings of the UK finance ministers took place. Quadrilateral meetings were held on 20 July 2021, 14 October 2021 and 12 January 2022. On 21 March 2022 the ministers met for the first time as the Finance Interministerial Standing Committee (F:ISC), with 3 further meetings taking place on 15 June 2022, 20 October 2022 and 9 February 2023, although the October meeting was cut short due to the resignation of the Prime Minister during that meeting. The F:ISC formalises the former finance ministers'

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Quadrilateral under the Intergovernmental Relations Review.

90. Discussions over the period focused on a wide range of issues including our response to COVID and recovery from COVID, the cost-of-living crisis, supporting those fleeing war in Ukraine, public sector pay, use of the Financial Assistance powers in the UK Internal Market Act, EU replacement funding, Net Zero and budget flexibilities, as well as the implementation of the new F:ISC arrangements.

91. With the emergence of Omicron during winter 2021-2022 engagement during this period focused on COVID funding requirements and government responses, with a collective request from the devolved governments that the UK government remain pragmatic should circumstance in any of the 4 nations require the Coronavirus Job Retention Scheme and Self Employment Income Support Scheme to be revived as well as a request to make permanent the £20 uplift to Universal Credit.

92. We also continued to place an emphasis on the value of early certainty and enhanced transparency in regard to UK government financial decision making. Alongside the other devolved governments, we secured a guarantee from the UK government that money allocated to support the COVID-19 response would be provided in full, and further obtained agreement that funding allocated by the UK government to the devolved governments late in the financial year could be carried forward for deployment in the following year. Discussions have also focused on the importance of certainty and parity of funding in relation to support for Ukrainian people in the UK.

93. Several discussions took place on the emerging cost-of-living crisis and tackling fuel poverty. Devolved governments shared updates on respective plans to provide support to households and business. Information was also sought on the UK government's proposals, recognising that the main fiscal resources and levers to tackle the crisis were held by the UK government. As the crisis continued, we urged UK government to target support to the most vulnerable,

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putting forward practical actions in relation to housing, energy and welfare that the UK government could take to make a real difference to those hit hardest. We also requested that the UK government take steps to address the impact of inflation on public sector budgets and to invest in infrastructure to support economic growth.

94. With the backdrop of COP26 in November 2021, there was a focus on our collective efforts to tackle the climate and nature emergencies. We shared information on innovative steps taken by the Welsh Government to achieve Net Zero. We also highlighted the importance of our request to the UK government for additional budgetary flexibilities, specifically in relation to our capital borrowing limits, to allow investment in low-carbon infrastructure.

95. In relation to the UK Internal Market Act and use of the Financial Assistance Powers within it, we continued to press the UK Government on how it intended to work with the grain of devolved government policy, as stated by the UK Minister for Intergovernmental Relations. We also continued to press the UK government to fulfil its commitment to replace EU funding in full and provided examples of national programmes, including apprenticeships and business support, which relied on this funding and were vital to our economy. On replacement EU rural funding, alongside the other devolved governments we expressed our concerns with the methodology applied by the UK government, outlining how it does not fully replace EU funding, and secured an action at the February 2023 F:ISC for UK and devolved governments to discuss the differences in their assessment of the quantum in EU replacement funding through an open book exercise and to explore how they can achieve greater strategic alignment in their delivery of EU replacement funds.

96. In addition, we continued to press UK government to ensure they meet the additional costs of new functions directly resulting from EU Exit such as the operations needed at the Welsh border.

97. A proposal was put forward to the F:ISC seeking improvements to

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strengthen processes to provide greater end of year certainty for the devolved governments supported by appropriate budget flexibilities and discussions are ongoing.

98. Ahead of UK Fiscal Events we outlined the Welsh Government's priorities and sought clarity from the UK Government on its spending and tax plans. Prior to the Autumn Budget and Comprehensive Spending Review in October 2021, we asked the UK government to work with us and provide funding to support the long-term remediation and repurposing of coal tips in Wales. We also pressed for clarity on the Shared Prosperity Fund and none was forthcoming. Ahead of the UK Spring Statement in March 2022, the UK government fiscal events of autumn 2022 and the UK government Budget in March 2023, the primary focus of our engagement with the UK government was to press for urgent action to address the cost-of-living crisis and invest in public services.

99. We also continued to press the UK government to address its historical under-investment in rail and Research and Development in Wales, and highlighted opportunities in relation to decarbonisation and renewable energy, including support for the Steel Industry and improving transparency in regard to the UK Emissions Trading Scheme and Carbon Border Adjustment Mechanism.

100. No or limited information was provided by the UK government in advance of its fiscal events despite the implications for the devolved nations, including our own budget planning and Senedd scrutiny. We were only notified of the UK government's cost of living package in February 2022 on the morning of the Chancellor's Statement.

101. There have been occasions where the UK government has worked with us positively and constructively, for example, in relation to freeports where the UK government showed willingness to work as equal partners. This is an example of how we can work together and bring our different powers, levers and expertise to deliver for Wales. This way of working needs to applied to other areas including the UK Shared Prosperity Fund and Levelling Up Fund, where funding

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should come directly to Welsh Government so that all sectors can benefit from these programmes.

102. The establishment of the F:ISC in March 2022 was the culmination of considerable efforts to strengthen and formalise fiscal intergovernmental relations. The finance ministers approved the F:ISC Terms of Reference and agreed to an operating protocol which places meetings on a more equal footing with a rotating chair and secretariat. Officials have also been working together to provide a joint secretariat function. There is also a willingness to enable officials from across the administrations to work together to consider issues of common interest including end of year budget communication and flexibilities. It is hoped that this new approach will continue to develop, to enable greater engagement and information sharing in a spirit of mutual respect.

Freeports

103. The Freeport Programme in Wales policy serves as a benchmark for how Welsh Government can act in a partnership of equals with UK governments. Both governments co-designed the process for selection; officials from both governments jointly assessed the bids and both governments had an equal say in the final decision on the sites which will move forward in the process. Both governments, at official and Ministerial level, have been committed to this approach.

104. We worked extensively with UK government to ensure that the Freeport Programme in Wales was designed to align with our policies on fair work and net zero.

105. This joint working has been extended to investment zones. We are in early discussions with the UK government now it has relaunched and refocused its Investment Zones programme, as announced at the Spring Budget.

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Shared Prosperity Fund

106. As a replacement to EU funding, the Shared Prosperity Fund (SPF) not only leaves Wales £1.1 billion short compared to EU Structural and Rural funds, but also sets up a funding system that: bypasses the Welsh Government and the Senedd; excludes key growth sectors including universities, colleges and the voluntary sector; prevents high-impact strategic projects; and puts unacceptable demands on our local authorities.

107. The poor design and delivery of the scheme is clear. Funding under the SPF for the financial year 2022/2023 was only released to local authorities at the end of January 2023 (UK government was due to approve the plans and start payments in October 2022). To ensure that spending is completed as required by 31 March 2025, SPF project activity will need to cease by December 2024. This means that despite being a 3-year scheme, the SPF will only have around 18 months of project delivery.

108. The smaller and narrower scope of the SPF compared to the EU funding programmes is having a real impact on the economy and skills in Wales.

109. The UK government is also top-slicing the SPF to support a UK government adult numeracy scheme called Multiply, while denying us funding to support strategic priorities like Business Wales, SMART Cymru and Apprenticeships. Not only is Multiply poorly designed and beset by delays, but it also encroaches on a devolved policy area, is too narrow in focus and risks duplicating provision in Wales.

110. We have continued to raise our concerns with the UK government that its approach to SPF fragments the funding landscape in Wales, puts at risk established ways of regional working and passes responsibility to local authorities to deal with the consequences.

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Economy, energy and climate change

111. In December 2022 the Minister for Climate Change attended COP15 as part of the Convention on Biological Diversity. At COP15 the Minister for Climate Change spoke at a number of events and held bilateral meetings with other devolved or state governments such as Quebec and Catalonia. We shared the approach developed in Wales to meeting the 30x30 target, highlighted the importance of the role of subnational governments in addressing biodiversity loss, and discussed the need to identify additional sources of funding that avoided greenwashing and benefitted local communities.

112. A new Global Biodiversity Framework was agreed at COP15 which sets out four long-term goals and 23 targets which seek to achieve a nature positive world by 2030. The Minister for Climate Change will be introducing statutory domestic biodiversity targets in a forthcoming Bill to support delivery against the new global framework.

113. Significant effort has been focused on improving our intergovernmental relations and joint working with BEIS (prior to machinery of UK government changes in 2023) and these relationships have been strengthened although some challenges remain.

114. A shared priority of responding to the economic impacts of Covid-19 in 2021 necessitated an acceleration in the efforts which were already underway and provided a clarity of purpose to our engagement. The immediate response to the pandemic saw the Interministerial Group (IMG) for Business and Industry (B&I) move to weekly meetings and established a new Directors' forum with the devolved governments, BEIS and HMT. The establishment of a joint secretariat marked a shift in approach and meetings were conducted in the spirit of mutual respect. These fora, coupled with regular bilateral meetings with the UK government, ensured Wales had a direct voice during the development of some important UK-wide policy approaches.

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115. However, whilst engagement was significantly increased during the pandemic, we continued to face challenges around working collaboratively; Welsh Government was often treated as a stakeholder rather than a devolved government partner. The opportunity to inform policy that ensured Wales' needs were properly reflected could be sometimes challenging when faced with decisions already taken by UK government with only minimal consultation.

116. Since the end of the pandemic the frequency of intergovernmental ministerial groups and other intergovernmental fora was reduced to monthly or quarterly meetings. This was a positive and welcomed step in a period of significant economic challenge for Wales and the UK.

117. However, only 2 B&I IMGs took place in 2022; the last being held in May. The turbulence in UK government over the summer months of 2022 meant departmental ministerial portfolios were often unclear, and subsequent engagement in this period at the political level was problematic. Yet it must be noted that relations with BEIS at an official level always remained constructive throughout these months of uncertainty. The joint secretariat remained in place and regular contact was enacted in a spirit of mutual cooperation.

118. With the eventual calming of the turbulence in UK government and the introduction of a new administration in October 2022, it was intended that intergovernmental relations would settle into a rhythm of regular forward-looking engagement. A meeting of the B&I IMG took place in January 2023. The meeting was conducted in a constructive spirit and the future strategy of the IMG going forward was discussed.

119. The creation in February 2023 of 3 new UK government departments to replace BEIS (the Department for Science, Innovation and Technology, the Department for Energy Security and Net Zero, and the Department for Business and Trade) has disrupted the IMG process. We still await confirmation of new Ministerial portfolios and for departmental responsibilities to be established. However other fora, such as the Economy Directors' Forum, have continued at

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their regular pace.

120. Over this period, the Welsh Government has also worked closely with DLUHC and BEIS on projects of joint strategic importance. In particular, good progress has been made on the implementation of the UK Government's freeport policy in Wales, discussions on providing support to non-domestic energy users in response to the sharp increase in energy prices, and on the development of proposals for Investment Zones.

121. The IMGs play an essential role in decision making across the UK Emissions Trading Scheme (UK ETS), which is jointly run by the 4 governments of the UK. In particular, it has provided a forum for discussion on more contentious areas as well as an effective vehicle for final sign off across the portfolio Ministers. However, due to the technically complex and often urgent nature of the UK ETS, discussions on this at IMG risk taking time away from other agenda items, resulting in delays to these work streams.

122. There has also been continued engagement on EU Transition issues, with regular cross-Whitehall and other devolved governments sharing intelligence in relation to business issues. Regular engagement on REUL and relating international trade issues have also been conducted through the monthly BEIS-DA forum throughout 2022.

123. The Minister for Climate change attended the first Islands forum held in Orkney on 28 October 2022 which focused on energy security and the opportunities that renewable energy provided. The minister focussed on the potential for offshore renewables especially the developments of tidal stream around island communities in Wales and the broader opportunities that the transition to a net zero energy system gave to Wales.

124. On balance, intergovernmental relations have strengthened in the economic space. However, significant challenges remain, with persistently poor engagement in areas like the Shared Prosperity Fund and in other areas that are

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of strategic significance to Wales. Nonetheless, we continue to build on the formal structures now in place and will continue to pursue a positive approach to intergovernmental relations across the 4 nations in relation to economic development.

Skills and employability

125. The Welsh Government funds the education and learning provision and prison libraries in Welsh prisons through a joint Memorandum of Understanding with Her Majesty's Prison and Probation Service (HMPPS). These arrangements enable a close and productive working relationship with HMPPS and allows the Welsh Government to align the provision of education in prisons with Welsh Government policies.

Education

126. Regular meetings were held at official level during 2021 and 2022 to discuss issues affecting the Minister for Education's portfolio. The main focus of discussions during this period was the impact of the COVID-19 pandemic including operational arrangements in schools and colleges and education recovery.

127. Linked to the impact of COVID-19, there were also discussions about qualifications. The pandemic created a need for closer collaborative working and information sharing across the 4 nations in all areas of education. During the first year of the pandemic, many decisions by UK Government were made or shared with little time for the Welsh Government to account for these appropriately in decision making (an example of this would be the adaptations to 2020 qualifications).

128. The situation has improved since then, where all nations now recognise the

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interdependencies. There have been in-depth policy discussions (for example the scope of the appeals process in summer 2021 and differences across the UK) and different approaches have been recognised and respected. Qualifications Regulators also worked together during this period.

129. There have also been tensions around the scope and remit of the proposed English Curriculum Arm's Length Body. Both Welsh and Scottish Governments made representations to the UK government in 2022 emphasising how digital approaches align and differ across the 4 nations, not just driven by different curricula but also the fact that devolved governments have their own organisations, processes, and digital networks to support learning and resource development.

130. On 27 January 2022 the UK Education Ministers Council met for the first time. The UK EMC intends to provide central co-ordination and promotion of greater collaboration in areas of shared interest between Education Ministers. While ministerial portfolios differ in scope across the four administrations, the areas of shared interest cover the full range of education services, from Early Years through to Adult Education. These include the policy, delivery, technical and legislative matters where the governments have determined to engage on a multilateral basis.

131. The 2nd meeting of the UK EMC was held on 17 June in Edinburgh and the 3rd meeting was held in Cardiff on 9 December 2022. The meeting was chaired by the Minister for Education and Welsh Language and focussed on challenges and developments in the areas of the rising cost of living, general and vocational qualifications and lifelong learning with a presentation from the Cardiff and Vale College on the broad offer from the post-16 sector. The UK government will host the next meeting in June 2023.

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Environment, agriculture, food

132. Relations with Defra have been mostly positive during this period and the majority of EFRA common frameworks have been published and are operating in provisional form. However, there have been some areas where the UK government is seeking to diverge from the EFRA common frameworks where relations have been poorer with engagement very late leaving little time to consider our responses. This has been a particular issue where there are no specific frameworks in place or where a policy fits between multiple frameworks.

133. For example, engagement on the UK government's Genetic Technology (Precision Breeding) Act, for which there is no common framework, was very late in the day despite the impact this legislation will have in Wales.

134. Relations are also beginning to suffer due to the Retained EU Law (REUL) Bill. The delay to receiving information on Defra's plans regarding REUL has at times increased tensions, as have concerns that the Bill has potential to introduce divergence where it wasn't previously expected. While engagement on REUL has improved in 2023, Defra's deadlines have been unachievable, and engagement has been patchy across policy areas. Since this reporting period and following the revised approach in relation to the sunset clause in the UK REUL Bill, Defra provided officials with a list of legislation proposed for revocation to be included in the proposed schedule. Initial analysis withing the tight timescale indicates the majority of the proposed SIs would likely be fine. Only one area of concern remains on the National Air Pollution Control Plan (NAPCP) and discussions between officials are currently ongoing Defra but have been slow.

135. Concern also remains over the loss of EU law supremacy and interpretive effects, several requests were made at official and ministerial level for Defra's analysis of the impacts but nothing was shared. Since the end of this reporting period officials of the devolved governments and Defra have met to discuss the

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work on interpretative effects and a commitment to share the analysis has been given.

136. Where Defra were the lead department on a particular matter, relations were generally better than where there was involvement from other UK government departments, especially in relation to information sharing or timescales for providing feedback. Wider UK involvement has also slowed or hindered progress in some areas where agreement with Defra and the DAs had already been made through frameworks. Work on borders and on single use plastics are areas where relations have been affected by wider UKG interests than Defra.

137. The Interministerial Group EFRA continued to meet regularly during this period, and meetings have been mostly constructive with discussions of shared issues. However, with several meetings being cancelled at short notice and the Defra Secretary of State not attending meetings since 7 November 2022, the quality of these meetings has diminished, and the relationship has become strained.

138. The Food Standards Agency (FSA) In Wales has the function of developing policy and advising Welsh Ministers in relation to food safety, food standards and animal feed. Relations have been mostly positive during this period.

139. Collaboration with the FSA on the border target operating model has been positive. Officials and the Ministers have met with the FSA regularly and have been briefed throughout the process.

140. Although a Defra policy, the Genetic Technology (Precision Breeding) Act (PB Act) required considerable involvement from the FSA. As is the case with Defra, 2 FSA common frameworks have been established setting out the principles by which the 4 nations of the UK should follow when developing policy and how divergency and disputes should be managed. Neither framework was engaged for early consideration and discussion between the 4 nations on PB.

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Although an England policy, the PB Act triggers the mutual recognition element of the Internal Market therefore impacts businesses and enforcement bodies in Wales. The PB Act puts into question the influence the UK government has over FSA expertise and policy focus and whether the Welsh Government could command the same.

141. The Food Standards Agency is currently undergoing a programme of regulatory reform activity with the aim of ensuring food regulation remains proportionate, appropriate for the current climate and effective. A collaborative agreement has been established for Wales and sets how the Welsh Government, FSA and local authorities work together to ensure proposals are appropriate for Wales and all relevant Welsh stakeholders are fully engaged in the process.

142. In light of above, and the new responsibilities falling to the FSA following the UK's departure from the EU, a review of the FSA function in Wales will be conducted this year. The review will consider whether the current structure and operation of the FSA and its interface with the Welsh Government are appropriate to best deliver the FSA in Wales's statutory objectives.

Health

143. Discussions during this period at ministerial level continued to focus largely on COVID-19 related matters; although there was also engagement on other issues including those relating to EU Transition, the UK government's Health and Care Act and strategic policy issues of interest across the UK such as the health contribution to the climate change agenda. Later in the year consideration was given to incrementally developing the existing 4-nations mechanisms into an Interministerial group (IMG) structure.

144. Two formal IMG meetings have been arranged but both were cancelled at very short notice due to the UK government minister's availability. This lack of

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progress with the IMG agenda makes cooperation on a UK-wide basis very difficult; there are several important issues that would benefit from a 4-nations discussion and approach. Welsh and Scottish Ministers have written to UK government to request an IMG meeting.

145. Welsh, Scottish and UK government ministers met to discuss the Minimum Services Level Bill (ambulance services consultation); Welsh Government and Scottish Government made their policy position clear and stated that Officials would not engage with this consultation.

146. Behind this, intergovernmental work was mostly operational, with generally constructive engagement at official level through various official-level mechanisms. Examples included a 4-nations EU Transition co-ordination group, a UK-wide supply resilience group, and discussions around the UK Life Sciences Vision. Intergovernmental work also continued to be supported by the detailed work undertaken through NHS relations, particularly involving NHS Wales organisations such as Public Health Wales and NHS Wales Shared Services Partnership.

Science

147. There has been a variety of discussions, meetings and engagements with UK government departments at an official level involving the Chief Scientific Adviser(CSA) for Wales or representatives from his office. This has included regular meeting with the UK CSA network chaired by the UK government's Chief Scientific Adviser, Sir Patrick Vallance FRS FMedSci FRCP HonFREng. Professor Dame Angela McLean DBE FRS is due to take over the role in April 2023.

148. In addition, ongoing engagement has taken place throughout this period on subject specific issues involving science, innovation, research and development with relevant UK departments such as Department for Science, Innovation and

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Technology (DSIT). This covers a range of issues such as UK government's Nurse Review (Research, Development and Innovation landscape), the Horizon Europe Association or Plan B (now termed Pioneer as the programme to support research and innovation in the UK should association to the Horizon Europe scheme not prove possible), to promoting opportunities in Wales to UK departments such as engagement on proposals involving Project ARTHUR (Advanced Radioisotopes Technology for Health Utility Reactor). The primary purpose of engaging on science, research and innovation with UK departments is to help gather information and better understand available evidence. All of which can be utilised in the provision of clear advice to ministers on issues impacting on Wales, or helping to identify options for Welsh Ministers' that will help promote opportunities for investment or collaborative initiatives culminating in a benefit to Wales.

Justice

149. The UK government's Intergovernmental Relations Annual Report for 2022 states that:

> " progress has also been made between the Ministry of Justice and the Welsh Government around the findings of the Thomas Commission "

The Welsh Government considers this gives a more positive impression than is due.

150. Our Programme for Government commitment is to pursue the case for the devolution of justice and policing. The UK Government does not support the devolution of justice, and therefore dismissed out of hand the central recommendations of the Thomas Commission. The UK government did agree in 2021 to work with the Welsh Government to undertake a 'triage' of the other Thomas Commission recommendations to identify areas where there was

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mutual benefit in taking action, but it is important to note the limitations of this exercise.

151. Even within this limited area, while conversations at both an official and ministerial level have been held from later 2021 to present, there have been significant periods of inactivity due to the level of MoJ ministerial turnover which impacted on triage discussions. This process was characterised in **Delivering Justice for Wales** (p20-22) in May 2022 as “frustrating” and “slow to produce results”, and there has not been any marked improvement since. The process is still ongoing and, of the 45 recommendations identified as being within scope, only 14 have been discussed to date, with a degree of agreement being reached only on 5.

152. Overall, this has been a disappointing response from the UK government. Given that the exercise overlaps with programmes of work that the MoJ were taking forward irrespective of this process, it remains unclear whether the MoJ are intending to undertake any significant further activity as a result of the Thomas Commission discussions.

153. The one recommendation that does show promising progress is in the area of disaggregation of Welsh justice data. Welsh Government officials have completed a mapping exercise of criminal justice data and have identified a number of areas where data for Wales is collected but not separated from English data. This analysis has been shared with MoJ officials and we are awaiting a response.

154. Given the lack of progress, the Welsh Government may need to consider the viability of continuing with the triage process.

155. Relations with the UK government on justice more broadly remains fairly positive, supported by robust Welsh Government engagement in work to improve outcomes under the current system. We continue to work with MoJ, HMPPS, Policing in Wales and the Youth Justice Board Cymru on the delivery of

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the Youth Justice Blueprint and Women's Justice Blueprint. This includes work on the proposed Residential Women's Centre (RWC).

156. We published Implementation Plans highlighting progress against both Blueprints in May 2022 and we are working with MoJ to develop further work on women's and youth justice issues to deliver further improvements to the system. These will draw on the recommendations from the Senedd Equality and Social Justice Committee's inquiry into women's experiences of the justice system.

Community safety

157. Community Safety Division in Wales Government continue to work with the Home Office across a breadth of different policy areas. This is supported by regular and positive engagement between the Welsh Government and the Home Office's UK Domestic, Overseas Territories, Americas and 5 Eyes Unit. Examples of relevant work across the report period include:

- Work continues with the Home Office and key stakeholders across Wales to support implementation of the Serious Violence Duty which commenced on 31 January 2023. We worked with Welsh partners and Home Office colleagues on a bespoke Welsh chapter for the statutory guidance for the Duty to ensure it fully reflected the distinct delivery context in Wales.
- The Home Office has launched a review of Community Safety Partnerships. We have worked with the Wales Safer Communities Network to ensure that the views of stakeholders in Wales are fed back to the review team. It will be important to ensure this work, reflects the devolved context of services in Wales.
- We continue to work with the Policing in Wales and other emergency services colleagues on an Emergency Services Covenant in Wales, whilst still being linked into UK government work on the Police Covenant.
- The interests of the Armed Forces Community in Wales (Serving People, Veterans and their families) and the Armed Forces footprint are conducted

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through relations with the MOD and the Office for Veterans Affairs. There were regular meetings at officials level and over the reporting period exchange between ministers in relation to the Armed Forces Covenant, in particular preparing for the new 'Duty of Due Regard'. Going forward we hope to see better co-ordination with the Office for Veterans Affairs in relation to plans and announcements for UK-wide initiatives.

158. The examples above give a sense of how the Home Office engagement with Wales can lead to stronger policy outcomes overall. We continue to stress the importance of early and effective engagement with the Welsh Government given the importance of the distinct Welsh context for community safety issues and the interface with devolved issues such as substance misuse and mental health.

Violence Against Women, Domestic Abuse and Sexual Violence (VAWDASV)

159. The Welsh Government VAWDASV team and officials in health worked closely with the UK government's Department of Health and Social Care on the criminalisation of virginity testing and hymenoplasty as part of the Health and Care Act 2022. This relationship was constructive and collaborative, to ensure women and girls are protected from these abhorrent practices that constitute acts of violence against women and girls. The Senedd Cymru gave consent for the UK government to legislate on its behalf in this regard. Welsh Government contributed to UK government guidance to ensure the devolved nature of health and tackling VAWDASV were taken into account. The Welsh Government went a step further and published an **awareness raising toolkit** for the public and professionals to ensure that more people are aware of the criminal nature of these intrusive and degrading practices.

160. As a result of the Domestic Abuse Act 2021, the UK government has produced statutory guidance to support increasing the understanding of some of

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the definitions within this Act, as well as on controlling and coercive behaviour. Both sets of guidance were produced with engagement and input from the Welsh Government to highlight devolved responsibilities in line with the ground-breaking Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 to prevent gender-based abuse and protect and support victims and survivors.

161. Migrant victims of VAWDASV continue to be left behind by both UK government policy and UK legislation. In 2021, the Home Office launched its support for Migrant Victims Scheme (SMVS) to support some migrant victims fleeing domestic abuse. While the Welsh Government supports this scheme, it does not go far enough and there are gaps in provision which leave victims with no choice but to stay with or return to abusive partners. In December 2022, the Welsh Government accepted the recommendation of the Senedd Equality and Social Justice Committee to establish a crisis fund that service providers can access to support migrant women who are victims or survivors of sexual and gender-based violence and who are subject to No Recourse to Public Funds (NRPF). The fund, which will be established in spring 2023, will plug the gaps of the SMVS while we await the publication of the Home Office's evaluation of the pilot scheme.

Housing

Building safety

162. During the reporting period, fortnightly meetings were held with UK government and the devolved governments to discuss matters of building safety, share best practice and any lessons learned. The meetings have been extremely useful in generating an understanding of the different approaches across governments, as well as areas of commonality. The relationship is positive. Sharing of information, such as contract documents, enabled us to take

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a consistent approach with developers, which undoubtedly saved time. In addition to this, we have shared best practice, presenting on Welsh initiatives such as the Leaseholder Support Scheme, and attending Northern Ireland's Building Safety Expert Panel to explain our approach in Wales. We also work closely with colleagues in Scotland, and have issued joint letters on matters of mutual interest.

163. In addition to this, a number of meetings have been held between Welsh Government officials and UK government officials to discuss insurance in the context of recommendations of the Financial Conduct Authority Report on Insurance of Multi Occupancy Buildings, issued in September 2022. This included working with the UK government as they develop legislation around transparency in Managing Agents insurance charges and commissions.

164. Furthermore, there has been regular engagement through Inter-Ministerial Group meetings with UK government and devolved governments, in which matters of building safety are discussed.

Homelessness

165. Welsh Government officials met regularly with their counterparts in all 4 UK governments, via a monthly 4 nations meeting, during this reporting period. These meetings will continue throughout 2023 to provide early insight to forthcoming work, share good practice and policy on ending homelessness. We will build on these established relationships to develop our legislative reform to end homelessness.

Leasehold

166. During this reporting period, engagement between administrations on leasehold reform led to the passing of the Leasehold Reform (Ground Rent) Act

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in February 2022, which was developed with the involvement of Welsh Ministers, and which received the legislative consent of the Senedd. Further joint working is ongoing towards the expected introduction later this year of a further England and Wales leasehold reform Bill, to implement recommendations from the Law Commission's reports on Enfranchisement, Right to Manage and Commonhold, as well as other reforms to improve the experience of leaseholders. In support of this, a joint consultation was launched in early 2022 on aspects of a revised regime. The Minister for Climate Change met with then UK Minister for Housing Lucy Frazer MP in February 2023, at which meeting both ministers expressed a keen interest in further joint working on aspects of reform where there is mutual agreement.

New Homes Ombudsman

167. Welsh Government officials worked very closely with the UK government to ensure Welsh Ministers have a formal and purposeful role in the New Homes Ombudsman (NHO) scheme design. This includes a statutory duty on the Secretary of State to consult with Welsh Ministers on various aspects of the NHO, given the express provisions on the face of the Building Safety Act ("the Act"), and are the result of inter-governmental co-operation and engagement.

168. Effective negotiations and inter-governmental co-operation have also been experienced in relation to ensuring the Senedd's competence is not negatively impacted through provisions to negate the need to gain the consent of the appropriate UK government minister to remove functions from the NHO should we so wish. Whilst the UK government were always keen for the NHO to be UK-wide, our ability to influence the provisions so as not to restrict Welsh Ministers in the future led to Wales inclusion.

169. Throughout this reporting period, the UK government has engaged constructively with Welsh Government officials and the Minister for Climate Change on the NHO. Together we have secured a vehicle for meaningful and

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timely engagement, discussion, and consultation exists between the UK government and the devolved nations via the NHO Cross Government Working Group. We continue to work together positively on the detail of the NHO scheme design, content of Regulations and engagement needed.

New Build Homes Warranties

170. A very late amendment was made to the Building Safety Act, placing a requirement in law for developers of new build homes in England to provide a minimum 15 year warranty; extending the warranty period from 10 to 15 years.

171. The UKG factsheet issued at the time states “We are in discussions with the devolved administrations, and they will consider how this might be taken forward in their jurisdictions.” No discussion was held with Welsh Government on this, or the opportunity provided to extend to Wales. This could result in the New Homes Ombudsman (NHO) adjudicating against different provision.

172. Little engagement with Welsh Government has been forthcoming from the UK government, this follows the lack of any engagement on this aspect, prior to the late amendment, contrary to the factsheet details, and is limited to updates via NHO networks rather than Welsh Government policy leads.

Social housing regulation

173. There has been close liaison between Welsh Government and UK government officials in relation to the Social Housing Regulation Bill which is currently in its final stages. Early meetings considered policy implications of the Bill and more latterly, I respect of management and timing of the legislative consent process in the Senedd.

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Housing-related benefits

174. Welsh Government officials have ongoing engagement with officials in the Department for Work and Pensions (DWP) and Department for Levelling Up, Housing & Communities (DLUHC) about planned reform to the supported housing sector in England driven by a Supported Housing (Regulatory Oversight) Bill led by DLUHC. These reforms could result in linked reforms to non-devolved Housing Benefit rules for individuals who reside in specific types of supported housing. Welsh Government officials are exploring with key Welsh stakeholders the development of guidance for standards of support within Welsh supported housing settings, commissioned through the Housing Support Grant. This is intended to feed into any future changes to UK housing-related benefit rules. DWP officials are keen to engage regularly about these developments to influence their plans.

Social Welfare/Cost of Living

175. The majority of the levers to tackle poverty and support the people of Wales through the cost of living crisis sit with the UK government and although there have been good working relationships at an civil service officials level which have facilitated the quick introduction of funds such as the Welsh Government Fuel Support Scheme and the Cost of Living Support Scheme there has been little interaction at a ministerial level.

176. The Minister for Social Justice and Chief Whip has repeatedly written to the DWP Secretary of State (including joint letters sent with the other devolved governments) suggesting policy changes that could be made to lift the most financially vulnerable people across the UK out of poverty with no responses received. This total disregard of the only form of communication with the DWP Secretary of State is a major concern. During the reporting period at least 9 letters were sent with no reply.

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177. The recent report published by Policy in Practice which estimates that the total amount of unclaimed income-related benefits and social tariffs is now £18.7 billion a year. This serves as timely reminder that a strategic joint effort between all 4 governments is required to ensure that household incomes are maximised by encouraging individuals to claim their entitlements. To be truly effective this needs to be led at a ministerial level.

178. Our Programme for Government commitment to explore the necessary infrastructure required to prepare for the devolution of the administration of welfare is at risk of being undermined by the UK government's lack of support as this will require co-operation from both governments. This was apparent in the UK government's response to the Welsh Affairs Committee (WAC) inquiry into the Benefits System in Wales where they rejected the recommendations completely. The message was clear that they do not intend to devolve any elements of social security to Welsh Government, have no intentions to discuss this further and rejected the recommendation to set up a UK-Welsh Government Inter-Ministerial Advisory Board on Social Security.

179. The response from the UK government recognised the positive engagement between Welsh Government officials and DWP officials. However, it is important that Welsh Ministers have regular meetings with the DWP Secretary of State, and as part of the intergovernmental machinery, a DWP Inter-Ministerial group should be established at portfolio level between all four nations. Welsh Government have been consistently pushing for this level of engagement and discussions are continuing to agree the best structure for this group.

180. Similarly with the WAC recommendation relating to carrying out a joint impact assessment of the Basic Income Pilot was dismissed out of hand by the UK government. In developing the Basic Income for Care Leavers in Wales pilot, Welsh Government has been engaged with UK government departments on how the scheme interacts with the policy areas of tax, benefits and legal aid. There have been good working relationships between officials and HM Revenue

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and Customs in agreeing the handling of tax payments and we had some initial helpful discussions with colleagues at the Ministry of Justice on the implications of the pilot for accessing legal aid. The interaction at Ministerial level with UK government has been less positive in relation to the interaction with the benefits and legal aid systems, in particular the way in which the most recent correspondence regarding legal aid was handled.

Transport

181. After a considerable hiatus, ministerial engagement with the Department for Transport (DfT) resumed in March 2023 when the Deputy Minister for Climate Change met with the Transport Secretary, the Rt Hon Mark Harper. In addition, the Transport IMG was reconstituted, with a rotating chair agreement in place across all 4 governments. After this reporting period, the IMG met for the first time in May 2023, chaired by the Welsh Government (Deputy Minister for Climate Change). Ministers and officials continue to press the case for greater devolution of rail matters to Wales, alongside a fair funding settlement, including our fair share of the £100 billion UK government investment in HS2 that are currently denied to Wales by virtue of HS2 being classified as an England & Wales project. Consultation with Welsh Government is inconsistent. For example, the Welsh Government had no role in, and was not consulted on, the recent extension of the Avanti West Coast contract despite it significantly reducing the level of services to Welsh passengers.

182. Throughout the various Ministerial changes in the UK government over the last year, official level links with DfT have remained positive and constructive, with regular cross-cutting engagement via a monthly 4-nations meeting and well-established relationships between respective policy teams Relations with Transport Scotland and officials in Northern Ireland are equally positive, with frequent engagement in a range of transport policy areas.

183. Regarding bus policy, there has been very limited ministerial engagement

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but officials meet counterparts from the UK, Northern Ireland and Scottish governments on a regular basis to discuss common policy and delivery issues. Welsh Government officials have working operational relationships with DVLA, DVSA and DWP to manage operational issues around bus services and concessionary passes.

184. Given Welsh Ministers' policy position, engagement with DfT on the Strikes (Minimum Service Levels) Bill has been very limited. There has been more open engagement with respect to Retained EU Law, with officials exchanging information on the policy and legal challenges arising from the proposed changes whilst ensuring that the Welsh Government's policy position has been communicated firmly throughout.

185. Welsh Government officials have also continued to work closely with DfT on other matters including, transport decarbonisation, Taxi & Private Hire Vehicle legislation, the Blue Badge Scheme.

186. Officials are in regular liaison with the Office for Zero Emission Vehicles (OZEV) on electric vehicle charging infrastructure, facilitating access to funding for Welsh local authorities, and sharing knowledge on amendments to building regulations.

187. On Active Travel, Welsh Government takes part in quarterly quadrilateral meetings between policy leads from each of the devolved governments and the DfT, as well as Active Travel England. These mostly online meetings provide an informal forum to share updates on relevant policies and programmes and experience of delivery.

188. Throughout 2021 Welsh Government officials were also involved in the steering group for the DfT-led update to the Highway Code that strengthened the Code in relation to the safety of walkers, cyclists and horse riders, which came into force in January 2022 and in the development of the publicity campaign that accompanies the changes.

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189. Welsh Government worked together with DfT, the other devolved governments and other stakeholders on the initial development of School Streets Guidance during 2021 and 2022, which each government will now customise and issue separately.

Culture sport and tourism

190. Welsh Government Officials work closely and effectively with Department for Culture, Media & Sport across the whole culture, sport and tourism portfolio. Officials have a strong relationship with regards to Events, and work alongside the Event bodies of all home nations on developing and bidding for events including, for example, the joint UK and I bid for the 2028 Euros.

191. Twice yearly meetings are held with the heads of the heritage agencies from the other UK governments. As Welsh Government's Historic Environment service Cadw participates in the World Heritage Advisory Group established to advise Department of Culture Media and Sport (DCMS) on strategic matters relating to the UK's implementation of the 1972 UNESCO World Heritage Convention. The group provides advice in respect of domestic approach to future nominations of World Heritage Sites by the State Party and strategic issues relating to existing World Heritage Sites across the UK. During 2022-2023 the group supported the review of the UK Tentative List of future nominations.

192. The Culture Division represents Welsh Government on the Cultural Diplomacy Group, meeting with officials and partners from across the UK. In August 2022 officials attended the International Culture Summit in Edinburgh, arranged by the British Council and focusing on Education and Culture, and Culture and a Sustainable Future. Welsh Government hosted a breakfast event and held a series of bilateral meetings with other delegations.

193. Officials regularly met with UK government, Scottish Government and

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Northern Ireland Executive to discuss issues relating to the museums sector during this period. This has included work to ensure the impact of the cost-of-living crisis and increased energy prices was fed to UK government's survey to determine need for energy cost support for businesses beyond April 2023. Officials liaised with colleagues in UK government around the changes to the definition of treasure in the Treasure Act 1996 and the associated changes to the code of practice.

194. Welsh Government officials worked closely with UK government counterparts on development of the 2025 UK City of Culture competition, which now encourages applications from towns and regions in addition to cities, and the independent judging panel now includes a Wales representative, appointed with our involvement. Wrexham was one of the three runners-up, receiving £125,000. Despite lengthy engagement at official and ministerial level, the UK government confirmed its decision to use UK Internal Market Act financial assistance powers to deliver runners-up grants, including to Wrexham, despite our call for usual devolved funding arrangements to be applied.

195. Since early 2023, Culture Division officials working on developing a new culture strategy for Wales have met with representatives from the Scottish Government, Northern Ireland, and Ireland to discuss areas of mutual interest.

196. Welsh Government officials also worked closely with officials in Scottish Government, Northern Ireland and UK government to take forward arrangements for a proposed Culture and Creative Industries Inter Ministerial Group.

197. Further discussions have taken place between Welsh Government and UK government officials on a range of cross border, including, participation and competing against Russian/Belarussian athletes and concussion guidance for community sport. This engagement was productive and meaningful. At ministerial level we have struggled to get the Sports Cabinet meeting convened against existing protocols and have only met twice in the last 2 years. The latest

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of which was curtailed to an hour with only one main agenda item covered. That was in August 2022, and we have been unable to arrange a follow up meeting to date.

World Cup

198. The Welsh Government sought to maximise the opportunities and benefits from Wales' senior men's football team's participation at the FIFA World Cup 2022 in Qatar. There were 4 objectives:

- the promotion of Wales
- projecting our values
- ensuring the safety of Welsh citizens at the tournament
- securing a positive and lasting legacy from our participation at the World Cup.

Activities were focussed on 4 core strands:

- an enhanced marketing campaign
- a partner support fund
- engagement through our network of Welsh Government overseas offices
- ministerial engagement at the tournament.

199. Engagement with the FCDO and the UK Ambassador in Qatar, Jon Wilks, was very positive. The UK Ambassador visited Wales in June 2022, shortly after Wales had qualified for World Cup focussed engagement with Wales and the FCDO sent a delegation to Wales for further discussions. The Welsh Government and key stakeholders such as the FAW were also part of the regular cross HMG World Cup 22 Coordination Board led by the FCDO. We worked closely with the British Embassy in Qatar to deliver on events in the run up to and during the World Cup, including a major Wales reception at the Ambassador's residence as part of the First Minister's programme.

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200. The Cymru Wales Brand marketing team worked with the UKG GREAT campaign team in the months running up to the FIFA World Cup in autumn 2022 on Wales's representation within a GREAT Pavilion in Qatar which included a bi-lingual poem by Hanan Issa about the National Forest.

201. Welsh Government offices across the world also worked with the respective UK Embassy and Consulates to deliver joint events.

Conclusion

202. This overview report is intended to provide a substantive and balanced assessment of the nature of intergovernmental work across the Welsh Government within this reporting period and summarise in particular the engagement which has taken place between Welsh Government and UK government.

203. As shown, we continue to have positive relationships with the other devolved governments, and there are also clear examples of constructive and collaborative working with the UK government. However, for much of this period the Welsh Government has encountered a UK government that has been hostile to devolution, and whose actions are damaging to the Union as a result, particularly in relation to the impacts of the UK government's legislative programme and financial issues.

204. There have been some indications that the relationship is capable of being improved since autumn 2022, and we welcome those signs of progress. There are still clear tests to come where we hope to see the UK government follow through on its stated commitment to the Sewel convention, devolution and the Union.

Mark Drakeford MS

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First Minister of Wales
June 2023

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Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

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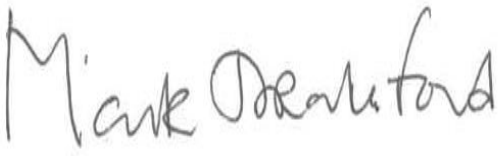
Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru

18 July 2023

Dear Huw,

Inter-Institutional Relations Agreement: Intergovernmental Relations Report

I am writing in accordance with the Inter-Institutional Relations Agreement to notify you that I today laid the Intergovernmental Relations Report, which covers the period of April 2021 to March 2023. The published report can be accessed here.



MARK DRAKEFORD

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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.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Report about Inter-governmental Relations 2021-23**
DATE	**18 July 2023**
BY	**First Minister, Mark Drakeford MS**

The Welsh Government has today published a report about intergovernmental relations covering the period 2021-23. It is available here: Providing inter-governmental information to the Senedd: report 2021 to 2023

This report is intended to provide a balanced assessment of the nature of inter-governmental work across Welsh Government and summarises the engagement between the Welsh Government and UK Government, in the context of the Inter-Institutional Relations Agreement between Senedd Cymru and the Welsh Government.

It supplements the regular Welsh Government updates provided to the Senedd, in both plenary and committee meetings, and via written statements and correspondence.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **British-Irish Council Summit in Jersey**

DATE **19 July 2023**

BY **First Minister, Mark Drakeford MS**

I attended the 39th meeting of the British-Irish Council on 15 and 16 June, which was hosted by the Government of Jersey.

The meeting was chaired by the Chief Minister Deputy Kristina Moore on behalf of the Government of Jersey. Other attendees included Taoiseach Leo Varadkar TD, Tánaiste Micheál Martin TD, the First Minister of Scotland the Rt Hon Humza Yousaf MSP, the Chief Minister of Guernsey Deputy Peter Ferbrache, the Chief Minister of the Isle of Man Hon Alfred Cannan MHK, the Rt Hon Michael Gove MP, Secretary of State for Levelling Up, Housing and Communities, and Minister for Intergovernmental Relations, and the Rt Hon Chris Heaton-Harris MP, Secretary of State for Northern Ireland.

This was an opportunity to reflect on the 25th anniversary of the signing of the Good Friday Agreement and the importance of the institutions it established, including the British Irish Council itself.

The theme of this summit focused on housing and energy policy. We discussed the efforts underway across BIC member administrations to provide affordable housing and deliver on decarbonisation. I emphasised that modern methods of construction (MMC) go beyond modular building design and can help to address issues surrounding sustainable energy. They also include the incorporation of sustainable urban drainage and can ultimately increase affordability.

The council discussed the latest geo-political developments, including Russia's invasion of Ukraine; the cost-of-living crisis; climate change; and the UK's relationship with the EU. This included an update on political developments in Northern Ireland, centred around the Windsor Framework. In contributing to this discussion, I highlighted the fundamental importance of re-establishing a Northern Ireland Executive and the significance of the Windsor Framework, which is a first step in re-establishing relationships between the UK and the EU. The Welsh Government wants to see these relationships deepen, including, for example, in relation to student exchanges, research programmes and Creative Europe.

A joint Communiqué was issued after the meeting, which is available here: 39th British-Irish Council Summit, Government of Jersey 16 June 2023 Communiqué

The next Council Summit will be hosted by the Government of Ireland.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

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

19 July 2023

Dear Huw,

Inter-Institutional Relations Agreement: British-Irish Council Summit in Jersey

Further to my letter of 12 June regarding the inter-institutional relations agreement, the British-Irish Council Summit in Jersey and the discussion of housing and energy policy, I would like to draw your attention to my written statement of today, and to the BIC communique summarising the outcomes of the Summit.

Whilst at the Summit, I took the opportunity to have informal, bilateral meetings with Jersey's Chief Minister Deputy Kristina Moore, Taoiseach Leo Varadkar TD, Tánaiste Micheál Martin TD, the First Minister of Scotland the Rt Hon Humza Yousaf MSP and Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations the Rt Hon Michael Gove MP.

I have also copied this letter to the Climate Change, Environment, and Infrastructure Committee, the Local Government and Housing Committee, the Culture, Communications, Welsh Language, Sport, and International Relations Committee, and the Equality and Social Justice Committee.

Mark Drakeford

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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.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Inter-ministerial Group for Elections and Registration (IMG Elections)**
DATE	**19 July 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 an Inter-Ministerial Group for Elections and Registration meeting on 14 June.

The meeting was held virtually and, on this occasion, chaired by myself. In attendance were George Adam MSP, Scottish Government Minister for Parliamentary Business, Steve Baker MP, Minister of State, Northern Ireland Office, and Baroness Scott, Parliamentary Under Secretary of State, UK Government.

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 intentions for electoral reform.

A joint Communiqué relating to this meeting was issued on 18 July 2023: Communiqués from the Interministerial Group for Elections and Registration (external link in English only).

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

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

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

Llywodraeth Cymru
Welsh Government

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

SeneddLJC@senedd.wales

19 July 2023

Dear Huw

Further to my letter of 02 June regarding a meeting of the Interministerial Group on Elections and Registration which took place on 14 June, I have issued a Written Ministerial Statement summarising the discussions at the meeting which includes an agreed Communiqué. It has been published at: Communiqués from the Interministerial Group for Elections and Registration - GOV.UK (www.gov.uk)

Yours sincerely,

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

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The draft Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023**
DATE	**06 September 2023**
BY	**Lesley Griffiths Minister for Rural Affairs and North Wales, and Trefnydd**

Members of the Senedd will wish to be aware that we are giving consent to the Secretary of State exercising a subordinate legislation-making power in a devolved area in relation to Wales.

Agreement was sought by the Minister of State for Biosecurity, Marine and Rural Affairs, Rt Hon Lord Benyon to make a Statutory Instrument (SI) titled the Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023 ("the 2023 Regulations") to apply in relation to the United Kingdom.

The above titled SI will be made by the Minister of State, in exercise of the powers conferred under paragraph 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. The SI relates to the implementation of the Windsor Framework, as agreed between the UK and the EU on 27th February 2023.

Currently under the Northern Ireland Protocol, agri-food goods produced in and moved to NI are subject to EU animal, plant, public health, marketing, and organics standards. The amendments made to the Northern Ireland Protocol, as set out in the Windsor Framework will, in part, enable the establishment of a Retail Movement Scheme which will enable certain retail goods to move from GB to NI and meet GB public health, marketing and organics standards. Goods will still be required to meet EU standards for animal and plant health, and EU standards that apply to animal by-products.

The EU will be disapplying the relevant EU legislative instruments for the categories of goods that will be capable of being moved under the retail movement scheme,

including legislation that set standards on public health, marketing, and organics for goods in Northern Ireland, and provide the legal basis for enforcing them. However, enforcement powers against EU standards will remain for goods produced in NI. Legislation is therefore required on a domestic basis to ensure that goods moved under the scheme are subject to GB standards, and the relevant authorities in NI are able to enforce against non-compliance with GB standards.

This new Retail Movement Scheme will allow for simplified trading of specified retail goods between GB and NI for scheme members, as per the agreements made with the EU under the Windsor Framework.

The SI was laid before the UK Parliament on 5 September to come into force on 1 October 2023.

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

This instrument makes provision on the law applicable in Northern Ireland. The instrument does not have any impact on the Senedd's legislative competence, or the Welsh Ministers' executive competence.

The purpose of the amendments

The purpose of these Regulations is to protect biosecurity and support trade between Northern Ireland ("NI") and Great Britain ("GB"), following the agreement of the Windsor Framework. The instrument addresses the effect of Article 1(2) to the proposed European Union Regulation (currently a proposal reference (EU) COM(2023)124) pursuant to the Windsor Framework, in respect of certain retail goods moved from GB to NI and placed on the market in NI. This means that EU legislation will no longer apply to those specific goods or to NI establishments when handling those goods in NI where the requirements of the proposed EU Regulation are met.

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The Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the Regulations are available here:

http://www.legislation.gov.uk/id/uksi/2023/959.

Why consent has been given

Consent has been given for the UK Government to make this instrument as a result of Windsor Framework Agreement which was reached by the UK and the EU and announced on 27 February 2023 and to protect biosecurity by introducing protective measures such as the new Retail Movement Scheme across the UK.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

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

Llywodraeth Cymru
Welsh Government

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

06 September 2023

Dear Huw

I refer to my letter to you of 30 June 2023. I am writing to inform the Committee I have given my consent to the Minister of State to lay the *draft* Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Products Standards and Miscellaneous Provisions) Regulations 2023 in relation to Wales. I have laid a Written Statement which can be found at: https://senedd.wales/media/dn3mf1on/ws-ld16012-e.pdf.

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Consent has been given for the UK Government to make these Regulations following the Windsor Framework Agreement which was reached by the UK and the EU and announced on 27 February 2023. The Regulations intersect with devolved policy and will apply to Wales. The Statutory Instrument (SI) is subject to the affirmative procedure and was laid before Parliament on 5 September 2023 with a commencement date of 1 October 2023.

I have written similarly to Llyr Gruffydd MS, the Chair of the Climate Change, Environment and Infrastructure Committee.

Yours sincerely

Lesley Griffiths

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

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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.

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

Llywodraeth Cymru
Welsh Government

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

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21st July 2023

Dear Huw,

Thank you for your letter of the 7 July regarding *the Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023.* I can confirm that this is the first in a series of five instruments currently planned, which are progressing against variable timelines.

I have reviewed the Committees questions following your meeting on 3 July, my answers are set out in the following Annex.

I have written similarly to Llyr Gruffydd MS, the Chair of the Climate Change, Environment and Infrastructure Committee.

Yours sincerely,



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

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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.

Annex

Questions from the Legislation, Justice and Constitution Committee

Question 1: You told us that you received a letter from the Minister of State for Environment, Food and Rural Affairs, the Rt Hon Lord Benyon, asking for the Welsh Ministers' consent to these Regulations. Can you confirm when Lord Benyon wrote to you. In your letter to us on 2 December 2022, you committed to include the date of correspondence with UK Ministers in letters to Senedd Committees.

Question 2: Please can you share with us the relevant correspondence with Lord Benyon. Again, in your letter to us on 2 December 2022, you said you would aim to provide copies of correspondence with the UK Government to the appropriate Senedd Committees.

Response:

The Minister of State for Biosecurity, Marine and Rural Affairs, the Rt Hon Lord Benyon, wrote to the Minister for Rural Affairs and North Wales, and Trefnydd on 23 May 2023, to request the Welsh Ministers consent to the draft Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023.

Enclosed is a copy of the aforementioned letter and the response regarding this specific instrument.

Question 3: You told us that the Regulations intersect with devolved policy. Have you made an assessment of the devolved/reserved split? If so please can you provide details of that assessment?

Question 4: Did you consider bringing forward your own Regulations to deal with matters within devolved competence?

Response.

It is considered appropriate for this UK Government statutory instrument to apply to Wales as the instrument delivers on international obligations which are fixed as agreed in the Windsor Framework. Agreement was reached by the UK and the EU and announced on 27 February 2023. It was verified in Decision no. 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. It is appropriate for the regulations to be made by the UK Government to ensure a coherent and consistent statute book.

Whilst this instrument concerns subject matter that is devolved in relation to Wales (including food standards, and plant health standards), Part 2 relates to the amendment of GB-wide legislation and Part 3 of this instrument specifically concerns the application of law in Northern Ireland. It is the view of the Welsh Government that the Welsh Ministers do not have sufficient powers to make this instrument separately in relation to Wales.

It is possible that amendments to GB-wide legislation in Part 2 of this instrument, insofar as they make provisions applying in relation to Wales, could have been implemented separately in relation to Wales. Although the Welsh Government's general principle is that the law relating to devolved matters should be made and amended in Wales, on this occasion, it is considered appropriate for this instrument to apply on a UK-wide basis as there is no policy divergence between the Welsh and other UK governments in this matter. This ensures a coherent and consistent statute book with the amendments to the GB-wide legislation being accessible in a single instrument. I consider that legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes nor a prudent use of Welsh Government resources given other important priorities.

***Question 5: Can you confirm that the development of these Regulations was taken through the relevant common framework processes*.**

Response:

Officials have utilised the Plant Health Common Framework to work jointly with UK Government on this amendment. In addition, policy officials are in discussion with DEFRA over the governance arrangements to ensure Welsh interests and views on the Retail Movement Scheme are considered and addressed. A proposed Memorandum of Understanding will set out how the agreement process will operate for any future possible changes to the Scheme. Welsh Government officials, along with officials from the Scottish Government, Department of Agriculture, Environment and Rural Affairs in Northern Ireland and the Food Standards Agency, are members of the Defra-chaired Programme and Project Control Board and the overarching Northern Ireland Programme Board which oversee the implementation of the Windsor Framework.

The 2023 Regulations have been prepared and are subject to on-going discussions between UK and Welsh Government officials. Draft Statutory Instruments and associated documents in relation to these regulations have been shared or are the process of being shared. There has been a long history of joint working within this area, and this has been reflected in the drafting of this instrument.

Question 6: Has the UK Government written to you about the four other sets of Regulations referred to as NID/011, NID/012, NID/013, and NID/015 in the Scottish Government's letter?

b. If the UK Government has not written to you about the other Regulations, what action will you now take?

c. If the UK Government has written to you about the other Regulations, why does your letter of 30 June only refer to the Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023 (NID/014)?

d. Were you aware of the timings regarding the Regulations which are the subject of your letter?

e. Were you aware that the 2023 Act would result in the Regulations which are the subject of your letter no longer being subject to the affirmative procedure?

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Response:

The letter from the Rt Hon Lord Benyon Minister for Biosecurity, Marine and Rural Affairs is enclosed. This instrument (the Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023 - NID/014) is one of five, which will ensure that green lane goods can legally enter the NI market while complying with GB standards on public health, marketing, and organics (where EU standards are being disapplied under Article 1(2) and Annex I of the EU's draft legal text) and will include the necessary enforcement and sanction measures to ensure compliance.

The Welsh Governments aim was to ensure the Committee had sufficient time to consider each instrument, once drafts had become available and had undergone an in-depth review prior to being considered by Welsh Ministers. As the instruments are to be introduced under varying timetables, the DEFRA drafting is at variable stages. It was considered appropriate and helpful to the Committee to make the instruments available to you, as soon as they were in a position, where they could be approved by Welsh Ministers.

To this end, at the time of writing to the Committee, NID014 was still scheduled to be introduced under the affirmative procedure. It was subsequently converted to the negative procedure given that the passage of the Retained EU Law Bill had removed the affirmative trigger following its Royal Assent.

The remaining instruments will be shared with the Committee as soon as they undergo the same process.

Question 7: Are you aware of further implementing legislation being prepared to implement the Windsor Framework and as described by the Framework's accompanying documents? If so, please can you provide details, including timings.

The table below contains each of the instruments under preparation and the current timings we have been provided with (if any further legislation emerges, we will endeavour to inform the Committee accordingly). Please note the laying dates have been subject to change:

Ref	Name	Powers	Procedure	Laying
NID/013	The Windsor Framework (Enforcement etc.) Regulations 2023	Section 8C	Draft affirmative	04 Sept 2023
NID/014	The draft Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023	Section 8C	Made Negative	30 Aug 2023
NID/011	The Windsor Framework (Retail Movement Scheme) Regulations 2023	Section 8C	Made Negative	8 Aug 2023
NID/012	The Windsor Framework (Plant Health) Regulations 2023	Section 8C	Made Negative	30 Aug 2023

NID/015	The Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023	Section 8C	Made Negative	30 Aug 2023

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Department
for Environment
Food & Rural Affairs

The Rt Hon Lord Benyon
Minister for Biosecurity, Marine and Rural Affairs

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Lesley Griffiths MS
Minister for Rural Affairs and
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5th Floor, Tŷ Hywel
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Ref
NID/011/012/013/014/015

23 May 2023

Dear Lesley,

DEFRA SI PROGRAMME

I am writing to seek your formal consent in respect of five Statutory Instruments (SIs) due to be laid in July and August 2023. These SIs intersect with devolved policy and will apply to Wales. Details of these SIs are provided in **Annex A**.

As these Regulations will make provisions that could be made by Welsh ministers in exercise of your own powers, I am writing to ask for your consent to the devolved provisions contained within them. This is in line with the UK Government's commitment that it will not normally use the powers set out in the legislation to make provisions that could be made by a devolved administration without the consent of the relevant devolved administration(s).

I would like to express my continued appreciation for the positive cooperation that exists between our officials that has enabled this work to progress so effectively to date. Should any changes to this forward look occur, my officials will continue to keep yours updated. Please do not hesitate to get in touch if you need further information.

I am copying this letter to Julie James MS who I understand may have an interest in some of these SIs.

Yours sincerely,

Richard Benyon.

THE RT HON LORD BENYON

disability confident LEADER

Annex A

List of Defra SIs with devolved policy whose application extends to Wales and consent is being sought.

Legislative ID	Title	Enabling powers	Parliamentary procedure	Anticipated laying date	Application	DA clearance	Policy area
NID/013	The Windsor Framework (Enforcement etc.) Regulations 2023	EUWA Section 8c	Draft affirmative	Monday 17 July	England Wales Scotland Northern Ireland	Consent	Windsor Framework
NID/014	The Windsor Framework (Retail Movement Scheme; Public Health, Marketing and Organics Standards) Regulations 2023	EUWA Section 8c	Draft affirmative	Monday 17 July	England Wales Scotland Northern Ireland	Consent	Windsor Framework
NID/011	The Windsor Framework (Retail Movement Scheme) Regulations 2023	EUWA Section 8c	Made negative	Tuesday 8 August	England Wales Scotland Northern Ireland	Consent	Windsor Framework
NID/012	The Windsor Framework (Plant Health) Regulations 2023	EUWA Section 8c	Made negative	Wednesday 30 August	England Wales Scotland Northern Ireland	Consent	Windsor Framework
NID/015	The Windsor Framework (Sanitary and Phytosanitary Grant Scheme) Regulations 2023	EUWA Section 8c	Made negative	Wednesday 30 August	England Wales Scotland Northern Ireland	Consent	Windsor Framework

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

Llywodraeth Cymru
Welsh Government

The Rt Hon Lord Benyon Minister for Biosecurity,
Marine and Rural Affairs
UK Government
Department for Environment, Food and Rural Affairs
Seacole Building
2 Marsham Street
London
SW1P 4DF

Ref: NID/014

E: correspondence.section@defra.gov.uk

30th June 2023

Dear Richard,

Thank you for your letter of 23 May informing me of the UK Government's intention to lay the draft Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023.

I am giving consent to the application of the Regulations in Wales, in terms of the latest versions of the Regulations which I understand will be laid before the UK Parliament on 17 July 2023.

Yours sincerely,

Lesley Griffiths

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

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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.

Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
—
Legislation, Justice and Constitution Committee

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Lesley Griffiths MS
Minister for Rural Affairs and North Wales, and Trefnydd

7 July 2023

Dear Lesley

Draft Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023

At our meeting on 3 July 2023 we considered your letter of 30 June about your intention to consent to the UK Government making and laying the draft Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023.

There are some matters on which we would welcome further information and clarification.

We would be grateful to receive a response to the questions in the Annex at the earliest opportunity and no later than 31 July 2023.

I am copying this letter to Llyr Gruffydd MS, Chair of the Climate Change, Environment and Infrastructure Committee.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair

ANNEX

Question 1: You told us that you received a letter from the Minister of State for Environment, Food and Rural Affairs, the Rt Hon Lord Benyon, asking for the Welsh Ministers' consent to these Regulations. Can you confirm when Lord Benyon wrote to you. In your letter to us on 2 December 2022, you committed to include the date of correspondence with UK Ministers in letters to Senedd Committees.

Question 2: Please can you share with us the relevant correspondence with Lord Benyon. Again, in your letter to us on 2 December 2022, you said you would aim to provide copies of correspondence with the UK Government to the appropriate Senedd Committees.

Question 3: You told us that the Regulations intersect with devolved policy. Have you made an assessment of the devolved/reserved split? If so please can you provide details of that assessment.

Question 4: Did you consider bringing forward your own Regulations to deal with matters within devolved competence?

Question 5: Can you confirm that the development of these Regulations was taken through the relevant common framework processes.

Question 6: The Scottish Government wrote to the Scottish Parliament on 22 June 2023 identifying a package of five Statutory Instruments implementing parts of the Windsor Framework. The Regulations you have written to us about are referred to as NID/014 in the Scottish Government's letter. The other Regulations are: The Windsor Framework (Retail Movement Scheme) Regulations 2023 - (NID/011); The Windsor Framework (Plant Health) Regulations 2023 – (NID/012); The Windsor Framework (Enforcement etc.) Regulations 2023 – (NID/013); The Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023 - (NID/015).

The letter from the Scottish Government to the Scottish Parliament states: "*NID/011, NID/012 and NID/015 are subject to negative procedure. DEFRA plan to lay NID/011 in Westminster on 8 August 2023 and NID/012 and NID/015 on 30 August 2023. NID/014 is currently subject to draft affirmative procedure but we have been informed by DEFRA that it will likely be changed to the negative procedure, and we therefore propose to treat it as such for consent purposes. It is due to be laid on 17 July 2023 under affirmative procedure, but may be laid in August under negative procedure. NID/013 is subject to draft affirmative procedure and is due to be laid on 17 July 2023*." Specifically on NID/014, the Scottish Government states in its letter: "*The SI is currently subject to the draft affirmative procedure and is due to be laid on 17 July 2023, to come into force on 1 October 2023. However, the instrument may become subject to the negative procedure if the Retained EU Law (Revocation and Reform) Bill gains Royal Assent before the proposed laying date*."

The Regulations which are the subject of your letter are to be made under section 8C(1) of the *European Union (Withdrawal) Act 2018* (the 2018 Act) and are making amendments to retained direct EU law (RDEUL). Before the coming into force of the *Retained EU Law (Revocation and Reform) Act 2023* (the 2023 Act) , such regulations would be subject to the affirmative procedure if amending, repealing or revoking primary legislation or retained direct principal EU legislation (paragraph 8F(2)(a) of Schedule 7 to the 2018 Act). Following the coming into force of section 9 of, and Schedule 3 to, the 2023 Act, the reference to retained direct principal EU legislation has been removed from paragraph 8F(2)(a) of Schedule 7 to the 2018 Act, meaning that the affirmative procedure is no longer required for such regulations.

a. Has the UK Government written to you about the four other sets of Regulations referred to as NID/011, NID/012, NID/013, and NID/015 in the Scottish Government's letter?

b. If the UK Government has not written to you about the other Regulations, what action will you now take?

c. If the UK Government has written to you about the other Regulations, why does your letter of 30 June only refer to the Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulations 2023 (NID/014)?

d. Were you aware of the timings regarding the Regulations which are the subject of your letter?

e. Were you aware that the 2023 Act would result in the Regulations which are the subject of your letter no longer being subject to the affirmative procedure?

Question 7: Are you aware of further implementing legislation being prepared to implement the Windsor Framework and as described by the Framework's accompanying documents? If so, please can you provide details, including timings.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Windsor Framework (Retail Movement Scheme) Regulations 2023**
DATE	**10 August 2023**
BY	**Lesley Griffiths Minister for Rural Affairs and North Wales, and Trefnydd**

Members of the Senedd will wish to be aware that we are giving consent to the Secretary of State exercising a subordinate legislation-making power in a devolved area in relation to Wales.

Agreement was sought by the Minister of State Rt Hon Lord Benyon to make a Statutory Instrument (SI) titled the Windsor Framework (Retail Movement Scheme) Regulations 2023 (“the 2023 Regulations”) to apply in relation to the United Kingdom.

The above titled SI will be made by the Minister of State, in exercise of the powers conferred under paragraph 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. The SI relates to the implementation of the Windsor Framework, as agreed between the UK and the EU on 27th February 2023.

Currently under the Northern Ireland Protocol, agri-food goods produced in and moved to NI are subject to EU animal, plant, public health, marketing, and organics standards. The amendments made to the Northern Ireland Protocol, as set out in the Windsor Framework will, in part, enable the establishment of a Retail Movement Scheme which will enable certain retail goods to move from GB to NI and meet GB public health, marketing and organics standards. Goods will still be required to meet EU standards for animal and plant health, and EU standards that apply to animal by-products.

The EU will be disapplying the relevant EU legislative instruments for the categories of goods that will be capable of being moved under the retail movement scheme, including legislation that set standards on public health, marketing, and organics for goods in Northern Ireland, and provide the legal basis for enforcing them. However, enforcement powers against EU standards will remain for goods produced in NI. Legislation is therefore required on a domestic basis to ensure that goods moved

under the scheme are subject to GB standards, and the relevant authorities in NI are able to enforce against non-compliance with GB standards.

This legislation provides for the establishment of the Retail Movement Scheme. The 2023 Regulations prescribes how a person may apply for approval to move goods to which the Scheme applies into Northern Ireland; the location, nature, and extent of checks; and the rights of entry, seizure and destruction of goods posing a potential risk.

The SI was laid before the UK Parliament on 8 August 2023. In terms of Parts 1 and 2, the 2023 Regulations will come into force on 1 September, with the remainder coming into force on 1 October.

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence.

The 2023 Regulations result from the Windsor Framework agreement. The 2023 Regulations do not commit Welsh Ministers to adopting any future UK Government position on biosecurity.

The instrument does not have any impact on the Senedd's legislative competence, or the Welsh Ministers' executive competence. The 2023 Regulations confer new functions on the Secretary of State, to establish a Retail Movement Scheme. The Secretary of State functions of establishing (and maintaining) the Scheme are exercisable administratively and include the function of establishing 'terms and conditions' under which the Scheme will operate. The consent of the Welsh Ministers (and Scottish Ministers) to the terms and conditions of the Scheme is required prior to establishing the Scheme, and prior to any future modification of the terms and conditions. Failure to comply with the terms and conditions of the Scheme can result in direct sanctions under these Regulations (e.g. suspension or revocation of approval of persons to participate in the Scheme) and will be a potential criminal offence pursuant to regulation 12 of the Windsor Framework (Enforcement etc.) Regulations 2023.

The 2023 Regulations (Part 4) makes provision for investigatory powers and powers of enforcement (including rights of entry, and rights for the seizure and disposal of goods). In relation to Wales, functions will be conferred on persons authorised, in writing by the Welsh Ministers as the appropriate GB authority for Wales.

Functions are conferred on the Secretary of State and a programme of governance will enable Welsh Government officials to ensure these functions are exercised in a manner that reflects Welsh interests. In addition, a Memorandum of Understanding will set out an agreement process to operate for any future possible changes to the Scheme.

It is intended that APHA will manage the process and the day to day running of the Scheme on behalf of the Secretary of State.

The purpose of the instrument

The purpose of the 2023 Regulations is to protect biosecurity and support trade between Northern Ireland ("NI") and Great Britain ("GB"), following the agreement of the Windsor Framework. The instrument addresses the effect of Article 1(2) of Regulation (EU) 2023/1231 of the European Parliament and of the Council of 14 June 2023 on specific rules relating to the entry into Northern Ireland from other parts of the United Kingdom of certain consignments of retail goods, plants for planting, seed potatoes, machinery and certain vehicles operated for agricultural or forestry purposes, as well as non-commercial movements of certain pet animals into Northern Ireland. This means that listed EU legislation will no longer apply to those specific goods or to NI establishments when handling those goods in NI where the requirements of Regulation (EU) 2023/1231 are met.

The Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the 2023 Regulations are available here:

The Windsor Framework (Retail Movement Scheme) Regulations 2023 (legislation.gov.uk)

Why consent has been given

Consent has been given for the UK Government to make this instrument as a result of the Windsor Framework Agreement which was reached by the UK and the EU and announced on 27 February 2023 and to protect biosecurity by introducing protective measures such as the new Retail Movement Scheme across GB.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

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

Llywodraeth Cymru
Welsh Government

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

SeneddLJC@senedd.wales

10th August 2023

Dear Huw,

I refer to my letter to you of 1 August 2023. I am writing to inform the Committee I have given my consent to the Minister of State to lay the Windsor Framework (Retail Movement Scheme) Regulations 2023 in relation to Wales. I have laid a Written Statement which can be found at: https://senedd.wales/media/0dqfyvr1/ws-ld15994-e.pdf.

Consent has been given for the UK Government to make these Regulations following the Windsor Framework Agreement which was reached by the UK and the EU and announced on 27 February 2023. The Regulations intersect with devolved policy and will apply to Wales. The Statutory Instrument (SI) is subject to the negative procedure and was laid before Parliament on 8 August 2023 with a commencement date of 1 September (for Parts 1 and 2, with the remainder coming into force on 1 October 2023).

I have written similarly to Llyr Gruffydd MS, the Chair of the Climate Change, Environment and Infrastructure Committee.

Yours sincerely

Lesley Griffiths

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

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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.

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

Llywodraeth Cymru
Welsh Government

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

SeneddLJC@senedd.wales

1 August 2023

Dear Huw

I am writing to inform the Committee of the intention to consent to the UK Government making and laying the Windsor Framework (Retail Movement Scheme) Regulations 2023.

I have received a letter from the Minister of State for Environment, Food and Rural Affairs, Rt Hon Lord Benyon, asking for consent to these Regulations. The Regulations intersect with devolved policy and will apply to Wales. The Regulations contain provision that could be made by Welsh Ministers in exercise of our own powers. The Regulations will extend to England, Scotland, Wales and Northern Ireland and a similar request for consent has been sent to Scottish Ministers.

The Regulations will be made in exercise of the powers conferred under paragraph 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. The Regulations relate to the implementation of the Windsor Framework, as agreed between the UK and the EU on 27th February 2023

Currently under the Northern Ireland Protocol, agri-food goods produced in and moved to NI are subject to EU animal, plant, public health, marketing, and organics standards. The amendments made to the Northern Ireland Protocol, as set out in the Windsor Framework will, in part, enable the establishment of a Retail Movement Scheme which will enable certain retail goods to move from GB to NI and meet GB public health, marketing and organics standards. Goods will still be required to meet EU standards for animal and plant health, and EU standards that apply to animal by-products.

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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.

The EU will be disapplying the relevant EU legislative instruments for the categories of goods moved under the retail movement scheme, including legislation that set standards on public health, marketing, and organics for goods in Northern Ireland, and provide the legal basis for enforcing them. However, enforcement powers against EU standards will remain for goods produced in NI. Legislation is therefore required on a domestic basis to ensure that goods moved under the scheme are subject to GB standards, and the relevant authorities in NI can enforce against non-compliance with GB standards.

This new Retail Movement Scheme will allow for simplified trading of specified retail goods between GB and NI for scheme members, as per the agreements made with the EU under the Windsor Framework.

These Regulations require the Secretary of State to establish the new Retail Movement Scheme, which implements the Windsor Framework and is intended to regulate the movement of certain retail goods from Great Britain into Northern Ireland and what checks are to be made in respect of those goods. These Regulations prescribe how a person may apply for approval to move goods to which the Scheme applies into Northern Ireland; functions as to suspension or revocation of that approval; the location, nature, and extent of checks; and rights of entry, seizure and destruction etc of goods posing a relevant potential risk.

Although the Welsh Government's general principle is that the law relating to devolved matters should be made and amended in Wales, on this occasion, it is considered appropriate for this instrument to apply to Wales as there is no policy divergence between the Welsh and UK Government in this matter. This ensures a coherent and consistent statute book with the regulations being accessible in a single instrument. I consider that legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes nor a prudent use of Welsh Government resources given other important priorities.

I have written similarly to Llyr Gruffydd MS, the Chair of the Climate Change, Environment and Infrastructure Committee.

Yours sincerely



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

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The draft Windsor Framework (Enforcement etc.) Regulations 2023**
DATE	**06 September 2023**
BY	**Lesley Griffiths Minister for Rural Affairs and North Wales, and Trefnydd**

Members of the Senedd will wish to be aware that we are giving consent to the Secretary of State exercising a subordinate legislation-making power in a devolved area in relation to Wales.

Agreement was sought by the Minister of State for Biosecurity, Marine and Rural Affairs, Rt Hon Lord Benyon to make a Statutory Instrument (SI) titled the draft Windsor Framework (Enforcement etc.) Regulations 2023 ("the 2023 Regulations") to apply in relation to the United Kingdom.

The above titled SI will be made by the Minister of State, in exercise of the powers conferred under paragraph 8C(1) and (2) of, and paragraph 21 Schedule 7 to, the European Union (Withdrawal) Act 2018. The SI relates to the implementation of the Windsor Framework, as agreed between the UK and the EU on 27th February 2023.

Currently under the Northern Ireland Protocol, agri-food goods produced in and moved to NI are subject to EU animal, plant, public health, marketing, and organics standards. The amendments made to the Northern Ireland Protocol, as set out in the Windsor Framework will, in part, enable the establishment of a Retail Movement Scheme which will enable retail agri-food goods to move from GB to NI and meet GB public health, marketing and organics standards. Goods will still be required to meet EU standards for animal and plant health, and EU standards that apply to animal by-products.

The EU will be disapplying the relevant EU legislative instruments for the categories of goods that will be capable of being moved under the retail movement scheme, including legislation that set standards on public health, marketing, and organics for goods in Northern Ireland, and provide the legal basis for enforcing them. However, enforcement powers against EU standards will remain for goods produced in NI. Legislation is therefore required on a domestic basis to ensure that goods moved

under the scheme are subject to GB standards, and the relevant authorities in NI are able to enforce against non-compliance with GB standards.

This new Retail Movement Scheme will allow for simplified trading of specified retail goods between GB and NI for scheme members, as per the agreements made with the EU under the Windsor Framework.

The purpose of the 2023 Regulations is to provide for the enforcement of GB standards in Northern Ireland. The 2023 Regulations form part of a wider suite of statutory instruments delivering the Windsor Framework arrangements, including to address any non-compliance with the Retail Movement Scheme requirements (which poses a risk to the biosecurity of the island of Ireland and could otherwise result in onward movement of Retail Movement Scheme goods into the EU).

The 2023 Regulations laid before the UK Parliament on 4 September 2023 to come into force on 1 October 2023.

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

This instrument makes provision on the law applicable in Northern Ireland. It also makes amendments to certain domestic statutory instruments applying in each of the UK countries. The instrument does not have any impact on the Senedd's legislative competence, or the Welsh Ministers' executive competence.

The purpose of the 2023 Regulations

The purpose of the 2023 Regulations is to protect biosecurity and support trade between Northern Ireland ("NI") and Great Britain ("GB"), following the agreement of the Windsor Framework. The instrument addresses the effect of Article 1(2) to the proposed European Union Regulation (currently a proposal reference (EU) COM(2023)124) pursuant to the Windsor Framework, in respect of certain retail goods moved from GB to NI and placed on the market in NI. This means that EU legislation will no longer apply to those specific goods or to NI establishments when handling those goods in NI where the requirements of the proposed EU Regulation are met.

The 2023 Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the Regulations are available here:

The Windsor Framework (Enforcement etc.) Regulations 2023 (legislation.gov.uk)

Why consent has been given?

Consent has been given for the UK Government to make this Instrument as a result of the Windsor Framework Agreement which was reached by the UK and the EU and announced on 27 February 2023 and to protect biosecurity by introducing protective measures such as the new Retail Movement Scheme across UK.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

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

Llywodraeth Cymru
Welsh Government

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

6 September 2023

Dear Huw

I refer to my letter to you of 9 August 2023. I am writing to inform the Committee I have given my consent to the Minister of State to lay the draft Windsor Framework (Enforcement etc.) Regulations 2023 in relation to Wales. I have laid a Written Statement which can be found at: https://senedd.wales/media/v5mbbgyy/ws-ld16013-e.pdf.

The Regulations intersect with devolved policy and will apply to Wales. Certain aspects of the Regulations could be made by Welsh Ministers in exercise of our own powers. The Regulations extend to Northern Ireland, England, Scotland and Wales. The Statutory Instrument (SI) is subject to the affirmative procedure and was laid before Parliament on 4 September 2023 with a commencement date of 1 October 2023.

Although the Welsh Government's general principle is that the law relating to devolved matters should be made and amended in Wales, on this occasion, it is considered appropriate for the Regulations to apply to Wales as there is no policy divergence between the Welsh and UK Government in this matter. This ensures a coherent and consistent statute book with the legislative provision being accessible in a single instrument. I consider that legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes nor a prudent use of Welsh Government resources given other important priorities.

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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.

I have written similarly to Llyr Gruffydd MS, the Chair of the Climate Change, Environment and Infrastructure Committee.

Yours sincerely,



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

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

Llywodraeth Cymru
Welsh Government

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

09 August 2023

Dear Huw

I am writing to inform the Committee of the intention to consent to the UK Government making and laying the draft Windsor Framework (Enforcement etc.) Regulations 2023.

I have received a letter from the Minister of State for Environment, Food and Rural Affairs, Rt Hon Lord Benyon, asking for consent to these Regulations. The Regulations intersect with devolved policy and will apply to Wales. The provisions could be made by Welsh Ministers in exercise of our own powers. The Regulations will extend to England, Scotland, Wales and Northern Ireland and a similar request for consent has been sent to Scottish Ministers.

The Regulations will be made in exercise of the powers conferred under paragraph 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. The SI relates to the implementation of the Windsor Framework, as agreed between the UK and the EU on 27th February 2023.

Currently under the Northern Ireland Protocol, agri-food goods produced in and moved to Northern Ireland (NI) are subject to EU animal, plant, public health, marketing, and organics standards. The amendments made to the Northern Ireland Protocol, as set out in the Windsor Framework will, in part, establish a Retail Movement Scheme which will enable certain retail goods to move from GB to NI and meet GB public health, marketing and organics standards. Goods will still be required to meet EU standards for animal and plant health, and EU standards that apply to animal by-products.

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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.

The EU will be disapplying the relevant EU legislative instruments for the categories of goods moved under the retail movement scheme, including legislation that set standards on public health, marketing, and organics for goods in Northern Ireland, and provide the legal basis for enforcing them. However, enforcement powers against EU standards will remain for goods produced in NI. Legislation is therefore required on a domestic basis to ensure that goods moved under the scheme are subject to GB standards, and the relevant authorities in NI can enforce against non-compliance with GB standards.

This new Retail Movement Scheme will allow for simplified trading of specified retail goods between GB and NI for scheme members, as per the agreements made with the EU under the Windsor Framework.

These Regulations provide for the enforcement of GB standards in Northern Ireland, and make provision on offences, penalties and certain fees. These Regulations are part of a wider suite of statutory instruments delivering the Windsor Framework arrangements, including to address any non-compliance with the Retail Movement Scheme requirements (which poses a risk to the biosecurity of the island of Ireland and could otherwise result in onward movement of Retail Movement Scheme goods into the EU). They provide for an offence of non-compliance with the terms and conditions of the Retail Movement Scheme.

Although the Welsh Government's general principle is that the law relating to devolved matters should be made and amended in Wales, on this occasion, it is considered appropriate for this instrument to apply to Wales as there is no policy divergence between the Welsh and UK Government in this matter. This ensures a coherent and consistent statute book with the regulations being accessible in a single instrument. I consider that legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes nor a prudent use of Welsh Government resources given other important priorities.

I have written similarly to Llyr Gruffydd MS, the Chair of the Climate Change, Environment and Infrastructure Committee.

Yours sincerely,



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

Lesley Griffiths Minister for Rural Affairs
and North Wales and Trefnydd

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Windsor Framework (Plant Health) Regulations 2023**
DATE	**05 September 2023**
BY	**Lesley Griffiths MS, Minister for Rural Affairs and North Wales and Trefnydd**

Members of the Senedd will wish to be aware that we are giving consent to the Secretary of State exercising a subordinate legislation-making power in a devolved area in relation to Wales.

Agreement was sought by Lord Benyon, Minister for Biosecurity, Marine and Rural Affairs at the Department for Environment, Food and Rural Affairs (DEFRA) to make a Statutory Instrument (SI) titled the Windsor Framework (Plant Health) Regulations 2023.

The above titled SI will be made by the Secretary of State, in exercise of the powers conferred under paragraph 8C(1) of Schedule 7 to the European Union (Withdrawal) Act 2018. The SI relates to the implementation of the Windsor Framework, as agreed between the UK and the EU on 27th February 2023.

The amendments contained in the Regulations lay the foundations for changing the way in which plants, plant products and other objects move between Great Britian ("GB") and Northern Ireland ("NI") by introducing initial requirements for a NI Plant Health Label scheme.

The NI Plant Health Label scheme will enable the movement of various plants and plant products from a GB professional operator to a NI professional operator. It is anticipated this will become similar to the currently used UK Plant Passport scheme. The plants and plant products included in the NI Plant Health Label scheme are:

- plants for planting;
- seed potatoes; and
- vehicles and machinery which have been operated for agricultural or forestry purposes and equipment for their movement from GB to NI.

The SI was laid before the UK Parliament on 5 September 2023 to come into force on 1 October 2023.

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

These measures under the Windsor Framework broaden the executive competence of the Welsh Ministers by conferring functions on them (in their capacity as the 'Competent Authority' for Wales) without encumbrance. The SI does not transfer any functions to the Secretary of State.

The purpose of the amendments

The purpose of the Regulations is to protect biosecurity and support trade between Northern Ireland and Great Britain. The amendments contained in the Regulations lay the foundations for changing the way in which plants and other objects move between GB and NI by introducing initial requirements for a NI Plant Health Label scheme.

The Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the amendments is available here:

http://www.legislation.gov.uk/id/uksi/2023/957

Why consent has been given

Consent has been given for the UK Government to make this instrument in relation to, and on behalf of, Wales as the SI relates to a devolved area, however, the SI operates GB-wide and has effect as to the acceptance of goods into Northern Ireland. It also places requirements on Northern Ireland operators. Making this SI GB-wide will protect biosecurity by introducing protective measures such as the new NI Plant Health Label Scheme. It is imperative for businesses that we maintain the same regime for the new NI Plant Health Label Scheme either side of the border.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

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

Llywodraeth Cymru
Welsh Government

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

09 August 2023

Dear Huw,

The Windsor Framework (Plant Health) Regulations 2023

I wish to inform the Committee of the intention to consent to the UK Government making and laying The Windsor Framework (Plant Health) Regulations 2023 by 30 August 2023.

I have received a letter from the Minister of State for Environment, Food and Rural Affairs, Rt Hon Lord Benyon MP asking for consent to these Regulations. The Regulations intersect with devolved policy and will apply to Wales. The Regulation will extend to England, Scotland and Wales and Northern Ireland and a similar request for consent has been sent to Scottish Ministers.

The Regulations will be made in exercise of the powers conferred under paragraph 8C(1) of Schedule 7 to the European Union (Withdrawal) Act 2018. This is a power for a Minster of the Crown to make regulations in connection with the Ireland/Northern Ireland Protocol in the withdrawal agreement. The SI relates to the implementation of the Windsor Framework, as agreed between the UK and the EU on 27th February 2023.

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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.

The purpose of the Regulations is to protect biosecurity and support trade between Northern Ireland (“NI”) and Great Britain (“GB”). The amendments contained in the Regulations change the way in which plants, plant products and other objects move between GB and NI by introducing requirements for a NI Plant Health Label scheme.

The NI Plant Health Label scheme enables the movement of various plants and plant products from a GB professional operator to a NI professional operator. This will be similar to the currently used UK Plant Passport scheme. The plants and plant products included in the NI Plant Health Label scheme are:

- plants for planting;
- seed potatoes; and
- vehicles and machinery which have been operated for agricultural or forestry purposes and equipment for their movement from GB to NI.

The Statutory Instrument (SI) is subject to the negative procedure and is due to be laid before UK Parliament on 30 August 2023 with a commencement date of 1 October 2023.

Although the Welsh Government’s general principle is that the law relating to devolved matters should be made and amended in Wales, on this occasion, it is considered appropriate for the substance of the amendments to apply to Wales. The SI relates to a devolved area, however, the SI operates GB-wide and has effect as to the acceptance of goods into Northern Ireland. It also places requirements on Northern Ireland operators. Given the application to Northern Ireland it would not be within competence of Welsh Ministers to wholly make this SI as Wales-only. Additionally, there is no policy divergence between the Welsh and UK Government in this matter. This ensures a coherent and consistent statute book with the regulations being accessible in a single instrument. Making the regulations GB-wide also ensures there will be no risk of legislative divergence in the UK which would likely jeopardise the implementation of the Windsor Framework.

I have written similarly to Llŷr Gruffyd MS, the Chair of the Climate Change, Environment, and Infrastructure (CCEI) Committee.

Yours sincerely



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

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023**
DATE	**05 September 2023**
BY	**Lesley Griffiths Minister for Rural Affairs and North Wales, and Trefnydd**

Members of the Senedd will wish to be aware that we are giving consent to the Secretary of State exercising a subordinate legislation-making power in a devolved area in relation to Wales.

Agreement was sought by the Minister of State Rt Hon Lord Benyon to make a Statutory Instrument (SI) titled the Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023 ("the 2023 Regulations") to apply in relation to the United Kingdom.

The above titled SI will be made by the Minister of State, in exercise of the powers conferred under paragraph 8C(1) and (2) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. The SI relates to the implementation of the Windsor Framework, as agreed between the UK and the EU on 27th February 2023.

Currently under the Northern Ireland Protocol, agri-food goods produced in and moved to NI are subject to EU animal, plant, public health, marketing, and organics standards. The amendments made to the Northern Ireland Protocol, as set out in the Windsor Framework will, in part, enable the establishment of a Retail Movement Scheme which will enable certain retail goods to move from GB to NI and meet GB public health, marketing and organics standards. Goods will still be required to meet EU standards for animal and plant health, and EU standards that apply to animal by-products.

The EU will be disapplying the relevant EU legislative instruments for the categories of goods that will be capable of being moved under the retail movement scheme, including legislation that set standards on public health, marketing, and organics for goods in Northern Ireland, and provide the legal basis for enforcing them. However, enforcement powers against EU standards will remain for goods produced in NI. Legislation is therefore required on a domestic basis to ensure that goods moved

under the scheme are subject to GB standards, and the relevant authorities in NI are able to enforce against non-compliance with GB standards.

This legislation provides for financial assistance and are aimed at ensuring that:

- There is a statutory basis for the award of financial assistance to reimburse or subsidise costs of introducing 'Not for EU' markings on packaging and boxes that is required for goods moving via the Retail Movement Scheme, and which are required to display this wording from 1 October 2023.
- There is a statutory basis for the award of financial assistance in any form which may be given by way of a grant, a loan or a guarantee.
- There is a statutory basis for recovering of any financial assistance awarded where it has been determined by the Secretary of State or their delegates that the funds have been misused, misappropriated either unintentionally or deliberately, or as a result of any assessment which provides the reasonable grounds to believe the funds awarded have not been used for the purpose they were intended.

The SI was laid before the UK Parliament on 30 August 2023 and will come into force on 1 October.

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence.

The 2023 Regulations result from the Windsor Framework agreement. The 2023 Regulations do not commit Welsh Ministers to adopting any future UK Government position on biosecurity.

The instrument does not have any impact on the Senedd's legislative competence, or the Welsh Ministers' executive competence. The 2023 Regulations confer new functions on the Secretary of State to establish a scheme under which financial assistance can be provided to support compliance with the marking of retail goods requirements. The Secretary of State may delegate functions relating to the provision of financial assistance, with the consent of Welsh Ministers (and Scottish Ministers).

The Secretary of State functions of establishing a scheme under which financial assistance can be provided are exercisable administratively and include functions relating to the breach of conditions for financial assistance, administrative error, recovery of financial assistance and the suspension or termination of an agreement and notices.

Functions are conferred on the Secretary of State and a programme of governance will enable Welsh Government officials to ensure these functions are exercised in a manner that reflects Welsh interests. In addition, a Memorandum of Understanding will set out an agreement process to operate for any future possible changes to the Scheme.

The purpose of the instrument

The purpose of the 2023 Regulations is to protect biosecurity and support trade between Northern Ireland ("NI") and Great Britain ("GB"), following the agreement of the Windsor Framework. The instrument addresses the effect of Article 1(2) of Regulation (EU) 2023/1231 of the European Parliament and of the Council of 14 June 2023 on specific rules relating to the entry into Northern Ireland from other parts of the United Kingdom of certain consignments of retail goods, plants for planting, seed potatoes, machinery and certain vehicles operated for agricultural or forestry purposes, as well as non-commercial movements of certain pet animals into Northern Ireland. This means that listed EU legislation will no longer apply to those specific goods or to NI establishments when handling those goods in NI where the requirements of Regulation (EU) 2023/1231 are met.

The Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the 2023 Regulations are available here:

http://www.legislation.gov.uk/id/uksi/2023/956.

Why consent has been given

Consent has been given for the UK Government to make this instrument as a result of the Windsor Framework Agreement which was reached by the UK and the EU and announced on 27 February 2023 and to protect biosecurity by introducing protective measures such as the new Retail Movement Scheme across GB.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

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

Llywodraeth Cymru
Welsh Government

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

05 September 2023

Dear Huw

I refer to my letter to you of 31 August 2023. I am writing to inform the Committee that I have given my consent to the Minister of State for the making of the Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023 ('the Regulations') in relation to Wales. I have laid a Written Statement which can be found at:

https://senedd.wales/media/5pth1uyg/ws-ld16009-e.pdf

Consent has been given for the UK Government to make these Regulations following the Windsor Framework Agreement which was reached by the UK and the EU and announced on 27 February 2023. The Regulations intersect with devolved policy and will apply to Wales. The Statutory Instrument (SI) is subject to the negative procedure and was laid before Parliament on 4 September 2023, with a commencement date of 1 October 2023.

I have written similarly to Llyr Gruffydd MS, the Chair of the Climate Change, Environment and Infrastructure Committee.

Yours sincerely

Lesley Griffiths

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

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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.

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

Llywodraeth Cymru
Welsh Government

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

31 August 2023

Dear Huw

I am writing to inform the Committee of my intention to consent to the UK Government making and laying the Windsor Framework (Financial Assistance) (Marking of Retail Goods) Regulations 2023 ('the Regulations').

I have received a letter from the Minister of State for Environment, Food and Rural Affairs, Rt Hon Lord Benyon, asking for consent to these Regulations. The Regulations intersect with devolved policy and will apply to Wales. The Regulations contain provision that could be made by Welsh Ministers in exercise of our own powers. The Regulations will extend to England, Scotland, Wales and Northern Ireland and a similar request for consent has been sent to Scottish Ministers.

The Regulations will be made in exercise of the powers conferred under paragraph 8C(1) and (2) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. The Regulations relate to the implementation of the Windsor Framework, as agreed between the UK and the EU on 27th February 2023.

Currently under the Northern Ireland Protocol, agri-food goods produced in and moved to NI are subject to EU animal, plant, public health, marketing, and organics standards. The amendments made to the Northern Ireland Protocol, as set out in the Windsor Framework will, in part, enable the establishment of a Retail Movement Scheme which will enable certain retail goods to move from GB to NI and meet GB public health, marketing and organics standards. Goods will still be required to meet EU standards for animal and plant health, and EU standards that apply to animal by-products.

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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.

The EU will be disapplying the relevant EU legislative instruments for the categories of goods moved under the retail movement scheme, including legislation that set standards on public health, marketing, and organics for goods in Northern Ireland, and provide the legal basis for enforcing them. However, enforcement powers against EU standards will remain for goods produced in NI. Legislation is therefore required on a domestic basis to ensure that goods moved under the scheme are subject to GB standards, and the relevant authorities in NI can enforce against non-compliance with GB standards.

This new Retail Movement Scheme will allow for simplified trading of specified retail goods between GB and NI for scheme members, as per the agreements made with the EU under the Windsor Framework.

These Regulations establish the financial assistance scheme ('the scheme') and provides a discretionary power on the Secretary of State to give or arrange the giving of financial assistance to support compliance with the marking of retail goods requirements. These Regulations also make provision in relation to the delegation of the Secretary of State's functions and the recovery of any financial assistance provided under the scheme. The UK Government will introduce financial assistance, likely in the form of a grant to reimburse businesses for the specific costs incurred in preparation for the labelling requirements that will be required under the Retail Movement Scheme, from the 1 October 2023.

Although the Welsh Government's general principle is that the law relating to devolved matters should be made and amended in Wales, on this occasion, it is considered appropriate for this instrument to apply to Wales as there is no policy divergence between the Welsh and UK Government in this matter. This ensures a coherent and consistent statute book with the regulations being accessible in a single instrument. I consider that legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes nor a prudent use of Welsh Government resources given other important priorities.

I have written similarly to Llyr Gruffydd MS, the Chair of the Climate Change, Environment and Infrastructure Committee.

Yours sincerely



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

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

Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair
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30 August 2023

Inter-Institutional Relations Agreement: Inter-Ministerial Group on Justice

I am writing in accordance with the inter-institutional relations agreement to notify you that the inaugural meeting of the Inter-Ministerial Group on Justice will be held on 12 September. This is a re-scheduling of the 24 May meeting which was postponed due to the unavailability of Lord Bellamy KC, Parliamentary Under-Secretary of State for Justice.

The hybrid meeting is due to be chaired by Lord Bellamy KC and I will be representing the Welsh Government remotely. The meeting is likely to focus on a range of issues relating to the Victims Bill, Prisons, Court Recovery, Legal Aid, and Retained EU Law.

I will provide an update after the meeting.

I am copying this letter to the Minister for Social Justice and Chief Whip.

Yours sincerely,

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

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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.

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/2255/23

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
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1 September 2023

Dear Huw,

I wish to inform the Committee of my intention to consent to the UK Government making and laying one Statutory Instrument (SI): The Fluorinated Greenhouse Gases (Amendment) Regulations 2023 on 4 September 2023.

I have received a letter from the Minister of State for Biosecurity, Marine and Rural Affairs, The Rt. Hon. Lord Benyon, asking for consent to these Regulations. The Regulations intersect with devolved policy and will apply to Wales. Therefore, the provisions could be made by Welsh Ministers in exercise of our own powers. The Regulations will extend to England, Scotland and Wales and a similar request for consent has been sent to Scottish Ministers.

This SI amends retained Regulation (EU) No 517/2014 on fluorinated greenhouse gases (the EU F-Gas Regulations). The amendment will correct a technical error made in a previous amending instrument (SI 2020/1616) related to the date from which data can be used to recalculate the quantities of hydrofluorocarbons that can be lawfully placed on the GB market from 2024. The amendment is required to once again align the GBs phase-down of hydrofluorocarbons with our previous commitments made under the Montreal protocol. Article 16(3) of the retained regulations requires a recalculation of reference values by 31 October 2023.

This SI is being made under Articles paragraph 5(5) of Schedule 5 to the Retained EU Law (Revocation and Reform) Act 2023 and is subject to the affirmative resolution procedure. It is proposed that the SI is made and laid before the UK Parliament on 4 September 2023, in order for a commencement date of 31 October 2023. This is the deadline by which references values must be recalculated as set out in the legislation.

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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.

The Welsh Government's general principle is the law relating to devolved matters should be made and amended in Wales. On this occasion, it is considered appropriate for the substance of the amendments to apply to Wales as there is no policy divergence between the Welsh and UK Government on this matter. The EU F-Gas Regulations, which is being amended, is a GB-wide Regulation, so any amendments to it could not be made in the Welsh language.

Making these amendments through a GB-wide amending SI ensures a coherent and consistent statute book, with the regulations being accessible in a single instrument. Importantly, this approach also supports the continued operation of the GB-wide systems for registration, quota allocation and reporting, underpinned by the provisional Common Framework in this area, which provides consistency and equality for Welsh stakeholders.

I consider that legislating separately for Wales would not be the most appropriate way to give effect to necessary changes nor a prudent use of Welsh Government resources given other important priorities.

Yours sincerely,



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

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy

Llywodraeth Cymru
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Paul Davies MS
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Huw Irranca-Davies MS
Chair of Legislation, Justice and Constitution Committee

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5 September 2023

Dear Paul, Huw

I wanted to let you know, in line with the inter-institutional relations agreement, that a meeting of the Inter-Ministerial Group for Trade is scheduled for Thursday 7 September 2023.

The agenda will cover the ongoing negotiations with India and Canada as well as a discussion around the UK's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

I will update you further following the meeting.

Yours sincerely,

Vaughan Gething

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy

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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.

Lesley Griffiths AS/MS
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05 September 2023

Dear Huw

The Persistent Organic Pollutants (Amendment) (No. 2) Regulations 2023

I wish to inform the Committee of my intention to consent to the UK Government making and laying one Statutory Instrument (SI): The Persistent Organic Pollutants (Amendment) (No. 2) Regulations 2023 by 16 October 2023.

I have received a letter on behalf of the Minister of State for Biosecurity, Marine and Rural Affairs, Rt Hon Lord Benyon, asking for consent to these Regulations. The Regulations intersect with devolved policy and will apply to Wales. Therefore, the provisions could be made by Welsh Ministers in exercise of our own powers. The Regulations will extend to England, Scotland and Wales and a similar request for consent has been sent to Scottish Ministers.

This SI amends retained Regulation (EU) 2019/1021 of the European Parliament and of the Council on Persistent Organic Pollutants (recast) (the "POPs Regulation"). The amendment will add perfluorohexane sulfonic acid ("PFHxS"), its salts and PFHxS-related compounds to the list of substances of which the manufacturing, placing on the market and use are prohibited under the POPs Regulation. It also sets limit values for PFHxS, its salts and PFHxS-related compounds occurring as an unintentional trace contaminant in substances, mixtures and articles.

The purpose of the Regulations is to implement international obligations, which are placed on the UK by changes to the Stockholm Convention on POPs coming into force on 16 November.

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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.

This SI is being made under Articles 15(1) and 18(1) of the POPs Regulation and is subject to the affirmative resolution procedure. It is proposed that the SI is made and laid before the UK Parliament on 16 October 2023, aiming for a commencement date of 16 November 2023 in order to meet the UK's international obligations.

The Welsh Government's general principle is the law relating to devolved matters should be made and amended in Wales. On this occasion, it is considered appropriate for the substance of the amendments to apply to Wales as there is no policy divergence between the Welsh and UK Government on this matter. The POPs Regulation, which is being amended, is a GB-wide Regulation, so any amendments to it could not be made in the Welsh language.

Making these amendments through a GB-wide amending SI ensures a coherent and consistent statute book, with the regulations being accessible in a single instrument. I consider that legislating separately for Wales would not be the most appropriate way to give effect to necessary changes nor a prudent use of Welsh Government resources given other important priorities.

Yours sincerely



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

Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair, Legislation, Justice and Constitution Committee
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7 September 2023

Dear Huw,

I am writing to inform you that a meeting of the Finance: Interministerial Standing Committee (F:ISC) will take place on 20 September in London.

The focus of the meeting will be on economic and fiscal priorities. I will be pressing the CST to provide clarity as to how public sector pay awards are being funded in England, and whether this will give rise to consequential funding for Wales. This is information I have been seeking for the last six months, and the provision of such information was a commitment arising from the last F:ISC meeting.

With the UK Autumn Statement confirmed to take place on 22 November, I will be outlining the difficulties this presents in preparing the Welsh Government draft budget, as well as the implications this has for the timing allowed for scrutiny. I will also be reiterating previous asks of the UK Government to provide the necessary support to protect public services and respond to the inflationary, pay, and other cost pressures as well as issues such as RAAC. There will also be a discussion on funding pressures and budget flexibilities.

We will also have an item on energy security, building on discussions at the last F:ISC with a focus on the role of network and grid infrastructure, as well as priorities for investment in emerging renewable technologies.

Further to an action from the last meeting, Ministers will be asked to agree the revised F:ISC Terms of Reference and Operating Procedures which officials have been reviewing over the summer.

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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.

I will also be holding a bilateral meeting with the Chief Secretary to the Treasury to discuss Wales-specific spending pressures and the economic outlook, as well as support for industrial communities.

I will report to the Committee on the outcome of the meeting.

Yours sincerely,



Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

Y Pwyllgor Plant, Pobl Ifanc ac Addysg

—

Children, Young People and Education Committee

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Jeremy Miles MS
Minister for Education and Welsh Language

12 July 2023

Statutory guidance on elective home education

Dear Jeremy,

Thank you for your recent letter on elective home education dated 2 June providing clarity on timescales for the draft regulations and the Handbook for Home Educators. We considered this letter at our meeting on 14 June.

At this meeting, we also considered correspondence from a number of people raising concerns about the recently published statutory guidance on elective home education. We discussed these in the context of your recent statement on the guidance made in Plenary.

As you can see from the enclosed copies, some of the requests sit outside the powers or remit of a Senedd committee. Some correspondents asked that we look at the lawfulness of the guidance but as you know, matters of lawfulness are for the courts. While others requested for either the Committee or the Senedd to pause implementation of the guidance until there has been further scrutiny. As you will also know, this is not a power that is available to either the Senedd or a Senedd Committee. However, we would welcome your views on the other issues raised by the correspondents.

We agreed that issues around families feeling they have no choice but to move to home education because of a lack of the right support within school system will be considered in our two relevant inquiries. These are: do disabled children and young people have equal access to education and childcare?; and implementation of education reforms.

In particular, we would like to draw your attention to the comments about the consultation and engagement processes around development of the guidance (see for example submissions 3, 15 and 24.) We are concerned that those who wrote to us did not feel like their voices or experiences have been listened to as part of the development of this guidance. We would be grateful if you could

respond to their concerns. What further work can be done, or is planned, to help improve relationships between those in the home educating community who feel strongly about the new guidance and the Welsh Government?

We would appreciate a response by 14 September.

I am copying in the Chairs of the Legislation, Justice and Constitution Committee; and the Equality and Social Justice Committee as I believe they have received similar correspondence.

Yours sincerely,



Jayne Bryant MS
Chair

Enclosures: Correspondence on elective home education

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Gohebiaeth a gyflwynwyd i'r Pwyllgor Plant, Pobl Ifanc ac Addysg ynghylch canllawiau ar addysg ddewisol yn y cartref.	**Correspondence submitted to the Children, Young People and Education Committee regarding guidance on elective home education.**

Cyflwyniad / Submission 1

I am writing with regards to the new home education guidance that has been published on Friday.

As a home educating parent in Wales, I am deeply concerned about the new guidance, as is every home educator we know. The new regulations are very intrusive and the wording of the guidance is very negative towards home education, which will not help to develop positive working relationships between parents and the LA. The new guidance is disproportionate. There is no evidence that home educated children are at risk, and the millions of pounds that this intrusive monitoring is proposing is a complete waste of money, which I am sure could be much better used to improve the quality of children's lives and education.

Please see the legal advice that was sought on the matter by the home educating community here.

LJC6-07-23 - Paper 18 - Letter from Families First in Education Wales 21 February 2023.pdf (senedd.wales)

I can understand visits if there is a concern about a child or family, but for us parents who dedicate our lives to ensuring that our children are happy and receive an excellent education, this is not only unnecessary and of no benefit to us whatsoever, but completely intrusive and detrimental to their education. As I am sure you can appreciate, it is pretty full-on home educating and our time is very precious. Trying to fit in their school work each day, along with their groups that they attend every day and meeting with their friends etc. Having to waste precious hours on gathering evidence, writing reports and preparing things for a stranger (likely without teaching qualifications) to judge is of no benefit to our children and will waste a huge amount of time that should be spend on educating our children instead. The beauty of home education is that their education is for them and not to show someone else. I work with them every day so I know exactly what they know or need extra work on, without the need for recorded evidence of this. I feel our right to a private family life is being invaded.

There are also those children with special educational needs or other complex issues, who do not want to talk to strangers entering their homes and this will cause a great deal of anxiety and stress to those families unnecessarily.

I hope that the guidance can be fully debated and that a lot of this can be changed. I believe that the current guidance already serves the needs of ensuring children are receiving a suitable education in a far less intrusive and negative way that the new proposed guidance.

Cyflwyniad / Submission 2

I am writing with my concerns about the new home education guidance, I have highlighted a few points but feel that the guidance needs further review throughout and as such should be paused and not implimented.

Firstly, how will the register be created? Will it be a legal requirement? I fear that there are some data protection issues to address with the current proposals.

The guidance seems to undermine parental primace in our children's lives as the education of a child is the responsibility of the parents.

I question the EHE officers ability to assess the suitability of a child's education with an once a year visit and wonder not only how this will be implimented, but if it will lead to further invasion of our family lives and alter the way that many educators support their children once there is the need for evidence. In addition to that what is deemed suitable evidence and progress, who determines this?

The insistace that the child/children participate in the meetings is also unwarranted, if there are no concerns why would an individual have the right to demand a meeting with them? Does the child/children and their parents not have the right to decide who they meet with?

The local authorities are already over stretched how will they be able to support home education or is this just an exercise to create a register and an assessment process? If so what benefit is this to anyone?

The guidance even goes as far to say that there is no appeals process upon assessment, this is also very concerning.

The home education community is a vibrant and active community providing enriching, fulfilling lives for our children. Home education is not missing in education and I object home education being treated as a red flag. There are so many ways that

the local authority could choose to support this community and yet choose to register and check them. I feel the money spent on this register should be put to better use helping children in need through our underfunded and over stretched social services, schools and NHS.

Cyflwyniad / Submission 3

I write to formally request that your committee fully investigates the newly published Welsh Government guidance on Elective Home Education,
There are many areas that required investigation by the CYPEC including the impact on families and children in Wales. However in the first instance I request that the CYPEC investigate the areas of unlawfulness, including how it would place duties on Welsh Local Authorities to act unlawfully, as that surely has to be a priority for the Senedd to establish for this secondary legislation.

I request that, as well as your own deliberations, the CYPEC draws on legal advice in scrutinising the guidance and fulfilling the responsibilities of the Senedd to hold the Welsh Government to account.

This will necessarily take some time to allow adequate scrutiny and to ensure that Welsh Government does not proceed with unlawful statutory legislation.

Therefore I request that the Committee instruct that **this guidance is not implemented or progressed until there has been full and formal scrutiny of is by the Senedd.**

I request that in scrutinising the guidance, you give full consideration to the **two reports of David Wolfe QC**, which, for example, clearly and repeatedly demonstrate how insistence that every child has to be "seen" is unlawful.
Likewise, I ask for full consideration of any subsequent legal reports submitted to Welsh Government and/or the Committee.

In addition I ask you to full appropriate the legal points in the **formal rebuttal** of the former CCfW report on EHE in Wales.

I request that the Committee's investigations also address
- the issues of the requirement to provide evidence in every case to prove innocence in the absence of specific concerns in individual cases. How the guidance is based on the assumption that parents are considered to be not honouring their children's rights, not allowing their voices to be heard and not providing a suitable education until the parent and child prove themselves to be.

- the mistaken assumption that the State has a duty to ensure every child has a suitable education, which was explicitly stated in multiple communications from the Welsh Government in trying to justify these proposals and which is implicit throughout. This misassumption leads to a reversal of the lawful principle that education is the responsibility of the parent, not the state.
- the implications for the state becoming liable for failures in education if it is shifting the balance of power and assuming the role of being the one that is responsible. At present parents cannot sue schools for failures because education is the responsibility of the parent not the state and if a child is in school it is because the parent has chosen to put them there.

- how parents and children are not "free" to decline meetings when under threat of legal proceedings and social services involvement if they do so. coercion is not informed consent.
- the assumption that choosing not to accept a coerced meeting deemed necessary purely because of a lawful choice of educational approach is an automatic safeguarding concern requiring social service involvement; please investigate the lawfulness and the significant impact of this on law-abiding families and on the diversion of already overstretched social service resources away from those children who are genuinely in need.

- how the expectations of what has to be provided for a EHE child are significantly different from LA provision for EOTAS children.

- the discriminatory aspects of how school children will not be similarly interviewed about their feelings, opinions and beliefs of their school-based education and moves put in place to transition them to home education if they express that is their preference, as treating EHE as lesser than school based education is contrary to the Education Act.

- how children's rights, including those to privacy, are being misinterpreted or ignored.

- the lack of advocacy for families and children coerced into non-consensual interviews that have major legal and personal implications for each child, the lack of appeals process.
- the lack of due process for insisting on non-consensual or coerced interviews. At present, a child can only be interviewed without free parental consent if there is a court order demonstrating significant and reasonable risk of harm in that individual case. Generic non-consensual coerced interviews with whole sections of society purely on the basis of their lifestyle choice or philosophical ethos are not lawful.

Furthermore I ask you to investigate **if due process has been followed** in preparing and laying out this guidance. for example:

- The consultation process was not completed, with meetings cancelled due to Covid and not rescheduled and complaints from home educators regarding the conduct of those meetings that were held not addressed.
- Likewise could the Committee investigate if all the appropriate assessments have been conducted and to an appropriate standard, such as RIA.
- I am also aware that the present CCfW had requested a full evaluation plan would be conducted and published in association, however this has not been the case.

I also ask you to give due consideration to the following points and questions regarding **data protection and data sharing issues** - This list of data issues is also attached as a separate document.

1. 3.7 – are routine ISPs for LAs to share data about children in other LAs lawful if the child is NOT deemed at specific risk? That is, it is lawful to share data between LAs in the absence of specific risk and purely because they are home educated?

2. 3.11 – is it lawful for police and "professionals" to share data about children with other agencies purely because they are home educated and in the absence of any specific risk of harm?

3. 3.11 Is the wording on "*professionals*" too loose here? Does that mean that it is acceptable for doctors, dentists etc to inform the LA that a child is home educating in the absence of any specific concerns of risk but purely because they are home educating?

4. 3.13 is it lawful for LAs to "***have data sharing agreements to facilitate cross checking of children entering statutory provision against partner databases (such as early years, childcare teams and health***)" and to do so routinely for all children rather than in specific cases if there were evidence of concerns about individual children? Please note that they intend to cross reference HEALTH databases with educational ones without consent. This would be a deterrent from those who wish to avoid coerced, mandatory and likely unlawful meetings with LAs from placing themselves and their children onto health databases and thus accessing health care.

5. 3.14 and 3.15 – these points conflate the concepts of CME with an EHE child where the LA know that the child is EHE not CME but then may not know the location of that child if they move homes. Is data sharing acceptable and lawful if the EHE child who has moved home is not deemed a child at risk?

6. 3.16-3.19 – are these measures lawful and is it lawful for LAs to use them routinely to identify any children who are home educated in the absence of risks about individual children?

7. 4.19-4.30 –

a. Is it lawful for the LA to request such large volumes of data and information from families in the absence of specific risk or concern in each case? Please note they would routinely request information from **every** child and parent (not only where there is specific consideration of risk) on

i. Education

ii. Socialisation and social opportunities

iii. The child's beliefs and opinions about their family life in terms of their choice of educational approaches.

b. It is lawful for LAs to do so when the families are providing this information not "freely" but under coercion of threats of legal proceedings such as school attendance orders and social services involvement if they do not agree to meetings and to providing whatever information the LA request?

c. 4.28- 4.29. Whose property is whatever is done by the child in the course of their learning? (Sometimes termed "work" in the guidance, although many forms of home education do not involve "work" in terms of replicating school-like "work" as is alluded to earlier in the guidance).

i. Should a child of the age of consent be forced or coerced into sharing information about or examples of their learning or "work".

ii. Should a child who is not able to give consent due to age or ALNs be forced or coerced into sharing information about or examples of their learning or "work"?

iii. Should a parent be forced or coerced into sharing examples of learning or "work" that their child has done?

8. 4.39-4.41 – should there be any protections on

a. In terms of what this written report contains - should there be an independent body to assess any disputes about the relevance, validity and accuracy of the content?

b. Who this report can be shared with and how it can be used?

i. especially how can the information in such a report be used when the parents and children would not have consented to provide the information but for coercive effect of threats of legal action such as SAOs and social services involvement

ii. and/or if the LA plan to use the report without consent of the family?

9. (side point 6.9-6.12 – is there any need for clarity that data should not be shared with these bodies without consent?)

10. 7.21 "Data protection legislation allows for the sharing of information and should not be automatically used as a reason for not doing so. One of the specific circumstances which provides for information sharing is to prevent abuse or serious harm to others. When information is not shared in a timely and effective way, decisions made may be ill informed and lead to poor safeguarding practice and leave children at risk of harm."

a. What data legislation are they referring to? Is this phrasing likely to lead LA employees to disregard laws and rules on data sharing and privacy? Is this phrasing mean that data sharing without consent to be used as a general principle rather than an exception in individual cases where there is a justifiable and demonstrable reason to do so?

b. Is there evidence of clarity of what is meant by "serious harm" either in this guidance or in an appropriately rigorous training programme for LA employees utilising this guidance?

c. Should the public have sight of all training and procedures for when data sharing is and is not considered appropriate? Should that information be clarified by Welsh Government in their guidance or left to individual LAs? If the latter, who is accountable to ensuring all are compliant with the law?

Cyflwyniad / Submission 4

I am emailing to ask that the Senedd ensures the Welsh Government guidance on Elective Home Education is paused and not implemented until the Senedd has had full chance to scrutinise the unlawfulness and impact of the guidance.

Cyflwyniad / Submission 5

The Minister of Education has released new Statutory Guidance for Home Education (12th May 2023).

Whilst the guidance has some limited understanding of home education. The document contains many contradictions, and questionable requirements for Local Authorities making it an unworkable, counterproductive document for both Local Authorities and home educators.

Local Authorities and home educators would like to have a mutually respectful co-operative relationship. The underlying tone and content of this document, in it's current form, does not aid in that relationship.

The community has previously funded legal opinion and a rebuttal, which we ask you to consider. This has previously been sent to the Legislation, Justice and Constitution Committee can be viewed here
https://business.senedd.wales/documents/s134220/LJC6-07-23%20-%20Paper%2018%20-%20Letter%20from%20Families%20First%20in%20Education%20Wales%2021%20February%202023.pdf

The Chair of the LJCC wrote to the CYPE Committee regarding this matter on 7th March 2023.

The Education Department's civil servants are unable to tell us which sections of the guidance are statutory and which are non statutory, despite drafting the guidance.

The Children's Commissioner has voiced she was 'disappointed [with the lack of]

an evaluation plan to be published alongside any new guidance' (The Children's Commissioner for Wales, 16th May 2023)

Whilst we as parents and carers do not have appropriate legal knowledge on what is considered lawful. The guidance appears rushed with many errors that are most questionable in this regard and so we ask that the committee launch an urgent enquiry into the home education statutory guidance that has been published, in

order for the document to be thoroughly scrutinised to ensure it has been appropriately assessed and due process has been followed.

Cyflwyniad / Submission 6

I am writing to you to ask if you would launch an enquiry into the recently published guidance Elective Home Education.
I am extremely concerned about the negative impact this will have on home educated children especially in the area of respecting privacy and home life. Children may be expected to have face to face meetings without their consent to ensure suitability of education, with the added pressure of feeling if they don't perform well they will be sent to school.
This will threaten their entire way of life and the personalised education that they are currently receiving.

Cyflwyniad / Submission 7

I am writing to you in your capacity as chair of CYPEC concerning proposals for new Home Education Guidance for Local Authorities

I have sent the following email to the Education Minister, can you help with this?

Dear Mr Miles

I am contacting you in your capacity as Education Minister concerning proposals for new Home Education Guidance for Local Authorities.

How are you expecting Local Authorities will implement their duties regarding the new ALN Act for Home Educated Children when they are already under immense pressure within the state system. Waiting times for support are already to long to support families.

How will authorities comply with the new ALN code and Home Education proposals?

What funding has been allocated for ALN within Home Education?

How are Welsh Government expecting Local Authorities will implement their duties regarding the new ALN Act for Home Educated Children when they are already under immense pressure within the state system. Waiting times for support are already too long to support families.

How will Authorities comply with the new ALN code and Home Education proposals?

What funding has been allocated for ALN within Home Education?

Cyflwyniad / Submission 8

Whilst I am pleased to note that WG have recognised in paragraph 1.12 the alternative approach home educators take to that of a state education and in paragraph 4.20 that any enquiry the Local Authority conduct should be sensitive to the family circumstances, the guidance has limited understanding of home education.The document contains many contradictions, and questionable requirements for Local Authorities making it an unworkable, counterproductive document for both Local Authorities and home educators.

Local Authorities and home educators would like to have a mutually respectful co-operative relationship. The underlying tone and content of this document, in it's current form, does not aid in that relationship. I, and hundreds of other home educating families, are very concerned about the content of the guidance. In particular the requirement in paragraph 4.28

"*meetings that state Local Authorities should ask to see examples of learning, a variety of work both complete and incomplete in varying standards*".

Also paragraph 4.21 is particularly conflicting.

Welsh Government are taking **some** of the rights of children and implying that children are **obligated** to meet with the Local Authority and that the authority have greater jurisdiction over a child than a parent. They are combining the child's right to voice their opinion, with the suitability of education which section 436a of the education act does not require. Welsh Government are implying that it is only the state that can hear the voice of a child and not a parent. We are parents taking care of our own children.

The community has previously funded legal opinion and a rebuttal, which we ask you to consider. This has previously been sent to the Legislation, Justice and Constitution Committee can be viewed here https://business.senedd.wales/.../LJC6-07-23%20-%20Paper...

The Chair of the LJCC wrote to the CYPE Committee regarding this matter on 7th March 2023

The Education Department's civil servants are unable to tell us which sections of the guidance are statutory and which are non statutory, despite drafting the guidance.

The Children's Commissioner has voiced she was 'disappointed [with the lack of]

an evaluation plan to be published alongside any new guidance' (The Children's Commissioner for Wales, 16th May 2023)

Whilst we as parents and carers do not have appropriate legal knowledge on what is considered lawful. The guidance appears rushed with many errors that are most questionable in this regard and so we ask that the committee launch an urgent enquiry into the home education statutory guidance that has been published, in order for the document to be thoroughly scrutinised to ensure it has been appropriately assessed and due process has been followed.

Submission 8a

General Comment No. 12 (2009) The right of the child to be heard.

16. The child, however, has the right not to exercise this right. Expressing views is a choice for the child, not an obligation. States parties have to ensure that the child receives all necessary information and advice to make a decision in favour of her or his best interests.

https://resourcecentre.savethechildren.net/document/general-comment-no-12-2009-right-child-be-heard/?fbclid=IwAR3_5jkpjuo1UvVyS09oqwQfsqAohYV4FpSCYP46k5xFJuWHPRDV3CyAilo

Cyflwyniad / Submission 9

I am writing to you in your capacity as chair of CYPEC concerning proposals for new Home Education Guidance for Local Authorities.

I have sent the following email to the Education Minister, can you help with this?

Dear Mr Miles

I am contacting you in your capacity as Education Minister concerning proposals for new Home Education Guidance for Local Authorities. Why has there been no review, assessment or evaluation of the effectiveness of the current Non Statutory home education guidance for Local Authorities that was issued in 2016?

Why has there been no review, assessment or evaluation of the effectiveness of the current Non Statutory home education guidance for Local Authorities that was issued in 2016?

Cyflwyniad / Submission 10

It has come to my attention that the Welsh government have published the elective home education guidance (may 2023).

The exiting non statutory guidance is already working well and allows for positive relationships to be formed by local authority , so this will not benefit home educated children in any way. I also believe that this will be damaging to the good relationships with the la that many home educators currently have.

I am concerned that these new regulations threaten children's rights and hope that they will be adequately debated in the Senedd.

Cyflwyniad / Submission 11

The Minister of Education has released new Statutory Guidance for Home Education (12th May 2023).

Whilst the guidance has some limited understanding of home education. The document contains many contradictions, and questionable requirements for Local Authorities making it an unworkable, counterproductive document for both Local Authorities and home educators.

Local Authorities and home educators would like to have a mutually respectful co-operative relationship. The underlying tone and content of this document, in it's current form, does not aid in that relationship.

The community has previously funded legal opinion and a rebuttal, which we ask you to consider. This has previously been sent to the Legislation, Justice and Constitution Committee can be viewed here https://business.senedd.wales/.../LJC6-07-23%20-%20Paper...

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Whilst we as parents and carers do not have appropriate legal knowledge on what is considered lawful. The guidance appears rushed with many errors that are most questionable in this regard and so we ask that the committee launch an urgent enquiry into the home education statutory guidance that has been published, in order for the document to be thoroughly scrutinised to ensure it has been appropriately assessed and due process has been followed.

Cyflwyniad / Submission 12

Request for an enquiry to be launched into the recently published home ed guidance

We request the above for the following rationale:

1) the workability of the guidance, putting more pressure on the Local Authority when they already have resource and capability issues. Resourcing should be used to support families in crisis due to the education departments lack of knowledge, expertise and care, pushing them into crisis while children attended mainstream (for those children who have been removed from mainstream because of the failure of the LA)

2) Increasing numbers of home educated children have negative experiences of the education body due to the LAs lack of understanding of anything from attachment difficulties, trauma, to ASD.

Having them in the home, interrogating children as to what they have done, whether they are 'happy' and the general traumatic experience of having someone new involved in their lives would be inappropriate for most children in this situation and probably result in a backlash of negative behaviour and harmful anxiety attacks, self harm and depression.

It is not workable, appropriate or necessary.

3) I would add that while the children are obviously the main consideration, the pressure and stress that such visits would put on parents and carers could be huge. This would be both in the respect of the suggested meetings etc and the aftermath of supporting the children and helping them manage their behaviours, where they had been settled and building strategies to help anxieties.

4) lawfulness of such actions

Cyflwyniad / Submission 13

As you know, the Minister of Education has released new Statutory Guidance for Home Education (12th May 2023). Whilst the guidance has some limited understanding of home education, the document contains many contradictions, and questionable requirements for Local Authorities making it an unworkable, counterproductive document for both Local Authorities and home educators.

Local Authorities and home educators would like to have a mutually respectful co-operative relationship. The underlying tone and content of this document, in it's current form, does not aid in that relationship.

The community has previously funded legal opinion and a rebuttal, which we ask you to consider.

The Chair of the LJCC wrote to the CYPE Committee regarding this matter on 7th March 2023. The Education Department's civil servants are unable to tell us which sections of the guidance are statutory and which are non statutory, despite drafting the guidance.
The Children's Commissioner has voiced she was 'disappointed [with the lack o] an evaluation plan to be published alongside any new guidance' (The Children's Commissioner for Wales, 16th May 2023)

Whilst we as parents and carers do not have appropriate legal knowledge on what is considered lawful, the guidance appears rushed with many errors that are most questionable in this regard and so we ask that the committee launch an **urgent** enquiry into the home education statutory guidance that has been published, for the document to be thoroughly scrutinised to ensure it has been appropriately assessed and due process has been followed.

Cyflwyniad / Submission 14

It has come to my attention that the Welsh government have published the elective home education guidance (may 2023).

The exiting non statutory guidance is already working well and allows for positive relationships to be formed by local authority , so this will not benefit home educated children in any way. I also believe that this will be damaging to the good relationships with the la that many home educators currently have.

I am concerned that these new regulations threaten children's rights and hope that they will be adequately debated in the Senedd.

Cyflwyniad / Submission 15

I am writing to you in your capacity as chair of CYPEC concerning proposals for new Home Education Guidance for Local Authorities I have sent the following email to the Education Minister, can you help with this? Regarding references to an "agreed core offer" in standard copy and paste letters received from WG/education department, - Exactly who has "agreed" either the content or the acceptance of this offer of services for Home Educators like taking out more books from Libraries or Access to CADW sites that we can already access for free? Have the home educating community agreed to either the content or the acceptance of the offer?

Cyflwyniad / Submission 16

I am writing to you in your capacity as chair of CYPEC concerning proposals for new Home Education Guidance for Local Authorities.

I am most grateful for your insight and understanding of the situation we are facing as Home Educators. I have sent the following question to the Education Minister. What is your opinion on this?

Dear Mr Miles

I am contacting you in your capacity as Education Minister in Wales, concerning proposals for new Home Education Guidance for Local Authorities.

What problems are solved by current Welsh Government proposals for statutory guidance for Elective Home Education, that cannot be solved under the existing EHE guidance?

What problems are solved by current Welsh Government proposals for statutory guidance for Elective Home Education, that cannot be solved under the existing EHE guidance?

Cyflwyniad / Submission 17

It has come to my attention that the Welsh Government has published the Elective Home Education Guidance (May 2023). This is incredibly important to all families who have chosen to home educate, and it is deeply concerning, confusing and in many areas very contradictory. The existing statuary guidance has been working well, to date. Many families have a positive relationship with their local authority, but this has the potential to undo all of that in its entirety.

We all hope that these new regulations can be adequately debated in the Senedd within sufficient time.

Once we have had more time to consider the Welsh Government papers in more detail, I will further contact you with my comments, of which I hope will be helpful.

Cyflwyniad / Submission 18

I am a XXXXXXXXXXXXXX home educated person and I request that you please launch an urgent inquiry into the damaging Welsh Government guidance on elective home education.

Please use this email and the email below to consider something of the damage that this guidance would cause.

I have tried to put in a complaint to the Welsh Government, but they have refused to consider it. I have tried to explain the damage that their ideas would cause to young people like me, but all I get are copy and paste responses (that I know other people have had too) including a response that openly tell me that if I, or anyone like me, refuse to be interviews about my personal and private life and education then legal proceedings would result against my family unless I went to school.

I cannot begin to tell you how second rate, how mistrusted this makes me feel.

I cannot begin to tell you how much damage would have been done to my life and education if I had been forced to be regularly interviewed about my education and give an account of my "progress". Because "progress" in home education does not look like "progress" in school. Home education is much better than school education, but we don't jump through the same hoops at the same times - in fact that is exactly what makes it better.

School was so traumatic. It has been quite a few years since I last went to school and the way it crushed me still crushes me now.
I would not be here now if I had been forced to stay in, or go back to school.
I would not have survived it.
There will be suicides of young people if the Government insists in bullying them into interviews and forcing them into school if they refuse. I am not being overly dramatic saying that. These are real lives we are talking about. Don't push young people to the edge of that to have to prove in each case that interviews are damaging.
I do not want to explain further to you how dreadfully damaging school can be.
Please believe me and listen to me even though the Government does not.
My parents listened to me and supported me throughout my education, the Government do not.

Having my own Government use SCHOOL and legal action to make us go there as threat to coerce me and young people and children like me to conform to be interviewed and observed as if I have no rights or opinions and as if it knows better than I or my family is the most abhorrent thing I can imagine.

To use the thing I dread the most as a threat to make me dance and perform like a puppet - it is despicable.

I love being home educated. I love learning. Why deprive me of my education?
If my parents say I am being home educated why would you not believe them?
Why do you assume all home educating parents are liars unless we all jump through hoops to prove we are not?

Those hoops you would make us jump through are fiery ones. Those hoops wold damage us. They would traumatise us. Not just DURING the interviews. The whole thought of having to please someone else would take over my education.
Now - I am free to learn for the way learning enhances me as a person, for the way it benefits me, for the way it interests me.
I refuse to let my self worth and my education be overtaken by the concept of having to please other people.

I left school when I was X. I did not learn to read properly probably until I was maybe X - not because my parents were not encouraging me and helping me but because it just did not click. Plus I did not want to read because trying gave me terrible flashbacks of school. But when reading clicked, I loved it. I started to devour encyclopaedias. I have had work I have written published nationally and have several GCSEs and other similar qualifications before the age that these are taken in school. IF I had been forced to be interviewed and my "progress" assessed when I was younger, I could easily have been forced into school. That would have ruined my education and I would either not have gone or not have survived it. Home education gives long term not short term results. My parents would have been placed under pressure to MAKE me learn more quickly or in a different way. Thankfully they had the patience and wisdom to not force me but to gently and continually encourage, guide and support me but never to pressurise me, never to make me feel bad if what I was doing wasn't as "good" in other people's eyes as the gold standards that schools are meant to reach. and the result of that is that in the long term I have done far "better" than friends at school. But it is not "better" - it is where I should be, at the time I should be. But it is far far far "better" than it ever would have been if I had been forced into school.

I cannot begin to tell you how awful, how traumatic the thought would have been of being threatened with, let alone being forced into school.

My voice has always been that I want to be home educated and that I do not want to have to explain that perfectly reasonable and lawful choice to strangers. Why ignore my voice?

Learning is like a flower opening from a bud. Force it before it is ready, pressurise it, rip it open to see what is inside and you will damage it beyond repair.

We are not performing monkeys to dance to someone else's ideas. To make an animal do that is cruel. So why force us under threat of taking our parents to court and then try to pretend it is a "positive experience"?

My parents discuss issues of consent with me as a young person. How can going on a date be happy and positive if the person you are on the date with threatens you with things you dread, threatens to do things that would harm your children and family unless you do what they want?

I am not a data chip. I do not consent to my data being shared. Just being home educated is not a risk factor and is not a reason to be sharing my data.

The Government pretends it wants to "support" us. That is just such a ridiculous claim. It wants to control us, inspect us like some kind of animals in a laboratory - except those animals' sense of self worth and esteem would not be damaged anywhere near as much as ours would by implying that we have to meet other people's expectations and by implying our family are liars.
I want to do four A levels, I have the subjects selected that would work best for me. I cannot do those through school, there is no way I would manage a classroom environment - plus school simply would not allow me the options I choose or to study in the way that suits me best. But each A level EXAM costs over £2000 - that's just to sit the exams, not any other costs of studying. but will the Government support me with that? no. Will the LA? no - we've asked, nothing at all. Support? Nonsense.

Want to "support" us? Take that money they are wasting on paying people with no real training to carry out another Spanish inquisition and let us home educators explain how it could be used to REALLY support us.
But that would mean listening to us which is something that the Welsh Government just does not do.
We would far rather really do without a lot of nice things as a family to be able to keep the rights to education than sell out that right for the odd voucher or to be told we can go and see a CADW castle (which we already can for free by the way).

SO please, please urgently ensure there is a full inquiry into this horribly damaging guidance. Please make sure you examine all the ways it is unlawful. but also please please ensure you look at all the ways it is damaging too, because I suspect that the Welsh Government is so determined to try to have its way that they will just try to play legal tricks to pretend it has the right and power to do whatever it wants regardless of what we young people and families say. We really need the Senedd in Wales to do its job of standing up for the people of Wales and ensuring that only what is right and lawful happens to us. We need the Senedd to stop us being so bullied and threatened.

Please help us.

Dear Mr Miles,

XXX XXXXXX, XXXXXXX XXXXX XXX XX XXXXXX XXXXX XXXX XXXXXX.

When revising today about the McCarthy Era in the USA in the 1950s, I was intrigued to read how the textbook, to depict the bullying and unjust nature of the interview methods used by McCarthy, stated how,

"***any refusal to answer was taken as a sign of guilt***".

Yet Mr Miles, isn't that the approach Welsh Government are taking with their ideas of forcing children, like myself, into mandatory meetings with authorities against our wills, without consent of us young people, or consent of our parents?

Doing so purely because we continue to be home educated rather than taking the Government up on its offer of being educated by them instead?

*Isn't this what the Government are wanting to do by forcing our families into meetings, and we if do not comply then forcing us into courts or schools –by taking "**any refusal to answer as a sign of guilt**" to automatically presume that education cannot therefore be considered suitable.*

Mr Miles, I do not consent to invasion of my personal life with unwanted meetings. Does that make my family criminals?

The irony however also made me laugh. Many families have tried to engage with yourself and with the Education Department, only to be effectively ignored or palmed off with copy and paste replies that either do not answer the points and questions, or in effect say, "we're not talking to you, just go away and be quiet".

*Is "**any refusal to answer"** by Welsh Government also **"a sign of guilt**" on their part?*

*Of "**guilt**" of being paternalistic or autocratic?*

*Of "**guilt**" of assuming that any group that they do not understand must need "**regulating**"?*

*Of "**guilt**" of assuming that any group they do not understand must automatically need "**monitoring**"?*

*Of "**guilt**" of, like McCarthy, being suspicious of any minority group and assuming know better than them?*

*Of "**guilt**" of proceeding like some 1950s B movie robot that once it has been mistakenly set on a course just keeps going oblivious to the damage it is causing?*

*Of "**guilt**" of continuing with what it knows is unlawful?*

Please, Mr Miles, listen to us.

Please stop this damage and chaos.

The present guidelines work. Why try to fix what isn't broken?

Why not just keep these? If you genuinely want to add "support", why not just add "support" to these?

Wouldn't that be such a popular move?

Please chart a better course, set a higher level of conduct by not automatically following plans that even your predecessor knew were full of problems and did not have a lawful basis.

Be the one to set the standard for listening to and serving the community that elected you.

Cyflwyniad / Submission 19

We are writing to express our grave concern about the recent changes to Elective Home Education (EHE) Guidance in Wales. As dedicated Home Educators of our children XXXX X XXX X, we believe the new legislation undermines not only our children's rights to a suitable education based on their needs and preferences but

also the entire legal basis under ECHR Article 8 under which all government regulations and guidance has previously been drafted and regulated.

The ideological and philosophical views which we feel are better promoted through Elective Home Education are grounded in the European Convention on Human Rights Article 8 which protects family life and children's rights from the overt intrusion by Social Services and Government Departments which this new legislation actively promotes.

The range of reasons listed by the British Government for Elective Home Education include not only these ideological or philosophical views, but also a dissatisfaction with the school system, mental health, bullying and children unwillingness to go to school. All of which are in our view systemic issues in the school system itself.

As it is also clear from Elective Home Education (EHE) Guidance that the government curriculum is new, this new guidance seems to attempt through the back door to impose government guidance as to what is taught how and when. The change from Educational regulation through school to educational regulation by LA/Social Services will lead to unqualified personnel making decisions over what is an appropriate education for children who are being Home Educated.

The GOV.UK guidance clearly states:

"2.11 There are no legal requirements for you as parents educating a child at home to do any of the following:

Acquire specific qualification for the tasks

Have premises equips to any particular standard

Aim for the child to acquire any specific qualification

Teach the National Curriculum

Provide a "broad and balance" curriculum

Make detailed lesson plans in advance

Give formal lessons

Mark work done by the child

Formally assess progress, or set development objectives

Reproduce school type peer group socialisation

Match school base, age specific standards"

As it would appear that the new Welsh Government legislation directly contradicts the above listed provisions, it is questionable how the courts of England and Wales will decide upon the matter until which time this leaves parents in limbo with no time to adjust or properly address their legal and educational concerns.

As there has been no effort prior to this legislation to consult constructively with the numerous and dedicated Elective Home Education Families in Wales and beyond, it is entirely understandable that Home Educated feel this legislation to be unsupportive of the underlying educational basis not only of our own educational approaches but also of the rights to Home Education per se.

As Home Education is a huge commitment for our family and others alike and in the absence of any negative outcome for Home Educated children, it is deeply questionable why the Welsh Government does not engage into a constructive dialogue as to how Home Educated can be supported than undermine and if their concerns are regarding the increase removal of children from school to be Home Educated then their time and the extensive resources that the legislation will require would be far better spent reforming what issues parents feel led to their disenfranchisement with the school system as it stands.

Surely obtaining such insight and reforming schools where necessary would be far more fruitful and constructive than giving LA/Social Services carte blanche to coerce children back to school against their own and parents/carers wishes.

Home Education is about so much more than not attending school, and this legislation provides little scope for understanding and holistic educational approach and children's wider welfare. School classes of up to 30 children do not represent either an optimal education environment or the healthy socialisation of children. Such an environment and educational approach encourages bullying, competition and fear of failure as well as not being responsive to children's individual rates of learning nor their specific interest.

It is unfathomable how Social Services are meant to interpret and enact this new legislation, given their limited resources without grossly undermining the safeguarding provided by ECHR Article 8 upon which the basis of our civil society in post war Britain has been built.

XX X XXXX XXXXXXXX XXX XXXXXXXXXXXX XXXXXX who lived and worked in both Wales and England as well as having family abroad, travel is a central and valuable part of our children's education. For these purposes, Home Education is clearly far more suitable than school based education where unfortunately travel is not an option and race can very often be the basis of bullying and prejudice.

To sum up, it would appear this new legislation has been poorly thought through and swiftly enacted with little consideration for the basis on which Home Education has been successfully based upon since its inception and the protection granted to Home education under existing laws and ECHR Article 8. We as a family together with others in the Home Education Community will continue to Home Educate in the best interest of our children and seek protection from the courts if necessary to challenge any unlawful intrusion or imposition of this legislation which contradict the existing law and protection quoted above.

Submission 20

Attached is an open letter organised by a fellow home educator signed by a number of people of significance and experience in the realms of progressive education and safeguarding, objecting to the new WG guidance on home education in Wales.

To:

Re: Elective Home Education Guidance May 2023 (288/2023)

Parents and carers – not local authorities – bear responsibility for provision of a child's education. This is established both in primary legislation[1] and in human rights frameworks as the UN Special Rapporteur on education stated in 1999:[2]

"The objective of getting all school-aged children to school and keeping them there till they attain the minimum defined in compulsory education is routinely used in the sector of education, but this objective does not necessarily conform to human rights requirements. In a country where all school-aged children are in school, free of charge, for the full duration of compulsory education, the right to education may be denied or violated. The core human rights standards for education include respect of freedom. The respect of parents' freedom to educate their children according to their vision of what education should be has been part of international human rights standards since their very emergence."

This ill-thought through guidance upends this principle, requiring local authorities to assess the provision of education and a child's progress, relegating the views of

[1] s7 Education Act 1996

[2] https://www.ohchr.org/en/statements/2009/10/statement-special-rapporteur-right-education

parents and carers as secondary to that of the state. Assuming assessment duties is no minor administrative updating of guidance but instead represents a fundamental shift in the relationship between state and family, the repercussions of which are seismic.

Nor does the guidance address the practicalities of how local authorities are to meaningfully take this responsibility from parents. While parents and carers know their children, see their progress or struggles up close, know what they are interested in and what they want to do local authority staff do not know these children. Within a school setting, children are able to be assessed because of the uniformity of provision and expectations, this is not the case for home educated children where what a suitable education is will look different for every child. How are local authority teams – especially given a widespread lack of qualifications and experience in alternative educational approaches - to evaluate a child's education? How are they to judge if perhaps a child on one particular day might be tongue-tied or shy? How on a brief meeting are the views of local authority officers to be given more weight than that of the parent or carer? This is the reality of what is mandated by this guidance and the practical implications to the lives of children are huge.

Home education is an important freedom for families. Not only as it is for some - a choice made on the basis of parental or carer philosophical beliefs about education - but also as a vital safety net for the increasing numbers of children failed by the school system.

Governmental guidance must not – as this guidance does - undermine parental and carer responsibility for children in contravention of primary legislation and of human rights principles

Undersigned
Dr Chris Bagley, Institute of Education, UCL
Dr Beth Bodycote, Not Fine in School
Dr Ian Cunningham, Self-Managed Learning College
Charlotte Church, AWEN
Jonathan Field, co-founder AWEN
Tristram C. Llewellyn Jones, Home educator and civil liberties campaigner
Dr Harriet Pattison, Liverpool John Moore University
Heidi Mavir, author 'Your Child is Not Broken'
Alison Sauer, Trustee, Centre for Personalised Education
Dr Kevin Smith, Education, Cardiff University
Jo Symes, Progressive Education
W. Charles Warner, Education Otherwise
Lord Wei of Shoreditch

Stephanie Yorath, The Victoria Climbié Foundation UK
Rose Arnold, Suitable Education

Submission 21

I am writing to ask that you launch an inquiry into the new home education guidance which I believe to be illegal and discriminatory.

The intention to move the responsibility for education from parents to the State and the implication that children can be forced into meetings are not within the scope of the current law. Applying such intrusion into family life and parental responsibility only to a certain group of people based on a parenting decision seems to me to be a form of discrimination.

Please ensure that these issues are properly looked into and that the guidance is paused until it is done so.

Submission 22

I am writing to you in your capacity as chair of CYPEC concerning proposals for new Home Education Guidance for Local Authorities.

I have sent the following email to the Education Minister, can you help with this?

On 04/05/2022 Jeremy Miles answered written question WQ85029 with the following:

"In September 2021, I agreed to progress the proposals for elective home education (EHE) consulted on in 2019 and 2020, with the aim of ensuring that children and young people receive a suitable education, whilst making progress on identifying children missing an education."

Submission 22a

Why did The Education Minister agree to recommence work on Home Education?

My journey as a home educator began nearly XXX XXXXX XXX when my eldest son, a wonderful, musical, knowledgeable history buff XXXX XX told me he wanted his life to end.

He had suffered bullying, torment and discrimination at school due to being autistic (undiagnosed at that time) and the school was incapable of providing a suitable education in safety.

My son suffered humiliation and disrespect from other children whilst in state education due to being neurodivergent, but of course, sadly, society in general can

also be intolerant of diversity. Most families who home educate have, at some time or other, experienced being treated with disrespect and suspicion simply for being different – simply for exercising our right under the law to choose how our children are educated. The Welsh government appears intent on causing us further harm by stigmatising our situation through repeatedly conflating our educational approach with safeguarding issues and implying that there is an inherent problem with us simply due to our children's learning not taking place in school. This is discriminatory and insulting and clearly projects that Wales is a country that does not value or respect diversity in individuals, family life or in education.

However, this guidance really does mark a new low in the lack of respect and understanding towards home educators and home education from a Welsh government which has repeatedly asserted the belief that all children should be in school. The WG guidance has its basis in a presumption that home educating parents are not putting their child's education first and that parents have to provide evidence to prove that they are not guilty of neglecting their duty. This effectively sets us up as guilty until proven innocent.

The state's right to intervene is only lawful when there is reason to believe that suitable education is not taking place; this guidance effectively calls for parents to be examined by the state for evidence of failure, using our children as the source of that evidence. This mandate is accompanied by a fundamental disrespect and ignorance of home education philosophies and diversity of approach. It is not sufficient or acceptable to merely pay lip-service to an understanding of this – the Welsh government just acknowledging that there are varied approaches to education outside of the institution of school is not sufficient to even begin to approach empathising with the lived experiences of home educating families. It is also very difficult to remove an inbuilt bias towards what to expect to see or hear from a child when most council EHE officers have had previous careers as school teachers.

This school-biased thinking was highlighted in the Senedd Plenary of 6th June by the Minister for Education himself when he referred to us as parents who "teach at home" – most home educators in the UK would rigorously object to their role being described as teaching their children, in the same way that we repeatedly have to explain that most of us do not "home-school"; we are enablers, facilitators, mentors and supporters of our children's education and we often learn collaboratively alongside our children. But how would the education minister know that when he and other influencers (e.g. Estyn) only have experience of the school system where children are taught and schooled and produce a predictable, measurable output?

The Minister for Education also spoke in a contradictory manner about meetings with children not being mandatory but then emphasised that seeing and talking with the

child is how the suitability of an education is to be judged. And of course if the parent/child do not consent then prosecution and a school attendance order can follow. As I'm sure you are aware, there is no appeals process in place.

Is this supportive? My youngest child, XXXX XX certainly does not feel supported by this guidance – he feels threatened and fearful of it and those who are behind the thinking. He is aware of being part of a minority in society and how governments in the past have been guilty of huge injustices towards minorities.

I find it somewhat ironic that I had observed, in recent years, the beginnings of a more friendly and supportive role from our local education authority through provision of a variety of events, workshops and activities for home educating families. Unfortunately, in the last 12 months these provisions have largely disappeared (I assume that funds are now redirected in readiness for the new monitoring roles) and our local college, XXXXX XX XXXXX XXXXXXXX XXX XXXXX XXXXX, has announced that it is no longer accepting external exam candidates.

In light of the above, do you believe it possible, as has been suggested by Trefnydd Leslie Griffiths, that the new guidance "will provide an opportunity for the local authority to develop a positive relationship with families"?

Submission 23

The Minister of Education has released new Statutory Guidance for Home Education (12th May 2023).

Whilst the guidance has some limited understanding of home education. The document contains many contradictions, and questionable requirements for Local Authorities making it an unworkable, counterproductive document for both Local Authorities and home educators.

Local Authorities and home educators would like to have a mutually respectful co-operative relationship. The underlying tone and content of this document, in its current form, does not aid in that relationship.

The community has previously funded legal opinion and a rebuttal, which we ask you to consider. This has previously been sent to the Legislation, Justice and Constitution Committee can be viewed here
https://business.senedd.wales/documents/s134220/LJC6-07-23%20-%20Paper%2018%20-%20Letter%20from%20Families%20First%20in%20Education%20Wales%2021%20February%202023.pdf

The Chair of the LJCC wrote to the CYPE Committee regarding this matter on 7th March 2023

The Education Department's civil servants are unable to tell us which sections of the guidance are statutory and which are non-statutory, despite drafting the guidance.

The Children's Commissioner has voiced she was 'disappointed [with the lack of]

an evaluation plan to be published alongside any new guidance' (The Children's Commissioner for Wales, 16th May 2023)

Whilst we as parents and carers do not have appropriate legal knowledge on what is considered lawful. The guidance appears to be rushed with many errors that are most questionable in this regard and so we ask that the committee launch an urgent enquiry into the home education statutory guidance that has been published, in order for the document to be thoroughly scrutinised to ensure it has been appropriately assessed and due process has been followed.

I would be most grateful if you could launch an urgent investigation into the newly published guidance as there are many concerns regarding the guidance including how this is going to affect HE Children's mental health.

Submission 24

Whilst there are some positive paragraphs, the overall tone, is a document that has many contradictions, and is unworkable for both the Local Authority and the home education community. It appears to be rushed.

It is positive to note that Welsh Government recognise that 'Learning can take place in a range of locations…[and the importance of its] ability to be flexible and adapt to events and circumstances on a daily basis (4.8.)

Also that Welsh Government is 'mindful that home educators are **not** required to, among other things, have formal lessons, and mark work done by their child (See 4.13, for the full list)

However, despite a few sections demonstrating a limited understanding of home education. The document is completely incompatible with home education, and hundreds of families across Wales are very concerned.

The key issues are

- The local authority decides what is a suitable education (4.6,4.11, 4.16,4.17, 4.18, 4.28)
- The local authority has the right to mandatory meetings with the child and parent, and failure to comply could ultimately lead to the child being removed from the family home, under a care order (4.21, 4.34, 4.35, 4.37, 7.16, 7.17)

- There is no appeals process, nor is there any requirement for a local authority to ensure that staff are trained or understand bias, discrimination, or protected identities. (4.39,4.40,4.41)

It's important to note that the logical assumption of a family refusing to meet with the local authority could ultimately lead to a care order, has been verified by people far more knowledgeable than I am.

We are aware that Kirsty Williams on 11.12.19 told the Senedd that '…prior to final publication of the guidance and coming into force for the regulations, they will be subject to robust process and scrutiny, such as data protection impact assessment, integrated impact assessment and a regulatory impact assessment to ensure both are lawful' (Kirsty Williams, 11.12.19) However, we believe this hasn't been done.

Nor has a consultation response been issued by the Education Minster, only a summary of comments, by the previous Education Minister.

There are many contradictions within the guidance, suggesting it has not been fully scrutinised by relevant parties. This may allow the document to be legally challenged, which will not only cause embarrassment to the Welsh Government but will also be costly for the local authorities.

Contradictions, drafting mistakes and power grab points.

1.12 and 4.30 contradicts 4.4

3.13 Finding reception aged children by cross referencing live birth records.

4.7 contradicts 4.6, 4.4

4.12 makes no sense

4.21 contradicts itself and 4.34 and 4.37

4.28 contradicts 4.9

4.33 case law quoted makes no sense with heading

5.12 The wrong section is quoted to refer to. 4.21, which is about meeting the child

Submission 25

I was writing to you in your capacity as chair of the Children, Young People and Education Committee.

Mandatory meeting with LA representative

(Please bear in mind when reading this that our situation, like many families who opt for EHE, is complex. For the sake of brevity I will summarise but this summary merely scratches the surface of what I could say here.)

I am not currently home educating my daughter, but her needs are such that we may need to consider it in the near future. Her anxiety regarding appointments with professionals is extremely high and my experiences talking to other parents and professionals (particularly in the worlds of mental health and trauma informed practise) demonstrate we are not alone in this situation. Apart from the other issues raised in my first email, it is a very great concern to me that, if we were to opt for EHE at some point in the near future, the requirement to meet with a member of of the LA would be a massive source of stress and anxiety for her, even with me present, but to be told she is not allowed to have me present would be even worse, very likely leading to further traumatisation. Advice from trauma specialists is to prioritise felt safety and building relationships with key people. This would not be possible in the scenario which is being proposed by the government. Furthermore, advice from chronic fatigue specialists is that stress is to be avoided where possible, as it can cause flare ups or relapses. (I can provide you with relevant sources on these issues if that would be of help.) Our GP and other adoption specialists also agree that to have multiple different professionals dipping in and out is detrimental to her well-being and her recovery process. There is no provision being made within the current proposals to address this type of problem. **If the proposals go ahead I could be forced to make a choice between safeguarding my daughter's mental health and well-being and breaking the law.**

Can you see that this is a very frightening situation to be in?

Mental health crisis and attendance policies are exacerbating the situation

I am certain I am not alone in this situation. Levels of anxiety in children are clearly rising and I hear all the time how attendance figures have dropped drastically since the pandemic. Parents are being forced to consider educational alternatives for their children when they would not otherwise have chosen. Even just in my circle of close friends and family, I know of at least X children from X families who are experiencing anxiety around school - ranging from KS1-4. None of these are families who would previously have considered EHE, but some are coming to the conclusion they may not have much choice because of the detrimental effects they observe school attendance is having on their children. If I am representative of the general population, we are looking at a problem on a massive scale. Increasing the pressure on parents to comply with a system which is not working for their child is not a compassionate or even a pragmatic way forward. Attendance "targets" and rewards/punishments only make the problem worse because they do not address the underlying causes. They put pressure on schools, which is then transferred to parents and children. Increasing pressure is unhealthy for everyone. As a teacher I can speak from personal experience at both ends.

Please understand, I am not referring to parents who are negligent or children who are truanting. These are parents who are deeply concerned for their children's health and well-being and feel stuck between a rock and a hard place. For people like this, EHE sometimes becomes their only option. We may soon be one of those families.

Can you see how this wider context exacerbates the problems posed by the legislation?

A plea for help

Please, please, please will you, as chair of the Children, Young People and Education Committee, listen to our pleas for a wiser and less heavy handed approach. To make visits with a "stranger" mandatory for a child who is emotionally, physically or mentally fragile is not wise or kind and may not be for those who are more resilient either. To prevent them from having their primary carer present at such a meeting could cause huge distress, even more so because there is the potential for the results of such a meeting being that their parents/carers' provision could be judged as inadequate - and all on the basis of what they say. This is a burden that should not be placed on children. I urge you to rethink this.

These are very real concerns and I don't think it is an exaggeration to say that they constitute safeguarding concerns. I know each case will be different, but that is exactly the reason that a blanket mandatory requirement is inappropriate and potential harmful to many children like my daughter.

Can you see the kind of risks I am describing associated with what the government is proposing?

Are you happy to expose families, such as ours, to those risks?

I would be happy to talk to you further about these issues if that would be of help. As I say, I am not alone in these very real concerns and the feelings of threat that they pose to us. Please do not leave us or our children without a voice in this.

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

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: JJ/PO/242/2023

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
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13 July 2023

Dear Huw,

I am writing to you following the plenary debate on the draft Packaging Waste (Data Collection and Reporting) (Wales) Regulations 2023 in Committee on 11 July 2023 to confirm the matters which were corrected prior to making.

In the English text of the instrument:

- in regulation 2(1) the corresponding Welsh terms have been included in brackets after the definitions of “the 2003 Act” and “branded packaging” (see technical scrutiny point 1);
- paragraph 15(1)(b) of Schedule 1 now refers to “paragraph (a)” (see technical scrutiny point 5)

In the Welsh text of the instrument:

- in regulation 16(6) the word “data” has been included in the relevant place in the third line (see technical scrutiny point 4).

Yours sincerely,



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

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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.

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

Llywodraeth Cymru
Welsh Government

Business Committee Members

13 July 2023

The Environment (Air Quality and Soundscapes) (Wales) Bill

Dear Colleague,

Due to an administrative oversight, the General Principles debate on the Environment (Air Quality and Soundscapes) (Wales) Bill was not added to the Business Statement for debate on 12 September 2023.

The Business Committee have agreed Stage 2 proceedings should be completed by the Climate Change, Environment and Infrastructure Committee before 20 October 2023, subject to the General Principles of the Bill being agreed by the Senedd, and the Committee have provisionally scheduled Stage 2 proceedings accordingly. A delay to the debate would have a significant impact on the Committee's forward workplan and the Government will, therefore, table a motion to suspend Standing Orders to enable the debate to take place as planned and I am asking Business Managers to support the proposal.

The debate on the financial resolution motion will take place on 19 September. Although no proceedings may be taken on the Bill after Stage 1 unless the Senedd has agreed a financial resolution, if the Senedd agrees the General Principles of the Bill, the window for tabling Stage 2 amendments will open, allowing the Bill to follow the current timetable.

I hope by bringing this to your attention now it will allow sufficient time to discuss with colleagues before we next meet and I apologise for the administrative oversight.

I am copying this letter to the Chair of the Climate Change, Environment and Infrastructure Committee, Chair of the Legislation, Justice and Constitution Committee and Chair of the Finance Committee.

Kind Regards,



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

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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.

Y Pwyllgor Cydraddoldeb a Chyfiawnder Cymdeithasol

—

Equality and Social Justice Committee

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

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14 July 2023

Dear Huw,

Welsh Government's Legislative Consent Memorandum on the Victims and Prisoners Bill

Thank you for sharing a copy of your report on the above LCM with us. You will see that our report is based predominantly on information provided by the Minister for Social Justice and Chief Whip in response to our letter, which we received on 5 July. We had hoped to take evidence more broadly from Dame Vera Baird on this subject but unfortunately she was not in a position to contribute on this occasion. We were also unable to identify a suitable alternative in the timescales available to us.

Furthermore, we took the view that with several clauses still the subject of ongoing discussions and negotiation between the Welsh Government and Ministry of Justice it would be prudent to await the outcome of those discussions before reaching any definitive conclusions.

I hope that this information is useful. I know that our committees share a desire to improve outcomes for those involved in the criminal justice system in Wales and hope that we can continue to work together in that regard in future.

Yours sincerely,



Jenny Rathbone MS

Chair, Equality and Social Justice Committee

Welsh Parliament

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref VG/00257/23

Paul Davies MS
Chair, Economy, Trade and Rural Affairs Committee
Welsh Parliament
Cardiff Bay,
Cardiff,
CF99 1SN

24 July 2023

Dear Paul Davies MS,

Thank you for your letter of 26 June, requesting further information on work with the Western Gateway Partnership, UK Government structures, the Windsor Framework and the Border Target Operating Model.

With regard to hydrogen opportunities associated with the Western Gateway, we know the climate emergency demands we use all the tools at our disposal to accelerate progress to a net-zero energy system. We have regular dialogue with the Western Gateway Partnership on areas of joint activity and the Minister for Climate Change was a keynote speaker at its recent hydrogen conference in ICCW. We are also working with Cardiff Capital Region and Bridgend County Borough Council to explore how we may be able to support a hydrogen demonstrator project focused on transport and area heating.

While it is still a developing technology, hydrogen's unique properties mean it could, alongside extensive renewables developments, have a strong role in decarbonising Wales's power, transport and industrial processes and may have a role in delivering low carbon heating.

It is essential that as we develop our hydrogen capacity, we do not lock in a generation that relies on continued use of fossil fuels. We want to see a rapid transition to green hydrogen in Wales as soon as practicably possible.

Our hydrogen pathway sets out ten objectives focused on short term actions driving demand, production and cross-cutting action to 2025. They also set out avenues to plan for larger-scale projects to ensure Wales is well-positioned with respect to hydrogen and fuel cell technologies. We are committed to working with partners in Wales to deliver our ambitions.

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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.

In terms of how the Department for Business and Trade is structured, we have not been provided with a detailed organisational structure, but we do have a list of Ministerial responsibilities, these are as follows:

- Minister for International Trade - Minister Huddleston
- Minister for Industry and Economic Security - Minister Ghani (also Minister for Investment Security in the Cabinet Office)
- Minister for Investment - Lord Johnson
- Minister for Enterprise, Markets, and Small Business - Minister Hollinrake
- Minister for Exports - Lord Offord (also Lords Minister for the Scotland Office)
- Minister for Regulatory Reform - Earl of Minto.

I have set out a more detailed list of responsibilities at annex A.

In relation to the Windsor Framework, a secondary legislation programme to implement certain provisions of the framework, notably the Retail Movement Scheme, is being led by DEFRA with the Minister for Rural Affairs, North Wales and Trefnydd in the lead for the Welsh Government. I'm sure the Minister would be happy to provide updates to the Committee as the programme proceeds.

Lastly, on the Border Target Operating Model, we are expecting an announcement from the UK Government in the next week or so. I will provide a further update for Committee Members as soon as that is announced, setting out what it means for goods moving to Wales from the island of Ireland. I will also lay a Written Statement in the Senedd.

I hope the Committee will find this information useful.

Yours sincerely,



Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy

Annex A

Name / Role	Responsibilities
Nigel Huddleston MP Minister for International Trade	• Overall free trade agreement (FTA) and market access strategy • FTA negotiations • Bilateral trade relations • Osaka 2025 Expo • Multilateral policy • Trade remedies • Tariffs and disputes • Export Control Joint Unit • Trade envoys • UK-EU Trade and Cooperation Agreement (TCA) implementation and review • Engagement with crown dependencies and overseas territories • Trade and Agriculture Commission • Trade Remedies Authority
Nusrat Ghani MP Minister for Industry and Economic Security	• Advanced manufacturing • Automotive • Aerospace • Sustainability and Infrastructure • Steel • Materials • Maritime and shipbuilding • Professional and business services • Canada and Mexico FTAs • Economic security • Retained EU law (repeal and reform) • Sanctions • Ukraine reconstruction • Global supply chains • Critical minerals • Trade defence • Industrial Development Advisory Board (IDAB)
Lord Dominic Johnson of Lainston CBE Minister for Investment	• Investment strategy • Investment promotion across all sectors • Investor relationship management • Investment events (including Global Investment Summit) • DBT Investor Screening • Office for Investment • Defence and security exports • Lords trade legislation
Kevin Hollinrake MP Minister for Enterprise, Markets, and Small Business	• Small business and enterprise • Scale up strategy • Access to finance • Labour market and employment rights (including National Minimum Wage)

	• Postal Services (including Royal Mail) • Consumer and competition policy (including subsidy control) • Mutual recognition of professional qualifications • Office for Product Safety and Standards • Levelling up and regional growth • Corporate governance and transparency • Audit and insolvency • Hospitality • Retail • Consumer goods • Personal care • Post Office Limited • British Business Bank • Low Pay Commission • ACAS • Small Business Commissioner • Companies House • Competition & Markets Authority • Competition Service • The Insolvency Service • Competition Appeal Tribunal • Central Arbitration Committee • Certification Officer • Office of Manpower Economics • Office of the Regulator of Community Interest Companies • Groceries Code Adjudicator • Pub Code Adjudicator • British Hallmarking Council • Financial Reporting Council • Regulatory Policy Committee
Lord Offord of Garvel Minister for Exports	• Export strategy implementation and promotion across all sectors • Supporting small and medium sized businesses (SMEs) to export • Export Support Service • Trade missions and trade shows • Free trade agreement (FTA) utilisation • Outward direct investment delivery • Made in the UK, Sold to the World campaign • UK Internal Market and the Union • Board of Trade • UK Export Finance
The Earl of Minto Minister for Regulatory Reform	• Cross-government regulatory reform • Better regulation • Lords business legislation • All Private Members Bills • corporate issues

Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

Delyth Jewell MS
Committee Chair
Culture, Communications, Welsh Language, Sport, and International Relations Committee

SeneddCulture@senedd.wales

25 July 2023

Dear Delyth,

Council of Europe Convention on an Integrated Safety, Security and Service Approach to Football Matches and Other Sporting Events

I am writing in response to your letter of 14 July regarding the above convention. In relation to your request for further information I can confirm:

- I welcome the ratification of the Council of Europe Convention on an Integrated Safety, Security and Service Approach to Football Matches and Other Sporting Events. It is based on an approach of co-operation between all public and private stakeholders involved in making sports events safe, secure and welcoming, including local communities and supporters and is an approach that is already followed in Wales, not just for sporting events, but for any major event. We take an inclusive approach on the planning and management of an event and encourage cooperation and coordination between all relevant agencies.

- The Welsh Government was not directly involved in the development of the convention, which was signed by the UK Government in May 2019, but we are supportive of its principles.

- Officials have discussed the ratification of the convention with their counterparts in UK Government including the Home Office, particularly in the context of the joint UK and Ireland bid to host the Euros.

- The requirements of the convention are already in place and therefore no further steps are needed to implement it. Existing UK legislation satisfies the requirements of the Convention, and it is largely based on the methodology of policing in Wales, which is

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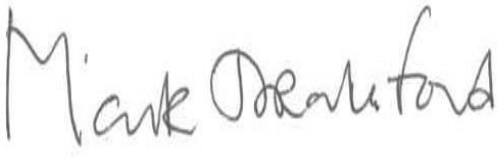
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already subject to continuous risk-based deployment, proportionate intervention and action to prevent, deter and detect criminal activity inside and outside the stadia and local vicinity.

- Responsibilities for implementing the convention lie across all partners involved in the delivery of an event including police and local authorities in Wales. As well as security and safety, this extends to those responsible for services to ensure football and other sports events are enjoyable and welcoming for all, in stadiums as well as public spaces where spectators and supporters gather before, during and after the matches. This includes aspects such as good catering and toilet facilities and the manner in which people are greeted and treated throughout the event. That is why the inclusive approach taken in Wales on the planning and management of an event is crucial.

I welcome the committee's interest in this convention.

Yours sincerely,



MARK DRAKEFORD

Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS
Prif Weinidog Cymru/First Minister of Wales

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Ein cyf/Our ref FM/1990/23

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27 July 2023

Dear Llywydd

Thank you for your letter of 12 July in relation to the Environmental Protection (Single-use Plastic Products) (Wales) Act 2023 and the commencement process.

As noted in my letter of 22 March, this was the first time that a Bill passed by the Senedd had engaged in the World Trade Organisation process (WTO). The approach we took in relation to the six-month WTO standstill period was based on our understanding of the requirements and mechanisms involved in that process. I acknowledge there is benefit in reviewing this process if it helps provide greater clarity in future and will ask my officials to arrange a meeting with the Senedd Commission to discuss further.

I am copying this letter to the Chair of Climate Change, Environment and Infrastructure Committee, the Chair of the Legislation, Justice and Constitution Committee and Chair of the Finance Committee.

Yours sincerely

Mark Drakeford

MARK DRAKEFORD

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Statement on the progress of the Independent Commission on the Constitutional Future of Wales**
DATE	**28 July 2023**
BY	**Mick Antoniw MS, Counsel General and Minister for the Constitution**

In May I provided a progress report on the work of the Independent Commission on the Constitutional Future of Wales.

The First Minister, the leader of Plaid Cymru and I met the Co-chairs this month for a regular update on their continuing work.

This is the latest progress report received from the Co-chairs: Independent Commission on the Constitutional Future of Wales: progress report.

We were particularly encouraged to hear about the Commission's engagement with the public and their efforts to ensure the final report is informed by the full range of opinions across the debate on Wales' constitutional future.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

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

Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
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2 August 2023

Dear Huw,

I am writing to request a correction to the record of my appearance before the Committee on 10 July. I am sorry that I was unable to review the record ahead of your deadline.

At paragraph 145 I suggested that work from Cardiff University – by which I was referring to the book "The Welsh Criminal Justice System: On The Jagged Edge", by Professor Richard Wyn Jones and Doctor Robert Jones – included a statistic that two thirds of those in prison with Welsh residential addresses are from ethnic minority backgrounds. In fact, although there are a number of relevant statistics, there is no statistic in the book on what proportion of people in prison in Wales are from ethnic minority backgrounds, and nor is that information routinely made public by HMPPS.

I hope the Committee will agree, however, that the point I was attempting to convey still stands. The book does, for example, include the shocking statistic that at the time when the research was conducted, for every 10,000 Black people living in Wales, 91 were stated to be in prison, while the equivalent figure for White people was 14. In other words, Welsh Black people were over-represented in prison population by a factor of six compared to White counterparts.

I would be grateful if the appropriate steps could be taken to ensure the record reflects the above

Yours sincerely,



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

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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.

Gwir Anrh/Rt Hon Mark Drakeford AS/MS
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

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

SeneddLJC@senedd.wales

07 August 2023

Dear Huw,

I am writing in response to your letter of 12 July about the UK-Switzerland Agreement on Recognition of Professional Qualifications.

Only the UK Government has the power to enter into international agreements which bind the whole of the UK, as this function is reserved under paragraph 10(1) of schedule 7A of the Government of Wales Act 2006 (GOWA). However, the Senedd has the power to pass laws relating to the observation and implementation of international obligations, as paragraph 10(3) of schedule 7A of GOWA excludes these functions from the reservation in paragraph 10(1).

This means the Welsh Government and the Senedd both have legitimate and crucial interests in the negotiation and terms of any international agreements that require implementation in devolved areas.

The Welsh Ministers remain consistently opposed to the inclusion of concurrent powers such as those in the Professional Qualifications Act 2022. The UK Government's approach in taking these powers is wholly inappropriate and disrespectful to the principle of devolution.

The Senedd did not give its consent to the Professional Qualifications Act, however the relevant executive functions now sit with Welsh Ministers. The Welsh Ministers therefore have the powers to make legislation under the Act to implement both it and the UK-

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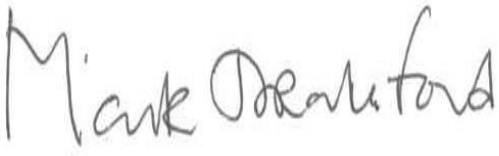
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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.

Switzerland Agreement on Recognition of Professional Qualifications in relation to Wales, and will exercise those functions responsibly.

Yours sincerely,



MARK DRAKEFORD

Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

–

Legislation, Justice and Constitution Committee

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Rt Hon Mark Drakeford MS
First Minister of Wales

12 July 2023

Dear Mark,

UK/Switzerland: Agreement on Recognition of Professional Qualifications

You will be aware that the Legislation, Justice and Constitution Committee is responsible for monitoring the implementation of non-trade international agreements in the Sixth Senedd.

During our meeting on 10 July 2023, we considered the UK/Switzerland: Agreement on Recognition of Professional Qualifications. This agreement provides a framework for the mutual recognition of professional qualifications in the UK and Switzerland.

The agreement relates to regulatory requirements for professional qualifications, certain aspects of which are devolved to Wales. On that basis, we understand that the UK Government consulted the devolved administrations on the drafting of the agreement and the relevant draft text in advance of signature, and we welcome this engagement with the devolved governments.

We know that the *Professional Qualifications Act 2022* (the 2022 Act) contains powers which may be used by UK or devolved Ministers to implement international recognition agreements and therefore may be used to implement this agreement. You will be aware that Senedd withheld consent to the 2022 Act on two occasions, following consideration of the Welsh Government's Legislative Consent Memoranda.

We would welcome your view on the relationship, if any, between implementing international obligations and the Sewel Convention, in light of the Senedd having refused consent for the parent legislation that is being considered for this agreement's implementation.

I am copying this letter to the Children, Young People and Education Committee and the Economy, Trade and Rural Affairs Committee.

I would be grateful to receive your response by 11 August 2023.

Yours sincerely,



Huw Irranca-Davies
Chair

Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

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

8 August 2023

Dear Huw,

Thank you for the report which was laid in the Senedd on 3 July on the Welsh Government's Legislative Consent Memorandum (LCM) No. 6 on the Procurement Bill.

I have considered the four recommendations in the report, and I am pleased to provide my response to each of them below.

Recommendation 1. The Minister should outline in the forthcoming legislative consent debate to which Memorandum No. 6 relates how the provisions included in Memorandum No. 6 relate to provisions in previous memoranda, and also how they relate to the outcome of the Senedd debates on consent motions which took place in Plenary on 28 March 2023.

As I explained in Plenary on 4 July, many of the amendments were technical in nature. A table is attached at Annex A which provides a comparison between the provisions in LCM No. 6 and previous memoranda.

All amendments are consistent with previous memoranda and fully align to Welsh Ministers' policy. They relate to sections of the Bill included in Motion 1, which was agreed in the Senedd on 28 March 2023.

I can also confirm that no amendments included in LCM No. 6 relate to Motion 2, the provisions for which were not agreed in the Senedd on 28 March.

Recommendation 2. The Minister should outline in the forthcoming legislative consent debate to which Memorandum No. 6 relates what action she has taken to resolve the matters for which the Senedd did not provide its consent as set out in motion 2 of the legislative consent debate held on 28 March 2023.

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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.

As I outlined in Plenary on 4 July, motion 2 related only to the trade elements of the Procurement Bill. Officials and Ministers had numerous discussions with the UK Government prior to the debate on 28 March regarding these issues. Due to the difference in viewpoints in these areas, we have not had any further dialogue with the UK Government.

As Welsh Ministers have concurrent powers in the Procurement Bill in these areas, we intend to take forward our own regulations through the Senedd in respect to these trade clauses. We will follow the model we used under the Trade (Australia and New Zealand) Bill to take forward our own statutory instruments for any future trade deals.

Recommendation 3. The Minister should write to the Committee providing detailed responses to recommendations 1 and 2 for the public record.

This letter provides the response to recommendations 1 and 2 for the public record.

Recommendation 4. The Minister should write to the Committee:

- explaining the implications for the procurement regime in Wales of the Senedd not consenting to motion 2 on 28 March 2023;

  As stated in my response to recommendation 2 above, the Welsh Ministers have concurrent powers in the Procurement Bill in relation to the trade clauses. We therefore intend to take forward our own regulations through the Senedd in this area. We will follow the model we used under the Trade (Australia and New Zealand) Bill to take forward our own statutory instruments for any future trade deals.

- identifying to what extent the Secretary of State will be able to exercise regulation-making powers in Wales in devolved areas;

  Members should be assured that we have taken equivalent powers in every appropriate area of the Bill. In these cases, only the Welsh Ministers can exercise powers in devolved areas.

  It has been agreed that in some cases it is appropriate for a Minister of the Crown to exercise regulation-making and other powers in devolved areas. These powers are listed in Part 1 of Annex B and include Minister of the Crown only powers and concurrent powers, including concurrent plus powers.

  The concurrent powers listed in Part 2 of Annex B relate to international trade, which is a matter that this Senedd has already voted on and withheld consent.

  Powers under the Act which are conferred on an "appropriate authority" are conferred on a Minister of the Crown, as defined in the Ministers of the Crown Act 1975. This definition is wider than just the Secretary of State. It means the holder of an office in His Majesty's Government in the United Kingdom, and includes the Treasury, the Board of Trade and the Defence Council.

- explaining what action the Minister proposes to take to address her outstanding areas of concern, including by means of introducing future Welsh legislation.

The areas of concern related only to the trade elements of the Procurement Bill. As Welsh Ministers have concurrent powers in the Procurement Bill in these areas, we intend to take forward our own regulations through this Senedd. We will follow the model we used under the Trade (Australia and New Zealand) Bill to take forward our own statutory instrument.

I trust the responses provided are helpful. Please do not hesitate to contact me if you need anything further.

Yours sincerely,



Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

Annex A - Comparison table between versions of the Procurement Bill

Bill as introduced to the House of Lords on 11 May 2022:
https://bills.parliament.uk/publications/46439/documents/1777

Bill as amended in House of Lords Grand Committee on 26 October 2022:
https://bills.parliament.uk/publications/48269/documents/2396

Bill (as brought from the House of Lords) on 14 December 2022:
https://publications.parliament.uk/pa/bills/cbill/58-03/0218/220218.pdf

Bill 249 2022-23 (as amended in Public Bill Committee) on 24 February 2023:
https://publications.parliament.uk/pa/bills/cbill/58-03/0249/220249.pdf

House of Commons Report Stage 13 June 2023

Clause number on Introduction	**Clause description**	**Clause as amended in Grand Committee**	**Clause as brought from the House of Lords ("HOL")**	**Clause as brought from the Public Bill Committee**	**Impact of amendments passed at Commons on 13/06/23 (within competence only)**
PART 1 *KEY DEFINITIONS*					
N/A	Procurement and Covered Procurement	N/A	1	1	
1	Contracting authorities	1	2	2	
2	Public contracts	2	3	3	
3	Valuation of contracts	3	4	4	
4	Mixed procurement: above and below threshold	4	5	5	
5	Utilities contracts	5	6	6	
6	Defence and security contracts	6	7	7	
7	Concession contracts	7	8	8	
8	Light touch contracts	8	9	9	
9	Mixed procurement: special regime contracts	9	10	10	
PART 2 *PRINCIPLES AND OBJECTIVES*					
10	Procurement only in accordance with this Act ***Amended clause title as brought from the HOL:*** *Covered Procurement only in accordance with this Act*	10	11	11	
11	Procurement objectives ***Amended clause title as brought from the HOL:***	11	12	12	

Clause number on Introduction	Clause description	Clause as amended in Grand Committee	Clause as brought from the House of Lords ("HOL")	Clause as brought from the Public Bill Committee	Impact of amendments passed at Commons on 13/06/23 (within competence only)
	Covered procurement: objectives				
12	The national procurement policy statement	12	13	13	
13	The Wales procurement policy statement	13	14	14	
PART 3 *AWARD OF PUBLIC CONTRACTS AND PROCEDURES*					
CHAPTER 1 *PRELIMINARY STEPS*					
14	Planned procurement notices	14	15	15	
15	Preliminary market engagement	15	16	16	
16	Preliminary market engagement notices	16	17	17	
17	Duty to consider lots	17	18	18	
CHAPTER 2 COMPETITIVE AWARD					
Terms of a procurement					
18	Award of public contracts following a competitive procedure ***Amended clause title as amended in Grand Committee:*** *Award of public contracts following a competitive tendering procedure*	18	19	19	
19	Competitive tendering procedures	19	20	20	
20	Tender notices and associated tender documents	20	21	21	
21	Conditions of participation	21	22	22	
22	Award criteria	22	23	23	
23	Refining award criteria	23	24	24	
24	Technical specifications *This clause was moved to* ***Chapter 6 'General provision about award and procedures'****, under a new sub-section "Technical specifications", as part of the amendments in Grand Committee.*	53	56	56	
25	Sub-contracting specifications	24	25	25	

Clause number on Introduction	Clause description	Clause as amended in Grand Committee	Clause as brought from the House of Lords ("HOL")	Clause as brought from the Public Bill Committee	Impact of amendments passed at Commons on 13/06/23 (within competence only)
Exclusions and modifications					
26	Excluding suppliers from a competitive award	25	26	26	
27	Excluding suppliers from a competitive tendering procedure ***Amended clause title as amended in Grand Committee:*** *Excluding suppliers from a competitive flexible procedure*	26	27	27	
28	Excluding suppliers by reference to sub-contractors	27	28	28	
29	Excluding a supplier that is a threat to national security	28	29	29	
30	Excluding suppliers for improper behaviour	29	30	30	
31	Modifying a section 18 procurement ***Amended clause title as brought from the HOL:*** *Modifying a section 19 procurement*	30	31	31	
Reserving contracts to certain suppliers					
32	Reserving contracts to supported employment providers	31	32	32	
33	Reserving contracts to public service mutuals	32	33	33	
Awarding contracts by reference to dynamic markets					
34	Competitive award by reference to dynamic markets	33	34	34	
35	Dynamic markets: establishment	34	35	35	
36	Dynamic markets: membership	35	36	36	
37	Dynamic markets: removing members from the market	36	37	37	
38	Dynamic markets: fees	37	38	38	
39	Dynamic market notices	38	39	39	

Clause number on Introduction	Clause description	Clause as amended in Grand Committee	Clause as brought from the House of Lords ("HOL")	Clause as brought from the Public Bill Committee	Impact of amendments passed at Commons on 13/06/23 (within competence only)
N/A	Qualifying Utilities Dynamic Market notices: no duty to publish a tender	N/A	40	40	
CHAPTER 3 DIRECT AWARD					
40	Direct award in special cases	39	41	41	
41	Direct award to protect life, etc	40	42	42	
42	Switching to direct award	41	43	43	The amendments to this clause would mean that a contracting authority (CA) could not rely on clause 19(3)(d) to justify a switch to direct award and that they would have to apply the clause 19 rules on abnormally low tenders before relying on that fact to switch to direct award. A further amendment would reflect the fact that some procedural requirements will be in associated tender documents rather than in the tender notice alone.
43	Transparency notices	42	44	44	
CHAPTER 4 AWARD UNDER FRAMEWORKS					
44	Frameworks	43	45	45	
N/A	Frameworks: Competitive Selection Process	N/A	46	46	
45	Frameworks: maximum term	44	47	47	
46	Frameworks: implied terms	45	48	48	
47	Open frameworks	46	49	49	
CHAPTER 5 AFTER AWARD, STANDSTILL PERIODS AND NOTICES					
48	Contract award notices and assessment summaries	47	50	50	
49	Standstill periods on the award of contracts	48	51	51	
50	Key performance indicators	49	52	52	The amendments to this clause would require key performance indicators to be published, but not necessarily before the contract is entered into.
51	Contract details notices and publication of contracts	50	53	53	

Clause number on Introduction	Clause description	Clause as amended in Grand Committee	Clause as brought from the House of Lords ("HOL")	Clause as brought from the Public Bill Committee	Impact of amendments passed at Commons on 13/06/23 (within competence only)
CHAPTER 6 ***GENERAL PROVISION ABOUT AWARD AND PROCEDURES***					
Time limits and termination					
52	Time limits	51	54	54	
53	Procurement termination notices	52	55	55	
N/A	N/A	*Technical Specifications*			
24	Technical specifications *This clause was moved to* ***Chapter 6 'General provision about award and procedures'****, under a new sub-section "Technical specifications", as part of the amendments in Grand Committee.*	53	56	56	
Excluding suppliers					
54	Meaning of excluded and excludable supplier	54	57	57	The amendment to this clause will make it clear that a CA must be satisfied that circumstances giving rise to the application of the exclusion are not continuing. There is also a consequential amendment to this clause linked to the amendment to Schedule 6.
55	Considering whether a supplier is excluded or excludable	55	58	58	Consequential amendments are made to this clause which are linked to amendments to clause 57.
Debarment					
56	Notification of exclusion of supplier	56	59	59	The amendment to this clause will require a CA to notify the appropriate authority if it excludes a supplier on the basis of a supplier being on the debarment list by virtue of the new ground to be inserted by the amendment to Schedule 6 Also an amendment to clarify that a Ca would only have to notify the appropriate authority if it excludes a supplier on the basis of its own judgement (rather than the debarment list).
57	Investigations of supplier: exclusion grounds	57	60	60	The amendment to this clause will require a Minister of the Crown to keep under review whether particular suppliers or sub-

Clause number on Introduction	Clause description	Clause as amended in Grand Committee	Clause as brought from the House of Lords ("HOL")	Clause as brought from the Public Bill Committee	Impact of amendments passed at Commons on 13/06/23 (within competence only)
					contractors should be investigated under clause 60 having regard to the fact that CAs may be unknowingly awarding public contracts to suppliers or sub-contractors that could be excludable suppliers by virtue of paragraph 14 of Schedule 7 (threat to national security). Also amendments to clarify the role of investigations in relation to the debarment list.
58	Investigations under section 57: reports ***Amended clause title as brought from the HOL:*** *Investigations under section 60: reports*	58	61	61	The amendment to this clause will ensure that the investigation reports specify the description of contracts in respect of which a supplier is to be an excluded supplier by virtue of the ground added by the amendment to Schedule 6 and clarify that the report can be prepared and published before an entry is made.
59	Debarment list	59	62	62	There are multiple amendments to this clause as a result of the new clauses inserted at Committee stage which provided additional rights to suppliers placed on the debarment list and as a result of the amendment to Schedule 6.
N/A	Debarment decisions: interim relief	N/A	N/A	63	
60	Debarment list: application for removal	60	63	64	The amendment to this clause will require a Minister of the Crown, after considering an application from a supplier for the removal or revision of an entry made on the debarment list, to notify the supplier of the Minister's decision and give reasons for the decision. There is also a consequential amendment to this clause due to amendments to clause 62.
61	Debarment decisions: appeals	61	64	65	The amendment to this clause would permit suppliers to challenge their being made an excluded supplier in relation to particular contracts by virtue of the ground added by the

Clause number on Introduction	Clause description	Clause as amended in Grand Committee	Clause as brought from the House of Lords ("HOL")	Clause as brought from the Public Bill Committee	Impact of amendments passed at Commons on 13/06/23 (within competence only)
					amendment to Schedule 6 (instead of having to challenge the whole entry).
N/A	Timeline for removal of suppliers	N/A	65	Removed	
N/A	Debarment proceedings and closed material procedure	N/A	N/A	66	
PART 4 *MANAGEMENT OF PUBLIC CONTRACTS*					
Terms implied into public contracts					
62	Electronic invoicing: implied term	62	66	67	
63	Implied payment terms in public contracts	63	67	68	
Notices about payments and performance					
64	Payments compliance notices	64	68	69	
65	Information about payments under public contracts	65	69	70	
66	Assessment of contract performance	66	70	71	
Sub-contracting					
67	Sub-contracting: directions	67	71	72	
68	Implied payment terms in sub-contracts	68	72	73	
Modifying public contracts					
69	Modifying a public contract	69	73	74	
70	Contract change notices and publication of modifications ***Amended clause title as amended in Grand Committee:*** *Contract change notices*	70	74	75	
71	Voluntary standstill period on the modification of contracts	71	75	76	
N/A	Publication of modifications	72	76	77	
Terminating public contracts					
72	Implied right to terminate public contracts	73	77	78	

Clause number on Introduction	Clause description	Clause as amended in Grand Committee	Clause as brought from the House of Lords ("HOL")	Clause as brought from the Public Bill Committee	Impact of amendments passed at Commons on 13/06/23 (within competence only)
N/A	Terminating public contracts: national security	74	78	79	The amendment to this clause would mean that, as with the existing national security exclusion ground in paragraph 14 of Schedule 7, a relevant CA would need to notify a Minister of the Crown before terminating a contract in reliance on the new exclusion ground to be added by the amendment to Schedule 6.
73	Contract termination notices	75	79	80	
PART 5 *CONFLICTS OF INTEREST*					
74	Conflicts of interest: duty to identify	76	80	81	
75	Conflicts of interest: duty to mitigate	77	81	82	
76	Conflicts assessments	78	82	83	
PART 6 *BELOW-THRESHOLD CONTRACTS*					
77	Regulated below-threshold contracts	79	83	84	
78	Regulated below-threshold contracts: procedure	80	84	85	
N/A	Regulated below threshold contracts: duty to consider small and medium sized enterprises	N/A	85	86	
79	Regulated below-threshold contracts: notices	81	86	87	
80	Regulated below-threshold contracts: implied payment terms	82	87	88	
PART 7 *IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS*					
81	Treaty state suppliers	83	88	89	
82	Treaty state suppliers: non-discrimination	84	89	90	
83	Treaty state suppliers: non-discrimination in Scotland	85	90	91	
N/A	Trade disputes	N/A	N/A	92	
PART 8 *INFORMATION AND NOTICES: GENERAL PROVISION*					

Clause number on Introduction	Clause description	Clause as amended in Grand Committee	Clause as brought from the House of Lords ("HOL")	Clause as brought from the Public Bill Committee	Impact of amendments passed at Commons on 13/06/23 (within competence only)
84	Pipeline notices	86	91	93	
85	General exemptions from duties to publish or disclose information	87	92	94	
86	Notices, documents and information: regulations ***Amended clause title as brought from the HOL:*** *Notices, documents and information: regulations and online system*	88	93	95	
87	Electronic communications	89	94	96	
88	Information relating to a procurement	90	95	97	The amendment to this clause is consequential on similar provision being made in the new record-keeping clause.
N/A	Record-keeping	N/A	N/A	N/A	This new clause would require CAs to keep records to explain decisions made for the purpose of awarding or entering into a public contract and records of communications with suppliers made before the contract is entered into, in each case, subject to time limits.
N/A	Data protection	91	96	98	
PART 9 *REMEDIES FOR BREACH OF STATUTORY DUTY*					
89	Duties under this Act enforceable in civil proceedings	92	97	99	
90	Automatic suspension of the entry into or modification of contracts	93	98	100	
91	Interim remedies	94	99	101	
92	Pre-contractual remedies	95	100	102	
93	Post-contractual remedies	96	101	103	
94	Post-contractual remedies: set aside conditions	97	102	104	
95	Time limits on claims	98	103	105	
N/A	Part 9 proceedings and closed material procedure	N/A	N/A	106	
PART 10 *PROCUREMENT OVERSIGHT*					

Clause number on Introduction	Clause description	Clause as amended in Grand Committee	Clause as brought from the House of Lords ("HOL")	Clause as brought from the Public Bill Committee	Impact of amendments passed at Commons on 13/06/23 (within competence only)
96	Procurement investigations	99	104	107	
97	Recommendations following procurement investigations	100	105	108	
98	Guidance following procurement investigations	101	106	109	
PART 11 *APPROPRIATE AUTHORITIES AND CROSS-BORDER PROCUREMENT*					
99	Welsh Ministers: restrictions on the exercise of powers	102	107	110	
100	Northern Ireland department: restrictions on the exercise of powers	103	108	111	
101	Minister of the Crown: restrictions on the exercise of powers	104	109	112	The amendment to this clause will ensure that a Minister of the Crown can conduct debarment investigations and put suppliers on the debarment list for the purpose of regulating Welsh Contracting Authorities and transferred Northern Ireland authorities. This amendment resolves an issue identified in the Bill relating to the debarment regime and how it will successfully operate across England, Wales and Northern Ireland. The amendment does not affect Welsh Ministers ability to conduct debarment investigations for the purpose of regulating Welsh Contracting Authorities. It should be noted that clause 110 has been amended to create a reciprocal power for Welsh Ministers to conduct debarment investigations for the purpose of regulating CAs which are not Welsh Contracting Authorities. Together these amendments will ensure that there is a joined-up debarment regime which recognises that debarment investigations can lead to a decision to put the supplier's name on the debarment list which will have an impact

Clause number on Introduction	Clause description	Clause as amended in Grand Committee	Clause as brought from the House of Lords ("HOL")	Clause as brought from the Public Bill Committee	Impact of amendments passed at Commons on 13/06/23 (within competence only)
					on all contracting authorities.
102	Definitions relating to procurement arrangements	105	110	113	
103	Powers relating to procurement arrangements	106	111	114	
PART 12 *AMENDMENTS AND REPEALS*					
104	Disapplication of duty in section 17 of the Local Government Act 1988	107	112	115	
105	Single source defence contracts	108	113	116	
106	Concurrent powers and the Government of Wales Act 2006	109	114	117	
107	Repeals etc	110	115	118	
PART 13 *GENERAL*					
108	Power to disapply this Act in relation to procurement by NHS in England	111	Removed	119	
N/A	Application of this Act to procurement by NHS England	N/A	116	Removed	
109	Power to amend this Act in relation to private utilities	112	117	120	
110	Regulations	113	118	121	
111	Interpretation	114	119	122	
112	Index of defined expressions	115	120	123	
113	Power to make consequential, etc, provision	116	121	124	
114	Extent	117	122	125	
115	Commencement	118	123	126	
116	Short title	119	124	127	
SCHEDULES					
Schedule 1	Threshold amounts	Schedule 1	Schedule 1	Schedule 1	
Schedule 2	Exempted contracts	Schedule 2	Schedule 2	Schedule 2	
N/A	Part 1 – Counterparty exempted contracts	N/A	N/A	Schedule 2	
N/A	Part 2 – Subject-matter exempted contracts	N/A	N/A	Schedule 2	

Clause number on Introduction	Clause description	Clause as amended in Grand Committee	Clause as brought from the House of Lords ("HOL")	Clause as brought from the Public Bill Committee	Impact of amendments passed at Commons on 13/06/23 (within competence only)
Schedule 3	Estimating the value of a contract	Schedule 3	Schedule 3	Schedule 3	
Schedule 4	Utility activities	Schedule 4	Schedule 4	Schedule 4	
N/A	Part 1 - Activities that are utility activities	N/A	Schedule 4	Schedule 4	
N/A	Part 2 - Activities that are not utility activities	N/A	Schedule 4	Schedule 4	
Schedule 5	Direct award justifications	Schedule 5	Schedule 5	Schedule 5	
Schedule 6	Mandatory exclusion grounds	Schedule 6	Schedule 6	Schedule 6	
Schedule 6	Part 1 - Offences	Part 1 Offences	Part 1 Offences	Schedule 6	
Schedule 6	Part 2 - Other mandatory exclusion grounds	Part 2 Other mandatory exclusion grounds	Part 2 Other mandatory exclusion grounds	Schedule 6	The amendment to this part of Schedule 6 would add a new mandatory exclusion ground which would allow a Minister of the Crown, following an investigation under clause 60 by an appropriate authority (which could include Welsh Ministers), to put a supplier on the debarment list on a mandatory basis for national security reasons but only for specific types of defined works, services or goods.
Schedule 6	Part 3 - General	Part 3 General	Part 3 General	Schedule 6	There is an amendment to para 43 of Schedule 6 as a consequence of the amendment to Part 2 of schedule 6.
Schedule 7	Discretionary exclusion grounds	Schedule 7	Schedule 7	Schedule 7	
Schedule 8	Permitted contract modifications	Schedule 8	Schedule 8	Schedule 8	
Schedule 9	Treaty state suppliers (specified international agreements)	Schedule 9	Schedule 9	Schedule 9	
Schedule 10	Single source defence contracts	Schedule 10	Schedule 10	Schedule 10	
Schedule 11	Repeals and revocations	Schedule 11	Schedule 11	Schedule 11	

Annex B

Minister of the Crown regulation making powers in Wales in devolved areas

Part 1

Sections 59 to 66 (debarment proceedings and closed material procedure). An amendment was made to clause 112 at Commons Report stage which will enable a Minister of the Crown to conduct debarment investigations and put suppliers on the debarment list for the purpose of regulating Welsh Contracting Authorities. This does not affect Welsh Ministers ability to conduct debarment investigations for the purpose of regulating Welsh Contracting Authorities. An amendment was also made to Clause 110 to create a reciprocal power for Welsh Ministers to conduct debarment investigations for the purpose of regulating contracting authorities which are not Welsh Contracting Authorities. It was agreed that these amendments were appropriate as together they will ensure that there is a joined-up debarment regime which recognises that debarment investigations can lead to a decision to put the supplier's name on the debarment list which will have an impact on all contracting authorities. This was referenced in SLCM no 6.

Section 67 (Electronic invoicing: implied term) A Minister of the Crown and the Welsh Ministers will have concurrent powers to make regulations in devolved areas regarding the required form of an electronic invoice, but the consent of the Welsh Ministers will need to be obtained before such regulations are made by a Minister of the Crown. A concurrent plus power was deemed appropriate, primarily to provide consistency to basic e-invoicing standards and syntaxes across the UK nations to avoid confusion and additional costs for suppliers. This was referenced in my letter to the Legislation, Justice and Constitution Committee (LJCC) in September 2022 (see paragraph 70 of the LJCC report in October 2022).

Section 109 (Guidance following procurement investigations) A Minister of the Crown and the Welsh Ministers will have concurrent powers to publish guidance following procurement investigations for the purpose of regulating a devolved Welsh authority, but the consent of the Welsh Ministers will need to be obtained before such guidance is published by a Minister of the Crown. This was referenced in SLCM 2.

Section 124 (Power to make consequential, etc, provision) A Minister of the Crown and the Welsh Ministers will have concurrent powers to make regulations in devolved areas in relation to consequential provision but the consent of Welsh Ministers will need to be obtained before such regulations are made by a Minister of the Crown. This was referenced in SLCM 5.

Section 126 (Commencement) Only a Minister of the Crown can make regulations in relation to commencement but a Minister of the Crown must obtain the consent of the Welsh Ministers before commencing the Bill's provisions which regulate procurement by a devolved Welsh authority. In the event that such consent was refused, UK Ministers could amend the Act so that the Act no longer applies to the regulation of procurement by a devolved Welsh authority and could be commenced without the consent of Welsh Ministers. This was referenced in SLCM 5.

It should be noted that a Minister of the Crown may exercise a power under the Act for the purpose of regulating a contracting authority that is a devolved Welsh authority, only in relation to a procurement under a reserved procurement arrangement or a transferred Northern Ireland procurement arrangement. Such procurement arrangements include for example frameworks and dynamic markets which were not awarded by a devolved Welsh authority.

Part 2

Section 89 (Treaty state suppliers) and section 92 (Trade disputes) A Minister of the Crown and the Welsh Ministers will have concurrent powers to make regulations in devolved areas under Part 7 of the Bill (implementation of international obligations). There is no requirement on a Minister of the Crown to obtain the consent of the Welsh Ministers before making such regulations. These provisions were included in Legislative Consent Motion 2 which were debated by the Senedd on 28 March 2023. The provisions included in motion 2 were not approved.

Jane Hutt AS/MS
Gweinidog Cyfiawnder Cymdeithasol a'r Prif Chwip
Minister for Social Justice and Chief Whip

Llywodraeth Cymru
Welsh Government

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

Jenny Rathbone MS
Chair, Equality and Social Justice Committee

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11 August 2023

Dear Huw, and Jenny,

Thank you for the Committees report on the Legislative Consent Memorandum on the Victims and Prisoners Bill laid on 19 May 2023.

I note the four recommendations from your Legislation, Justice and Constitution Committee (LJCC) and the one recommendation from Equality and Social Justice Committee which I have responded to below:

Legislation, Justice and Constitution Committee

Recommendation 1. We consider that the clauses of the Bill set out in the Memorandum fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29, and therefore require the consent of the Senedd.

Response:
I welcome this recommendation from the Committee which affirms the position on competence set out in the Memorandum.

Recommendation 2. The Minister should clarify if the Welsh Government has held any discussions with the UK Government about clause 28 of the Bill and why there appears to be a difference in opinion as to whether the Senedd's consent should be sought for this clause.

Response:
I have discussed this with the UK Government, who have confirmed that they agree with my assessment that clause 28 of the Bill does not need Senedd consent and that the current

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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.

explanatory notes are inaccurate. They have committed to reviewing the wording in the explanatory notes which will accompany the Bill's final version to accurately reflect this.

Recommendation 3. The Minister should confirm or correct our understanding that the Welsh Government was not aware of the provisions included in Part 3 of the Bill about the parole system, the Parole Board or preventing prisoners serving a whole life order to enter into a marriage or civil partnership until the Bill was introduced to the UK Parliament.

Response:
I was not aware of the provisions included in Part 3 of the Bill despite my officials asking for early sight of the complete Bill on several occasions, including the day before the Bill was introduced to the House of Commons.

Recommendation 4. If the Welsh Government was not made aware of the provisions in the Bill about the parole system, the Parole Board or preventing prisoners serving a whole life order to enter into a marriage or civil partnership until the Bill was introduced to the UK Parliament, the Minister should clarify how and when these provisions were drawn to the attention of the Welsh Government by the UK Government and what explanation the UK Government provided about their inclusion.

Response :
My officials have been engaging with colleagues in the Ministry of Justice (MoJ) and my legal and policy leads with an interest in the Bill, on the clauses expected to be introduced as part of the Bill. However, my officials had not had sight of the final Bill as a whole or Explanatory Note prior to it being introduced, or that the Bill title and provisions had been changed to 'Victims and Prisoners Bill'.

The Committee may wish to note that the UK House of Commons Justice Committee were unsighted on the changes to the Bill. On 27 June 2023, the chair of the Justice Committee wrote to the Secretary of State for Justice and commented that "*By introducing two new substantive parts to the Bill that were not included in the original draft bill would appear to be evidence of a fairly dysfunctional policy process. We appreciate that these decisions were taken before you took up your post and welcome the open-minded tone of your speech on Second Reading. We hope that in the future the Government will approach pre-legislative scrutiny with a spirit that reflects the underlying purpose of the exercise, which is to enable Members with a special interest and expertise in justice issues to contribute to examine a Bill before it is formally introduced."*

The first time the changes were raised formally by the UK Government was through engagement on 29 March 2023, the day the Bill was introduced into the House of Commons. This was through an e-mail which advised *"The Bill has been expanded to introduce an Independent Public Advocate (Part 2) to support victims of major incidents and their families. It also introduces parole reforms to put public protection at the heart of decision-making (Part 3), and prohibits prisoners who are serving a whole life order from entering into a marriage or civil partnership (Part 4)."*

Equality and Social Justice Committee

Recommendation 1. We recommend that the Senedd withholds legislative consent in relation to the Victims and Prisoners Bill.

In addition, one Member objected in principle to any legislation affecting devolved Welsh matters being enacted via a UK Government Bill.

Response:

I welcome the Committees work and confirm that discussions will continue with the UK Government on the full detail of their proposals regarding the relevant clauses requiring an LCM before we provide further recommendations to the Senedd on consent.



Jane Hutt AS/MS
Gweinidog Cyfiawnder Cymdeithasol a'r Prif Chwip
Minister for Social Justice and Chief Whip

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Establishment of the Commission for Tertiary Education and Research - Tertiary Education and Research (Wales) Act 2022 (Commencement No.2 and Transitory Provision) Order 2023**
DATE	**22 August 2023**
BY	**Jeremy Miles MS, Minister for Education and Welsh Language**

I am pleased to inform Members that yesterday I made the Tertiary Education and Research (Wales) Act 2022 (Commencement No.2 and Transitory Provision) Order 2023.

The duty of the Welsh Ministers to publish a statement of their priorities for and in connection with tertiary education and research will be brought into force on 4 September 2023, with my intention being to publish the first statement in December.

In addition to commencing this duty, the Order also commences section 14 of the Act requiring the Commission to prepare a strategic plan setting out how it intends to discharge its strategic duties and address the statement of priorities. The Commission will be required to submit its draft plan to the Welsh Ministers by 15 December 2024.

The Commencement Order will bring into force, on 4 September 2023, provisions in relation to the following matters:

- Academic freedom of higher education providers and staff (section 17);
- Institutional autonomy of tertiary education providers (section 18);
- Compatibility with charity law and governing documents of tertiary education providers (section 19);
- Duty on Commission to have regard to guidance published by the Welsh Ministers. (section 20);
- Provision enabling the Welsh Ministers to give the Commission general directions about the use of any of its functions (section 21);
- Provision enabling the Welsh Ministers to confer supplementary functions on the Commission by way of regulations (section 22);

- Provision enabling the Welsh Ministers to make schemes for the transfer of staff and property, rights and liabilities from HEFCW and the Welsh Ministers to the Commission (section 24 and Sch. 2).
- Power of the Welsh Ministers to fund the Commission (section 85(1), (2)(a) and (b)). The Order brings the remainder of section 85 into force on 1st April 2024.
- Information and advice from the Commission and information from the Welsh Ministers (section 130)
- Ability of the Commission to share information (section 132 other than subsection (1)(f))
- The status, procedures, operational arrangements and committees of the Commission (Schedule 1)

The Commencement Order also includes provision bringing certain functions within the Act partially into force, so as to enable the Commission to undertake preparatory activities over the autumn and winter to support the implementation of key functions.

The functions being brought partially into force will enable the Commission to undertake the following preparatory activities in respect of the registration system:

a. Initial preparation of the document specifying the requirements to be met in relation to the initial conditions of registration (section 27(1) and (2));

b. Determination of the general ongoing registration conditions (section 28(1) to (3), section 31(1)(a) to (f), (i), (j) and (2) and sections 32 and 33);

c. Start preparing guidance relating to ongoing registration conditions (sections 35 and 36);

d. Undertake preparatory work to determine how it will monitor registered providers' compliance with ongoing registration conditions (sections 35 and 36);

e. Start preparing a statement on its funding policy (section 87).

The Order also includes provision bringing into force the required powers to enable the Welsh Ministers to make the subordinate legislation necessary to support the establishment of the Commission and the ongoing implementation of the Act.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.

Jeremy Miles AS/MS
Gweinidog y Gymraeg ac Addysg
Minister for Education and Welsh Language

Llywodraeth Cymru
Welsh Government

Jayne Bryant MS
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22 August 2023

Dear Jayne

Tertiary Education and Research (Wales) Act 2022

Having made the Tertiary Education and Research (Wales) Act 2022 (Commencement No.2 and Transitory Provision) Order 2023 ('the Order') this week I wanted to take the opportunity to update the Committee on the purpose of the Order, and how it supports the implementation of the Tertiary Education and Research (Wales) Act 2022 (TERA) and the establishment of the Commission for Tertiary Education and Research (''the Commission').

The Order makes provision in respect of the two key dates:

- 4 September 2023 – the establishment date of the Commission, this will be the date all core members take up their posts and the Commission becomes fully established.
- 1 April 2024 - this is the date when the Commission will become operational and assume responsibility for its core functions following the dissolution of HEFCW.

The purpose of the Order is two-fold: enabling the Commission to take the necessary steps to ensure the required operational and governance arrangements are in place to support a smooth transition to it becoming operational, and enabling it to start developing certain deliverables required to support the implementation of key reforms.

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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.

Between September and April HEFCW will retain responsibility for the funding, quality and regulation of higher education, whilst the Welsh Government will retain responsibility for further education, apprenticeships, sixth forms etc.

Commencement in respect of the establishment Period

The Order provides for the coming into force of the following provisions of Part 1 of TERA on 4 September 2023:

- Academic freedom of higher education providers and staff (section 17);
- Institutional autonomy of tertiary education providers (section 18);
- Compatibility with charity law and governing documents of tertiary education providers (section 19);
- Duty on Commission to have regard to guidance published by the Welsh Ministers. (section 20);
- Provision enabling the Welsh Ministers to give the Commission general directions about the use of any of its functions (section 21);
- Provision enabling the Welsh Ministers to confer supplementary functions on the Commission by way of regulations (section 22);
- Provision enabling the Welsh Ministers to make schemes for the transfer of staff and property, rights and liabilities from HEFCW and the Welsh Ministers to the Commission (section 24 and Sch. 2).

Provisions of Schedule 1 are also brought into force on the same date. Schedule 1 sets out the status of the Commission; makes provision about membership of the Commission including some terms and conditions; imposes a duty on the Commission to have a Research and Innovation Committee, a Quality Committee and a staff member appointment committee.

This Schedule also enables the Commission to establish other committees including joint committees; makes provision about membership of the Commission (including workforce and learner representation), audit and accounts, a duty to ensure good value, annual reporting requirements as well as other operational requirements such as delegations, proceedings, register of interests and the exercise of functions.

The Order does not include provision in respect of the following aspects of Schedule 1, these will be commenced from April 2024 through a future commencement Order:

- The appointment of the associate Commission staff member and the establishment of the staff member appointment committee;
- The Commission's duty to prepare an annual report and an annual statement of accounts.

To ensure the Welsh Ministers are able to provide funding to the Commission from its establishment date, section 85(1), (2)(a) and (2)(b) of TERA is brought into force on 4 September 2023. The remainder of section 85 makes provision in respect of outcome agreements and is brought into force on 1 April 2024.

Section 86, which places limitations on the terms and conditions the Welsh Minister can attach to funding provided to the Commission in respect of the funding of higher

education, research and innovation and further education, is not commenced through the Order. These limitations are not required during the establishment period as the relevant funding powers of the Commission will not be in force at that time.

The Order also brings relevant functions in respect of information, data and advice into force on 4 September 2023.

Section 130 of TERA, which is commenced in full, requires the Commission to provide information and advice, in relation to its functions, to the Welsh Ministers where the Ministers request such information. The Commission may also give the Welsh Ministers any information or advice it considers appropriate. This section also allows the Welsh Ministers to provide the Commission with any information relating to the exercise of its functions.

The provision of information by either the Welsh Ministers or the Commission is limited to those functions of the Commission that are in force at that time.

Section 132 of TERA enables the Commission to share information, for the purpose of the exercise of any of its functions, with the bodies and persons listed on the face of the Act (or made in Regulations under section 132(1)(k)). The Order commences, on 4 September, this section with the exception of subsection (1)(f) which relates to the body to be designated by the Commission in respect of the assessment of quality of higher education.

As with section 130, the sharing of information under section 132 will be limited to matters relating to those functions of the Commission that are in force at the point in time the information is being shared.

Strategic planning cycle and strategic duties

The duty of the Welsh Ministers to publish a statement of their priorities for and in connection with tertiary education and research will be brought into force on 4 September 2023, with my intention remaining to publish the first statement in December 2023.

The Order also commences, on the same date, section 14 of TERA thereby requiring the Commission to prepare a strategic plan setting out how it intends to discharge its strategic duties and address the Welsh Ministers' statement of priorities.

Subjecting the Commission to the duty in section 14 will not mean it is required to finalise its strategic plan during the establishment period, as the duty in that section is simply to prepare the plan. Rather it is section 15 which specifies the date by which the Commission must submit their draft strategic plan to the Welsh Ministers.

The Order commences section 15 of TERA on 1 April 2024 with transitory provision requiring the submission of the first draft strategic plan by 15 December 2024.

To support the development of the strategic plan the Order also commences sections 2 to 12 of TERA which set out the strategic duties. The commencement of the strategic duties is limited to the purpose of enabling the Commission to prepare its

strategic plan. This limited commencement, for the specified purpose, means the Commission will not be subject to those duties during the establishment period. The strategic duties will come into force in April 2024, with provision to be made in a future Order.

Section 16, which requires the Commission to review its published strategic plan if the Welsh Ministers amend the statement of priorities, is also brought into force on 1 April 2024.

Provisions being partially brought into force to support the implementation of the registration system and financial transparency

The Order provides for the partial commencement, on the 4 September 2023, of the provisions necessary to enable the Commission to undertake the following preparatory activities in respect of the registration system:

- Start developing the document specifying the requirements providers must satisfy in order to meet the initial conditions of registration (section 27(1) and (2));

- Start determining the general ongoing registration conditions to be applied to providers when they are added to the register (section 28(1) to (3), section 31(1)(a) to (f), (i), (j) and (2) and sections 32 and 33);

- Start preparing guidance relating to the ongoing registration conditions (sections 35 and 36);

- Undertake preparatory work to determine how it will monitor registered providers' compliance with the ongoing registration conditions (sections 35 and 36);

- Start preparing a statement on its funding policy (section 87).

The partial commencement of these provisions does not subject the Commission to associated duties, these will be brought into force at the necessary future date through another commencement Order. Certain of the functions are commenced in full where doing so does not subject the Commission to duties it will not be able to fulfil during the establishment period.

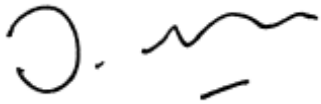
In addition to commencing the provisions which specifically provide for each of the above functions, associated provisions are also commenced to provide additional context where required and to ensure any cross references within the provisions function as intended.

Welsh Ministers Regulation making powers

In addition to the functions of the Commission being brought into force, either in full or partially, the Order also brings into force the required powers to enable the Welsh Ministers to make the subordinate legislation necessary to support the establishment of the Commission and the implementation of TERA.

If you, or the members of your Committee have any specific questions in the meantime I will be pleased to provide additional information where possible.

I have copied this letter to the Legislation, Justice and Constitution Committee and will be sharing with our stakeholders for information.



Jeremy Miles AS/MS
Gweinidog y Gymraeg ac Addysg
Minister for Education and Welsh Language

Submission to the Senedd Legislation, Justice, and Constitution Committee

Charles Whitmore, Research Associate, Cardiff University – Wales Governance Centre & Wales Council for Voluntary Action.

August 2023

About this evidence

This evidence has been written by Charles Whitmore as a part of the Wales Civil Society Forum project (Forum). This is a partnership between Wales Council for Voluntary Action (WCVA) and Cardiff University's Wales Governance Centre (WGC) funded by The Legal Education Foundation. It is being submitted following oral evidence session as a part of the Committee's inquiry into UK-EU Governance.

Questions

1. **Could you share your views on how the PPA has developed over the last 12 months, the role it has played to date and how this could be improved in future. How could UK and Welsh civil society be better engaged in the work of the PPA?**

1.1 The Parliamentary Partnership Assembly (PPA) has shown promising developments in terms of inclusivity and collaboration. There were initial concerns in our sector regarding the inclusion of civil society stakeholders on the UK's side as there were opportunities and consultations taking place in the EU, with civil society actors that were not paralleled at the UK level. Engagement with the Senedd provided an effective and welcome channel into the PPA, though this is inherently limited by virtue of the devolved legislatures being restricted to observational roles.

1.2 We are now seeing increased interconnections between the PPA and the UK's Domestic Advisory Group (DAG). Sir Oliver Heald's participation in the last DAG meeting and the involvement of DAG chairs in PPA breakouts are welcome developments that have brought key civil society concerns to the fore in PPA discussions. The further inclusion and coordinated engagement with civil society stakeholders in Wales and at the UK level as part of the PPA's work should be encouraged. This would facilitate advocacy for strengthened cooperation in numerous areas, including *inter alia*, youth work, mobility, regulatory cooperation, EU and UK citizens, association and / or partnerships with EU programmes (e.g. between Taith and Erasmus) and joint research opportunities.

1.3 Providing a more active role for the devolved legislatures would be welcome in terms of future improvements. More generally it is currently difficult to envisage a pathway to a more active devolved role in the TCA bodies under current UK Government, though more could be done in coordinating, consulting and supporting information sharing at the devolved and UK levels in the run-up to the relevant Intergovernmental Relations and TCA body meetings. **There should be a transparent process by which Wales can input into relevant PPA and other TCA body agendas and discussions around which stakeholder coordination and consultation can take place**.

2. **In evidence to the House of Lords Committee you called for better and more structured engagement between the Welsh Government and Welsh civil society on its work within the**

UK-EU governance structures and wider EU work. What mechanisms or structures would you like to see developed to support this?

2.1 The Wales Civil Society Forum led a body of work UK wide following the agreement of the TCA to raise awareness and understanding with voluntary sector stakeholders of TCA governance and opportunities like the TCA civil society forum and domestic advisory group. We felt it was important to advocate for a four nations approach for our sector to ensure that there was scope for a distinct devolved voice in these fora. The voluntary sector was ultimately given a number of seats on the DAG and first CSF, including WCVA and its counterparts from England, Scotland and Northern Ireland.

2.2 However these new opportunities have come in a context where EU and post-EU membership activities require more capacity than prior to Brexit. There is a desire in the sector to maintain and build relationships at the EU level, as well as to follow EU policy and legislative developments. Not least because this is necessary for the purposes of the level playing field provisions, but also to understand opportunities for regulatory cooperation and sharing good practice and learning. These must now however be balanced more carefully against competing domestic UK level developments, especially as the end of structural funds has drained capacity from these priorities.

2.3 There are several steps that might be explored at the devolved level to help mitigate these and other challenges (like those around transparency).

2.3.1 There is clearly a financial barrier to civil society participation in EU – UK Governance in terms of having staff with time dedicated to EU related affairs. WCVA and the WGC currently hold a third sector grant from the Legal Education Foundation to support with this, but this is only up to August 2024.

2.3.2 Now that the governance of various TCA bodies is starting to crystalise, there is an opportunity for the Welsh Government to strategically review Wales' overarching participation and input into UK – EU governance. An update to the International Strategy, or the separate development of a European Strategy developed collaboratively with stakeholders would help coordinate approaches to different TCA bodies.

2.3.3 A more coordinated and strategic approach to information sharing put on a formal standing at the devolved level would also help address transparency and scrutiny issues around the involvement of the Welsh Government in the TCA committees. It may also be an opportunity to address the lack of transparency around the new IGR structures, which should provide a space for the Welsh Government to inform UK positions prior to TCA body discussions.

2.3.4 A more regular and formal approach to coordination and information sharing would also provide an opportunity to inform civil society and Senedd participation in the DAG, CSF and PPA. Indeed there is arguably still a need for a structure akin to the EU Advisory Group that was previously convened by the Welsh Government.

3. Could you outline your views on the operation of the UK Domestic Advisory Group to date and the need for improvements in its operation?

3.1 The DAG is a group of independent civic society organisations convened to advise the UK Government on implementation of the TCA. Its governance has involved a learning curve for both stakeholders and the UK Government, not least because its remit covers the entire agreement - a novelty for EU FTA civil society mechanisms. It meets twice yearly at least and has a joint meeting with the EU DAG once a year ahead of the annual CSF. It can express views and make recommendations to the UK Government.

3.2 There were some initial challenges in setting up the UK DAG, for instance around the balance of representation being skewed heavily towards the private sector; ensuring fair decision making under these circumstances across private sector, trade union and wider civic society representatives; whether feedback loops could be committed to by the UK Government etc..

3.3 Governance and representational issues were dealt with via the nomination of an decision making executive council comprising one representative of each of the above sectors. Early issues relating to the need for timely dissemination of agendas and asks of DAG members have seen some improvements. Issues around resourcing of DAG members, at least for travel where face to face meetings are beneficial and adequate resourcing of the DAG secretariat remain, however.

3.4 There is still a need for a more purposive approach to the DAG at the UK level. A clear forward workplan has yet to be established, and there is an ongoing need to receive substantive items in time for us to organise any meaningful consultation / engagement in Wales. Similarly, a more formal cross-sector approach involving civil society, the Senedd and the Welsh Government around input into TCA governance may support a stronger Welsh voice in these structures, though the timely receipt of relevant information and invitations from the central level appears to be a barrier across the board.

3.5 Resourcing of participants involved in the DAG and CSF is also a clear need. By way of example, WCVA received a one-off grant from the Trade Unions Congress to support its physical participation at the first CSF in Brussels, but this was ad hoc and unexpected. Particularly where the CSF could also serve the wider purpose of building relationships between UK and EU actors, we feel that in person participation is important, yet the cost of doing so is prohibitive for many voluntary sector organisations.

3.6 Overall, it is still too early to fully gauge the effectiveness and need for improvements as the DAG has only just established a series of working sub-groups on key themes in Summer of 2023. Crucially, these are open for participation by non-DAG representatives, thereby providing a potentially useful vehicle to broaden engagement. The following groups have been established initially:

- *3.6.1 Regulatory cooperation and the level playing field*
- *3.6.2 Mobility*
- *3.6.3 Trade and Customs*
- *3.6.4 Energy and Climate Change*
- *3.6.5 Nations and Regions*

3.7 WCVA is involved in the work of the groups on regulatory cooperation, mobility and nations/regions, however it is not yet clear whether the substantive focus of these groups will encompass voluntary sector issues. From early meetings this will depend to some extent on whether work focuses purely on the technical implementation of the TCA, or more broadly on issues encountered by stakeholders in the UK – EU relationship that may be addressed via the TCA and/or broader cooperation built around the TCA. For example, this may mean the difference between a focus on mutual recognition of qualifications and professional mobility, as opposed to one which would also include addressing barriers to educational and youth mobility. Similarly, it remains to be seen whether the Level Playing Field group will focus on the technical provisions of the TCA, or whether broader aspects of divergence, like in the area of the human rights, may also come under scrutiny.

3.8 Early meetings suggest an intent to focus on the upcoming and future TCA reviews, which may itself provide some steer in due course, though there is currently uncertainty around the political will in the UK and EU surrounding this review cycle.

4. What lessons could be learned from the first Civil Society Forum under the TCA?

4.1 There are substantive and procedural lessons to be learned from the first civil society forum. Procedurally the organisation of the first CSF took place at too short a notice to enable organisations from across the UK to attend in person in – the cost of last-minute travel and accommodation was too prohibitive. Similarly, there was no time to consult wider stakeholders on requests for the agenda.

4.2 There was initial confusion stemming from the original UK expression of interest for members, which seemed to suggest organisations were seeking 'membership' of the CSF, whereas in practice it is more of annual summit, open to a wide variety of participants. As a result of this participants have expressed confusion to us around the next steps of the CSF or whether they will be automatically invited to the CSF in 2024 for example.

4.3 Substantively speaking there was uncertainty on part of many stakeholders as to the nature of the CSF as a TCA body and its core purpose. The text of the TCA is relatively vague on this stating merely that its aim is to 'conduct a dialogue on the implementation of part 2". Initially there was some misaligned expectations between civil society and the contracting parties as some representatives **hoped for an opportunity for meaningful strategic discussion on the issues facing the relationship and even about deepening cooperation in the future**. In practice however the first CSF played out more as a technical Q&A with all focus on trade and no focus on cooperation. Any points made about the latter, were ultimately included in the minutes.

4.4 This is in part a result of the negotiations narrowing the scope of the CSF to part 2 which presents a paradox whereby the CSF has potentially wider representation than the DAG, but a much narrower remit. Compounding this, some voluntary sector participants felt it odd that issues falling within the 'essential elements' of the TCA, which include climate change, human rights and the rule of law and which are therefore relevant the whole TCA, were not featured on the agenda (despite growing concern around divergence in the field of human rights relating to *inter* alia, the UK Bill of Rights Bill). Indeed with no space to raise these issues, and limited ability for the Welsh Government and Senedd to actively participate in their respective fora,

participants felt that there was little formal space to highlight the different domestic interpretations of UK Government activity relevant to the TCA (which in the case of human rights, has largely been considered heavily regressive).

4.5 **This narrow approach to the CSF it was felt, left a vacuum for high level strategic and inclusive discussions on policy and cooperation**. It remains to be seen whether this will be filled by the DAG and joint UK – EU DAG system, or indeed whether there is a need for a supplementary space falling outside the TCA. Indeed the EESC UK – EU Follow-up Committee has been filling some of this function on the EU's side while being very inclusive to devolved voices.

4.6 The UK will host the CSF in 2023, this should be used as an opportunity to set a precedent for flexibility in the organisation and remit of the event relative to the 2022 iteration. There should be ample opportunity for consulting stakeholders UK wide on the agenda, with space provided procedurally and substantively for building relationships and discussing ongoing cooperation, in addition to addressing issues of technical implementation. **As the agenda is technically set by the UK Government and EU Commission, the Welsh Government should be consulted on this as well.**

5. <u>Could you tell us about your views on the role of the UK's legislatures in providing oversight and scrutiny of UK-EU decision-making and how this could be improved.</u>

5.1 Recognising that capacity is limited, there are several ways the Senedd can play a key role in this space.

5.1.1 There is a clear transparency gap so scrutiny of the Welsh Government's participation in the IGR and TCA structures is crucial.

5.1.2 It is currently difficult to gauge any objective or strategy being pursued through participation in the TCA structures, nor is it clear how much influence, regularity or scope the Welsh Government has to influence the agendas of the joint TCA bodies. Recommending the formulation of a strategy based on experience to date of navigating post-Brexit UK – EU governance, would provide direction in building strategic connections in Europe, approaches to governance and the TCA bodies, would help frame any scrutiny, and help to better define civil society work and relevant support needs.

5.1.3 The Senedd can also play a crucial role in continuing to participate, encourage and support intra Wales dialogue and coordination between institutions and sectors. There may be a case for recommending the formalisation of coordination in the way that the EU advisory Group did. It is also crucial that resources continue to be devoted to building and maintaining relationships directly at the EU level and supporting sectors in Wales to do the same**. Indeed the Senedd's support of the voluntary sector's efforts to do so have made a significant positive impact in Wales and the EU.**

5.1.4 There may still be scope to continue to influence the development of the TCA governance bodies, as there are elections due domestically and at the EU level prior to the review in 2025/2026. In this context and as governance is starting to crystallise, it remains important to continue to make the case for embedding good practice and raising awareness of the need for sensitivity to devolved participation.

6. Do you have views on the balance of power and decision-making between the executive, legislatures and civil society in the post-Brexit institutional architecture compared to arrangements under EU membership?

6.1 The UK's withdrawal from the EU has marked a notable shift in power away from legislatures, towards executive function, as well as challenged the Sewell convention and diminished the role of independent civil society consultation and engagement around significant policy and legal change. A recent example of this has been the passage of the Retained EU Law (Revocation and Reform) Act and the broad executive powers it grants enact policy change with minimal parliamentary scrutiny.

6.2 Another instance of this institutional shift can be observed in the procedures surrounding the consultation, engagement and scrutiny of trade mandates and trade negotiations. At the EU level, established procedures such as the EU Trade Civil Society Dialogue have guided interactions. However, with the transition to the UK level, formal engagement frameworks have become scarce, and parliamentary scrutiny is minimalist.

6.3 These transitions might be qualified as a culture shock for civil society organisations in Wales as they stand in stark contrast to the formal arrangements under the Third Sector Scheme and wider context open engagement in Wales. Similarly, organisations in Wales have been active in participating in known EU procedures, where engagement with civil society in the legislative process is institutionalised by virtue of the role of the European Economic and Social Committee.

6.4 However at the UK level there is no similar culture of facilitating meaningful engagement and consultation with civil society. Brexit has also brought with it an increase in the use of Henry VIII clauses, rises in legislation going ahead despite the Senedd withholding consent and challenging consultation exercises on fundamental questions (like the Bill of Rights Bill where upwards of 90% -100% of thousands of responses expressed serious concern with seemingly no impact on the resulting legislation). This is concerning because an increasing amount of policy capacity in Wales must now be directed towards the UK level. Collectively these developments have shrunk the civic society space and shifted away from parliamentary scrutiny and democratic engagement towards unilateral central executive decision making.

7. As a committee, we have spoken of the challenges associated with navigating the new arrangements as a devolved parliament. An area of particular interest to us is the transparency and accountability of these new UK-EU governance structures. Professor Catherine Barnard told this committee that it 'feels pretty much like the transparency of a black box'. Could you share your views on how the transparency of decisions taking within these new UK-EU governance structures could be improved?

7.1 The transparency in the operation and governance of the bodies under the TCA is a challenge, though the commitments in the text of the TCA itself are very limited. For example, Rules 10 and 13 in Annex 1 of the TCA on the *Rules of Procedure of the Partnership Council and Committees* provide that minutes shall be made public, but neither set of commitments contains a timeframe for this to happen. Meanwhile, other key commitments to transparency are optional,

such as in rule 10(2) which provides that the parties ***may*** publish the decisions and recommendations of the Partnership Council. We have seen some improvement in communication upcoming meeting dates via the DAG, but there is little in the way of public information which will invariably frustrate wider independent scrutiny and analysis.

7.2 Furthermore, at the devolved level, the question of TCA body transparency cannot be dissociated from the transparency of the new structures for Intergovernmental Relations, as these should provide the fora for the Welsh Government to feed into the joint UK-EU agendas and discussions. Yet transparency is also challenging on this front. It is unclear from the information publicly available, the extent to which the IGR structures provide for meaningful co-decision. In some cases this seems unlikely, for example the Inter-ministerial Group on Trade's Terms of Reference suggest that policy formulation actually still follows the devolution memorandum of understand and international relations concordat. Yet these are out of date and arguably no longer suited to the level of intergovernmental decision making required post-Brexit.

7.3 Illustrating some of these challenges at the TCA level, at the meeting of the trade partnership committee on 1 Dec 2022,[1] the EU requested that the parties start exchanging agendas earlier because it needed more time to consult the Member states in the Council to inform its position. It is unclear on the UK side what the process and governance is for the UK Government to consult the Welsh Government. Similarly, it is unclear whether this takes place in sufficient time for the Welsh Government to consult stakeholders prior to feeding up to the UK.

7.4 There are also practical examples where there is arguably cause for concern stemming from the UK's representation of issues at the partnership council where there has been significant divergence in views at the devolved level. For instance, at the Partnership Council meeting on the 24 March 2023,[2] the joint UK – EU statement reflects discussion of the Bill of Rights Bill and the Retained EU Law Bill with no further detail. Yet the UK Government has systematically represented both pieces of legislation as unproblematic, despite significant and near universal concern about both at the devolved level (and indeed more widely across the UK). Owing to the lack of transparency it is very unclear how the UK's positions for these meetings are arrived at and indeed how effective the IGR bodies are at providing input for the Welsh Government

[1] UK Government, "Minutes: second meeting of the Trade Partnership Committee under the UK-EU Trade and Cooperation Agreement, 1 December 2022", Available at: https://www.gov.uk/government/publications/uk-eu-trade-and-cooperation-agreement-trade-partnership-committee-meeting-1-december-2022-agenda/minutes-second-meeting-of-the-trade-partnership-committee-under-the-uk-eu-trade-and-cooperation-agreement-1-december-2022

[2] UK Government, EU Commission, "Joint statement on the Withdrawal Agreement Joint Committee and Trade and Cooperation Agreement Partnership Council meetings, 24 March 2023", Available at: https://www.gov.uk/government/news/joint-statement-on-the-withdrawal-agreement-joint-committee-and-trade-and-cooperation-agreement-partnership-council-meetings-24-march-2023

Inquiry into UK-EU governance – Submission of written evidence

by Tanja Buzek, Chair
on behalf of the EU Domestic Advisory Group under the EU-UK Trade and Cooperation Agreement



BACKGROUND

Under its Institutional Framework, Article INST.7 of the EU-UK Trade and Cooperation Agreement (TCA) provides that each Party set up an independent Domestic Advisory Group (DAG) composed of civil society organisations' representatives, and consult it on the issues covered by the TCA and any subsequent supplementary agreements concluded between the UK and the EU.

The primary task of the EU DAG is to advise the European Commission, but also liaise with the European Parliament and Council, on the implementation of the full TCA. It is the first EU DAG to have such a wide scope[1], going beyond the years' long-established focus on trade and sustainable development.

Such an unprecedented large scope called for a larger EU DAG to harness expertise from a wide range of stakeholders, while ensuring the DAG's ability to operate at pace. The EU DAG under the TCA thus comprises 30 seats in total, 24 from the wide network of European and national civil society organisations and six from the European Economic and Social Committee (EESC). The members of the EU DAG are organised internally in three equal sub-groups of business organisations, trade unions and various interests' groups and its work is led by a Presidency team of one chair and two vice-chairs from each of the three groups. This overall DAG composition ensures a balanced representation of economic, social and environmental stakeholders. The EU DAG's work is further supported by the input of 61 permanent observer civil society organisations across the TCA's large scope.

[1] The EU-CARIFORUM Economic Partnership Agreement of 2008 provides for a similar wide scope of all economic, social and environmental aspects of the relations between the Parties to be covered by a Joint Consultative Committee (JCC) of civil society organisations.

EVIDENCE

Starting on a more general note, the EU has a longstanding record of **incorporating civil society monitoring structures into its free trade agreements**, through the setup of DAGs and a wider civil society forum format for each agreement. Building on this experience, the role of the EU DAGs has been evolving in practice and EU DAG members took the lead call on **further strengthening their role and impact**[2]. To support this process, in 2021 the EESC initiated an annual all-DAG meeting, bringing together all members of all current twelve EU DAGs to advance cross-cutting matters, with the high-level political buy-in from the Commission and the European Parliament. The EESC, acting as the DAG secretariat and contact point under each agreement, also issued a Handbook about the work of EU DAGs[3].

Turning to the work of the EU DAG under the TCA more specifically, it held its **first meeting on 25 November 2021**, following an open call for expression of interest and members' selection by the European Commission. The DAG members from the EESC are nominated from within the Committee. The regular mandate of all EU DAGs is two and a half years; however, to allow for a better continuation of work during its first mandate, the UK DAG is exceptionally set up for four years until September 2025. All **composition, meetings and documents are made publicly available** on the dedicated DAG portal[4] to serve the EU DAGs' own call for transparency. To date, the EU DAG held seven meetings and published main takeaways after each meeting. On average the EU DAG meets up to four times a year. Meetings are held in Brussels, with the EESC providing the meeting premises and organisation, and take place in a hybrid format to allow for as much participation as possible. There is limited funding available by the Commission for non-Brussels based organisations to attend meetings.[5]

In full agreement with our UK counterpart, the EU DAG is convinced that the TCA can be a sound basis to build a stronger, more stable, resilient and sustainable relationship for the benefit of EU and UK citizens, and: **for the TCA to support a positive and constructive framework of rights and standards**. In order to achieve this, it is essential to promote an open, pragmatic and good faith cooperation between regulators on both sides. It is equally necessary that both parties engage closely with civil society organisations, adopt a **broad and constructive approach towards inputs provided** by both the EU and the UK DAG, and give a timely follow-up to their recommendations.

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[2] Non-paper of the EU DAGs, Strengthening and Improving the Functioning of EU Trade Domestic Advisory Groups, October 2021, https://www.eesc.europa.eu/sites/default/files/files/non-paper_of_the_eu_dags_strengthening_domestic_advisory_groups_oct2021_002.pdf

[3] Due to be updated for the new EU DAG term 2023-2025 but 2022 version available: Handbook for members of EU Domestic Advisory Groups, EESC, 2022, https://www.eesc.europa.eu/da/our-work/publications-other-work/publications/handbook-members-eu-domestic-advisory-groups

[4] The EU Domestic Advisory Group under the EU-UK TCA, https://www.eesc.europa.eu/en/sections-other-bodies/other/eu-domestic-advisory-group-under-eu-uk-tca

[5] For Brussels meetings, up to three DAG members can receive funding to cover travel and if needed accommodation expenses. For UK meetings, this funding is available for up to six members, whereas a balance between the three groups of employers, workers and NGOs should be respected.

Within its regular meeting work flow, the EU DAG established a structured dialogue with the Commission, in particular representatives from the Directorate-General (DG) for Trade, to flag issues under the TCA and prepare input for the Joint Trade Specialised Committees. Throughout 2022, the EU DAG collectively compiled an **EU-UK relations Issues Tracker** (see Annex), a document collecting its main issues and recommendations with regard to TCA implementation – and more broadly on EU-UK relations. Evolving over time and open to additions and updates, the Tracker has been conceived to be a living instrument for the DAG to facilitate and structure the ongoing discussion, as well as to provide high-quality inputs to the Commission in dealing with UK counterparts. Looking beyond the daily, necessary work that the Commission has been carrying out, the Tracker can be a **key tool available to all actors involved in both monitoring and implementation of the TCA**. The EU DAG, represented through its Chair, provided also evidence in the Joint Hearing of the European Parliament Committees on Foreign Affairs (AFET) and on International Trade (INTA) in Brussels on 25 May 2023, on the annual implementation report on the TCA.

When it comes to living civil society structures, **DAG-to-DAG collaboration is the 'beating heart'** of every trade agreement. In October 2022, the EU and the UK DAGs under the TCA held their first joint meeting in Brussels, back-to-back with the first Civil Society Forum (CSF) the following day. Collaboration between civil society organisations in the EU and the UK is vital, as they share common goals to ensure the EU and UK work towards a more stable, positive, forward looking and rule-based relationship. As DAGs we commit ourselves to a constructive collaboration on areas of mutual interest and concerns, starting from a regular exchange between our DAG presidencies. As for the first **CSF**, it was a jointly shared civil society observation across organisations on the EU and UK side that it needs to **allow for a more dynamic civil society interaction with the parties and among each other**, with breakout spaces in the agenda for more output. Whereas the DAGs constitute a day-to-day operation thread of TCA implementation, the CSF could provide a for a broader platform for civil society interaction on EU-UK relations. Latter would benefit from a wider civil society participation beyond the circle of DAG members organisations.

In our first **Joint DAG statement**[6], we stressed that the two parties should aim to value and build upon what they have in common, while maintaining an open and constructive dialogue over issues and differences. The DAGs believe that **ensuring a Level Playing Field between the UK and EU is crucial** to ensure fair competition and protect workers, businesses and citizens. We also jointly emphasized the **importance of the Protocol on Ireland/Northern Ireland to the TCA and the Belfast/Good Friday Agreement to be respected in all their dimensions**, calling on both parties for a mutually agreed solution that protects peace, jobs, and provides prosperity for all.

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6 Joint Statement of the EU and the UK Domestic Advisory Groups under the TCA, 3 October 2022, https://www.eesc.europa.eu/en/documents/joint-declaration/eu-and-uk-domestic-advisory-groups-eu-uk-trade-and-cooperation-agreement

Ever **closer collaboration with the Parliamentary Partnership Assembly (PPA)** is a joint priority of both the EU and the UK DAG, for the PPA and the DAGs represent two sides of the same 'TCA monitoring' coin. The EU DAG chair followed the invitation to address the UK Delegation to the Parliament Partnership Assembly (PPA) in London on 22 May to present the work of the DAG, and will join an exchange with the EU Delegation to the PPA in Brussels on 26 October. These engagements should ideally lead for the **EU and UK DAG chairs to be invited to attend the PPA meetings a permanents observers**.

Annex

EU DAG under the Trade and Cooperation Agreement

EU-UK relations Issues Tracker

December 2022*

In full agreement with its UK counterpart, the EU DAG is convinced that the TCA can be a sound basis to build a stronger, more stable, resilient and sustainable relationship for the benefit of EU and UK citizens: a relationship that supports a positive and constructive framework of rights and standards.

In order to achieve this, it is essential to promote an open, pragmatic and good faith cooperation between regulators on both sides. It is equally necessary that both parties engage closely with civil society organisations, adopt a broad and constructive approach towards inputs provided by both DAGs, and give a timely follow-up to their recommendations.

With the aim of structuring and facilitating this ongoing dialogue, the EU DAG member organisations across business, workers and NGOs identified and collected their main issues and recommendations with regard to TCA implementation and more broadly on EU-UK relations.

This document is the result of that exercise: a coherent and structured list, evolving over time and open to relevant additions and updates by DAG members, representing the views and priorities of EU civil society.

The EU DAG believes that this list will contribute to a more open and focused discussion, at the same time providing relevant inputs to the European Commission to feed into its interactions with UK counterparts.

** In light of most recent legislative developments in the UK, the section on workers' rights (non-regression) has been updated in January 2023.*

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1. SECTORIAL AND SPECIFIC ISSUES

2. CUSTOMS

3. Reinforcement of customs cooperation and trade facilitation between the Parties

The reinforcement of customs cooperation between the EU and the UK is pertinent to support appropriate levels of compatibility in customs legislation and procedures and to ensure the promotion of trade facilitation. It will contribute to a stable and predictable regulatory framework for border controls and trade in goods to guarantee a smoothly functioning transport and logistics chain. Experiences have shown that **effective exchange of information and constructive dialogue between customs administrations** are indispensable for successful cooperation in the area of customs. So is a strong partnership with the trade community.

Notably, the TCA confirms the commitment of the EU and the UK to establishing a shared **Single Window Environment**, which plays a prominent role. Depending on its design and implementation, it has the potential to modernise customs and border processes and enhance efficiency and simplifications for trade. If effectively implemented, it can streamline exchange of information and customs controls and ultimately improve trade facilitation through simplified processes, time saving, faster clearance and reduction of administrative burden and costs for businesses.

The provisions on mutual recognition of **Authorised Economic Operator** (AEO) programs are highly important to trade, as is fostering cooperation between customs and other government authorities regarding the AEO program. The correct and timely implementation, as well as subsequent monitoring, of the commitments related to AEO will increase competitiveness and also secure and further facilitate cross-border trade.

Some further points related to customs regulations and border controls that in our view should be addressed as a matter of priority include **harmonising data requirements for import, export and other customs procedures by implementing common standards and data elements** aimed at simplifying clearance processes. Furthermore, it is important to establish a **Safety & Security mutual recognition agreement** to waive advanced security filings between the Parties, as additional customs safety and security declarations that are required for entry and exit of goods form a major additional administrative burden for transport and logistic operators. Furthermore, digital solutions to facilitate the entry of ships to ports and the exchange of regulatory information wherever possible should be also encouraged.

It is also critical to take appropriate measures to **simplify the Union Customs Code (UCC) provisions on return goods** to facilitate release without a formal declaration for both EU goods located in the UK and UK goods located in the EU. In particular, EU goods located in the UK are now subject to extremely burdensome formalities and procedures upon return to the EU, and consideration should be given to establishing a common threshold between EU and UK under within which there is no need for a formal proof of origin for imported goods.

Specifically relating to **cross-border e-commerce**, additional easements could be provided by waiving Power of Attorney (POA) for goods in small consignments (goods of negligible value) and increasing the low value threshold to a commercially meaningful level.

In addition, designating some transport services as an essential service could ease crisis situations in future, along with adopting simplifications initiated during the COVID-19 crisis on a permanent basis in an EU-UK context.

4. Impact of customs procedures on transport and logistics

- Shipment times have increased significantly. It is more difficult to get timely deliveries from mainland Europe, due to UK land bridge delays.
- There are fewer logistics and transport companies. This has led to much higher shipment costs. There are additional fixed costs for all shipments between UK and EU, in both directions. The administrative burden for businesses has increased, with significant costs for agriculture and customs clearance, and increased delivery times. This has a huge impact, for example on book imports/exports from/to the UK.

5. Taxation

VAT must now be paid for goods subject to VAT between the UK and EU; effectively a 20% price increase on a wide range of goods. This is inconvenient but it is how things are supposed to work now; however, it also happens that e-commerce orders delivered in several parcels are subject to VAT on the value of the whole consignment for each individual parcel, resulting in customers being charged the full VAT several times over.

6. Rules of origin

Lots of uncertainty remains when it comes to **bilateral cumulation** of origin and what constitutes "sufficient processing" in this regard, particularly for agri-food products.

Tolerance rules: EU operators are unsure about the quantity of UK ingredients that can be incorporated in the final product (especially if exported to a third country).

7. Statements of origin

UK customs was requesting that the statement of origin indicate which Member State the product is from (even though according to TCA the statement should only mention "the Union" as the origin).

8. Other technical issues and concerns arising from the new EU-UK trade regime

Addressing technical issues and concerns arising from the new EU-UK trade regime (e.g. groupage of products, availability of Border Control Posts for relevant trade such as livestock, mutual recognition of plant passports and the overall operation of the new UK Border Control Model, digitisation of administrative procedures, etc.).

9. TRANSPORT

1. Competitiveness and reciprocal market access

The EU and the UK must remain on par as competitive locations for transport operators (shipping companies, rail operators, ports, logistics) to conduct business. Therefore, a level playing field - in the environmental, fiscal, social, and other regulatory domains – is a priority. This must respect the different sea routes and road/rail transport routes between the EU/EEA and the UK and also the different transport modes, so that maritime, road, aviation and rail transport are all treated in the same way. Furthermore, reciprocal market access should be preserved.

2. The issue of freeports and the level playing field

Last year, the UK decided to set up seven (maritime) freeports with the intention for these areas to act as national hubs for global trade and investment in their region. Although free zones and freeports are relatively common in the EU, these are no more than areas for storage and warehousing in combination with simplified customs procedures. On the other hand, UK freeports could offer more benefits to the companies established there as the UK will have more freedom over the flexibilities and tax concessions it can offer in free zones, including tax reliefs, planning liberalisations and incentives for innovation, in order to attract more investment in the freeports. This is because EU Free Zones are governed by the Union Customs Code as well as by EU rules on State aid, which stop Member States using selective tax exemptions and financial incentives to distort competition. As the UK freeports could benefit from a competitive advantage, which ultimately could lead to business moving from the EU to the UK, they might conflict with the provisions on the level playing field and State aid in the TCA.

Freeports may also undermine the UK government's Level Playing Field commitments on upholding workers' rights. The UK government has cited "free zones" in the Gulf States and the U.S. as models for UK freeports to follow. In both cases, employers were attracted to these free zones because they were areas with far fewer workers' rights[7]. Concerns include the possibility that freeports could be used as sites for smuggling and tax evasion.

[7] For example, US trade unions have highlighted that employers in the free zones routinely use union busters and subject workers to a high level of surveillance to intimidate and exploit them.

The Commission should monitor closely the further development of the UK's freeports, and analyse, as well as address, any conflicts with the provisions on the level playing field foreseen in the TCA.

3. EU-UK maritime passenger transport

The EU is currently implementing the Entry Exit System (EES) Regulation (implementation deadline: May 2022) and the European Travel Information and Authorisation System (ETIAS) Regulation (implementation deadline: December 2022). These regulations will require detailed checks of UK passengers as close to the border as possible before entering or exiting the Schengen area. This in practice means that UK passengers will need to be checked in ports, which sometimes simply don't have the space to perform such checks. The Commission should therefore investigate how the implementation of these regulations can be reconciled with the vast number of maritime passengers coming from the UK to the EU and at the same time the lack of space in certain European ports.

4. Ensuring a level playing field for ports in-between the EU and UK decarbonisation policy agendas[8]

The regional scope of maritime proposals in the Commission'' Fit for 55 package can pose a challenge to the level playing field between the EU and the UK. There are two key legislative proposals that are especially relevant in this regard: the EU Emission Trading System (ETS) and the Energy Taxation Directive.

Due to the limited scope of the ETS proposal, concerns have been raised by a number of port stakeholders regarding the risk of cargo leakage due to possible evasive ETS stops at British ports rather than calling at European ones, in order to avoid falling within the scope of the EU ETS as much as possible and thus minimise costs. Such practices must be prevented to protect the integrity of EU climate policy, and to avoid undermining the competitiveness and connectivity of EU markets and ports. As long as the UK does not introduce some form of CO_2 pricing or participate in the EU Directive, the competitive position of European seaports could be negatively affected.

With regard to the Energy Taxation Directive, a tax on marine fuels is proposed which only applies to vessels in intra-EU waterborne navigation. This creates a risk that bunkering operations shift outside the EU, for instance towards the UK, since the marine fuels tax would only be levied in ports in the EU when the next port of call is another port in the EU.

[8] ECSA believes it is premature at this point to address the effect of the Fit for 55 package on EU-UK trade as the legislation is still being negotiated. However, EU ship owners strongly support the objective of maintaining a level playing field between the EU and the UK including in the environmental regulatory domain.

5. The need to return to a single safety framework in the Channel Tunnel

One of the consequences of Brexit for the Intergovernmental Commission (IGC) supervising Eurotunnel's activities was the loss of its mission as safety authority for the cross-Channel fixed link. Incidentally, the EPSF has become the safety authority and will be followed soon by the ORR on the sections of the tunnel located respectively in France and in the UK. Two regulatory frameworks for railway safety in the tunnel have therefore been put in place, with no guarantee of convergence. Any divergence in safety rules and their application can only lead to significant additional operational costs and disrupt existing and potential new traffic by considerably increasing the standards that the equipment will have to meet, not to mention the risk to safety given the operational complexity generated by this situation. It is therefore necessary to return as quickly as possible to a single regulatory framework supervised by a single safety authority. The TCA concluded on 24 December 2020 does not include a relevant provision, so France and the United Kingdom must adopt bilateral agreements.

6. The issue of rail interoperability

The EU has no longer accepted notified body reports or certificates from the UK (now renamed "approved bodies" in the UK) since the end of the transition period. On the other hand, the UK still accepts EU documents, but will eventually accept only UK certificates/reports as of 1 January 2023. This leads to unnecessary double assessments that are costly and do not provide any added value. While today it is "simply" duplication, the more the EU and UK diverge in future, the more the assessments and certificates will consequently differ. Although this issue was the subject of several "notices to stakeholders" released by the Commission regarding preparedness, the rail transport industry is currently confronted with this barrier, which may become graver in the future.

In addition, the Commission and the EU Agency for Railways are currently working on the revision of the Technical Specifications for Interoperability (TSIs) to be voted on by the Railway Interoperability and Safety Committee (RISC) at the end of 2022. This revision will comprise both new functions and requirements, an overhaul to the transitions regime, a significant update to the referenced standards, and also many smaller or editorial changes. Once implemented in the EU, the risk of a delayed and/or diverging corresponding update to the UK NTSNs may arise. The Commission should ensure sufficient cooperation with the UK to minimise this two-speed update to the regulatory frameworks and avoid technical barriers being established due to the TSI/NTSN revisions outline above.

7. Issues related to public procurement

Public procurement clauses are of outmost importance for the rail supply industry. The basis of the public procurement chapter is the UK's membership of the WTO Agreement on Government Procurement, effective since 1 January 2021, but with increased in ambition. In this context, it is fundamental to be vigilant in relation to the implementation of the commitments reached between the EU and UK, particularly on the imperative of EU companies being able to participate on an equal footing with UK companies in bids. Special attention should be given so that private-owned entities in the covered utilities sectors that

operate on the basis of special or exclusive rights granted by a competent UK authority are covered by the agreement. Moreover, it is also important to be vigilant and report any concern in bids below the GPA thresholds ("small-value procurement"), for which there is a guarantee of non-discrimination of EU companies established in the UK. The non-respect of these provisions would not only be out of line with the agreement reached between the Parties but would also seriously harm the European rail supply industry on a dynamic and very important market.

10. CULTURAL AND CREATIVE INDUSTRIES

1. **Online Liability and Liability Privileges**

There is a risk of regulatory divergence due to the lack of implementation of Article 17 of Directive 2019/790 (and the future Digital Services Act and Digital Markets Act) and a risk of the dilution or distortion of the EU's established online liability and liability privilege principles.

2. **Enforcement of Intellectual Property Rights**

The IPR enforcement provisions are positive but further arrangements would be useful to set out specific minimum standards and alignments in greater detail.

3. **Exceptions and Limitations**

We welcome Article 233 of the TCA. However, there is a risk of potential influence from the UK's other prospective trading partners that could dilute this provision.

4. **Collective Rights Management**

Both the EU and UK have very good standards with regard to rules on collective management of rights (see Collective Rights Management Directive 2014/26/EU) which are worth being promoted in each of the Parties' relations with third countries.

5. **Road haulage/cabotage rules for organisations in the live performance and music sector**

The TCA does not distinguish between own-account transport (which allows an unlimited number of stops) and other commercial road haulage operations. From the EU side, Regulation 1072/2009 applies. Both the TCA and the EU regulation led to difficulties in the organisation of touring activities for live performance organisations from the EU to the UK and vice versa. These touring activities fall under commercial road haulage and cabotage rules even if the carriage of the goods is only ancillary to the overall activities. This means a restriction of only three stops in one country, which makes the organisation of longer tours

impossible. The TCA does not distinguish between operations of different sectors (commercial and non-commercial).

6. Visas for the purpose of paid activity

There is a problem for artists and cultural professionals from the UK. The EU-UK TCA does not lay down an option for artists/authors to provide services as a paid activity, because they do not fall under the EU-UK TCA chapter on the Mode 4 category of Contractual Service Suppliers or others. As a consequence, Regulation 2018/1806 applies. According to Article 6(3), a Member State may make the undertaking of a paid activity subject to obtaining a work permit: it may also decide to require a visa even in the case of short-term stays, where such stay includes the undertaking of "paid activities".

Conclusion: there is a missing gap in the agreement that would make it possible for artists/authors and cultural professionals from UK to provide their services.

11. BOATING INDUSTRY

1. Regulatory divergence

Currently the EU Recreational Craft Directive 2013/53/EU and UK Recreational Craft Regulations are aligned without substantive changes.

However, discussions are ongoing in the UK about how to adapt the product regulations stemming from EU law, and the Commission is also reviewing the Recreational Craft Directive with potential changes to the legislation in future.

Divergence in the legislative framework for recreational craft between the EU and UK, as well as in the standards supporting these, would negatively impact trade and manufacturers in the sector from a cost perspective.

This is particularly relevant due to the limited number of large producers, with many manufacturers producing only a limited number of boats per year, and a significant number of SMEs in the recreational boating industry (over 95%).

2. Second-hand craft

There is a large second-hand market for recreational boats, due to their long lifetime (up to 50 years or more) and an estimated boat fleet of over six million boats in European waters.

The issue of second-hand goods, including recreational boats, has not satisfactorily been dealt with in the EU-UK agreements.

While some issues have received clarification from the side of the Commission already, a number still exist in relation to re-certification (under the Recreational Craft Directive) and VAT treatment.

We have also raised these issues with DG GROW and DG TAXUD.

3. **Unfettered access NI-GB**

The UK Government has announced "unfettered access" to goods in trade between Northern Ireland and Great Britain. There is however a lack of detail and clarity on how this will be implemented in practice.

12. METAL, ENGINEERING & TECHNOLOGY-BASED INDUSTRIES

1. **Divergence assessment unit in the Commission**

There will be inevitable legislative divergence between the EU and the UK, via either inertia or legislative action from either side. Consequently, the Commission should set up a specially tasked divergence assessment unit to monitor regulatory divergence in the interest of all stakeholders.

2. **Mutual Recognition of Professional Qualifications (MRPQs)**

While the TCA establishes a process in which regulators and industry bodies can work together to establish MRPQs, it does not contain a formal process for recognition.

3. **EU third-party contractors carrying out services in the UK**

Short-term deployment of EU citizens to the UK can take place without a work permit and/or visa if there is a contract between the manufacturer of the products and the British customer. However, a work permit and/or visa is required if the person being deployed is a third-party contractor or supplier.

4. **The UK's accession to the Lugano convention**

The Lugano Convention is an international judicial treaty negotiated by the EU with Iceland, Norway and Switzerland on matters of jurisdiction in civil matters. The limits of the TCA no longer provide this certainty for businesses as there is no provision for civil judicial cooperation.

13. INSURANCE REGULATION/FINANCIAL SERVICES

1. **Level playing field**

The EU DAG is a strong advocate of a level playing field between the European Union and the United Kingdom and carefully monitors potential divergence between the two markets in the financial services field.

Developments related to insurance regulation, and particularly Solvency II, are especially relevant.

A level playing field in relation to protection of personal data is also of the utmost importance.

14. AGRICULTURE

1. **New EU health certificate for dairy**

Animal health attestation in the new health certificates for dairy products are problematic for imports from the UK.

It is not possible for UK veterinarians to certify products that contain both UK and EU milk (because of an "either/or" formulation in the certificate). The announced postponement of UK import controls (2023) gives some more time to switch to a fully digital environment between the EU and UK.

Three-month residency requirement: it is not possible to certify products containing milk from cows that have been in the UK for at least three months prior to milking and milk from cows that have been introduced from an EU Member State more recently.

2. **Digital certificates**

UK health certification (for most animal products) will be introduced in stages from July onwards. Paper certificates/physical copies travelling with the goods are not practical due to the number and frequency of shipments.

3. **Border Checkpoints (BCPs)**

There needs to be a higher number of BCPs in the UK capable of enabling the transport of egg and poultry from the EU (Ireland and Mainland EU) to the UK and vice versa.

4. **Egg yolk UK import certificates to be effective as of 1 April**

The matter has been addressed at EU level but there has been little movement in the discussions so far. Regarding egg yolk, besides a TRQ for the UK there is no possibility to export liquid egg yolk without any additives (sugar or salt) to the UK; the product is missing in the veterinary certificate. This product is not on the EU certificate, which the UK translated.

5. **Administrative burden in the ornamental horticulture industry**

The ornamental horticulture industry is concerned about the massive administrative burden and possible disruptions of the trade flow of cut flowers to the UK as from 1 July 2022. Cut flowers are low-risk products. However, without a risk-based diversification by the UK, all cut flowers seem to require a phytosanitary certificate and thus a physical inspection for export to the UK. This is especially complicated in light of the fact that consignments consist of a broad diversity of cut flower varieties (over 100 in one consignment is not rare) and the issue concerns about 200 000 consignments yearly.

6. **Trade of seed potato**

Trade of seed potato has been disrupted.

15. SANITARY AND PHYTOSANITARY MEASURES

1. **Ensure that EU-UK food, drink and agri-food trade continues to flow as frictionlessly as possible**

Operators have to deal with new export/import requirements, SPS and customs controls, administrative procedures, and future regulatory developments.

The new requirements have a considerable impact on the administrative workload of companies as well as costs, and are complicating the logistics of deeply integrated supply chains.

Looking at the latest EU trade statistics, agri-food exports to the UK in the period January-September 2021 were up 0.5% compared to the same period in 2020. Meanwhile, imports from the UK registered a sharp decline of 27%.

While this signals a smoother flow of EU exports to the UK, at least for the time being, one should keep in mind that EU operators themselves now have to deal with the phase-in of new UK import requirements and controls on EU goods. These include pre-notification of agri-food imports, full customs controls & declarations for all goods (from 1 January 2022) & new requirements for Export Health Certificates (from 1 July 2022).

16. PHARMACEUTICALS

The TCA importantly includes an annex on medicinal products that provides for mutual recognition of Good Manufacturing Practice (GMP) inspections and certificates. It also provides that the EU and UK authorities should endeavour to cooperate from a regulatory perspective and that a joint Working Group on Medicinal Products should be established.

The recent adoption by the EU of bespoke measures to allow continuity of supply of essential medicines to patients located in Northern Ireland and in those EU markets historically dependent on the United Kingdom, such as Cyprus, Ireland and Malta, was another important step, particularly relevant for the off-patent sector, which supplies close to 85% of prescription medicines in Northern Ireland.

At the same time, it would be key to strengthen further the regulatory cooperation between the EU and UK and in particular to agree on the mutual recognition of batch testing, to avoid duplicative and unnecessary operations that can delay patients' access to medicines.

This would minimise the negative economic consequences of Brexit on both sides of the Channel, thus safeguarding the competitiveness of both the EU and the UK vis-à-vis other global players in the life science sector. It would also be in line with the objectives of the TCA Annex to facilitate the availability of medicines in each Party's territory and promote regulatory approaches in line with the relevant international standards.

17. LUGANO CONVENTION

Concerns have been raised by human rights lawyers on the UK not acceding to the Lugano Convention. The Lugano Convention ensures the recognition and enforcement of civil and commercial judgments and rules on jurisdiction and smoothens procedural aspects. Without the Convention the principle of *forum non conveniens* applies in the UK, meaning that a case can be dismissed where an appropriate and more convenient alternative forum exists. For example, the health and safety of tea pickers in Kenya: in practice this means that such a case can be dismissed by the UK judge and needs to be brought in front of the courts of the state where e.g. the work is performed, in this case Kenya. This makes it harder to bring human rights cases before courts in the UK.

18. EUROPEAN WORKS COUNCILS (EWCS)

1. EWCs and SE Representative Bodies (SE RBs)

Thousands of workers in the UK risk losing access to transnational information and consultation which in many cases they have been entitled to for more than 20 years.

There are three key issues:

1. For EWCs and SE RBs that were established on the basis of UK law, the role of central management has to be transferred to a Member State. As central management is free to choose in which country the representative agent will be located, some companies have decided to relocate the EWC or SE RB to a country with lower standards for the functioning of these bodies.

2. There is no legal obligation for UK representatives to remain on EWCs. In practice, this means it depends on the goodwill of management whether or not UK representatives will stay on board. In many companies it has been agreed that UK representatives can remain as '"full" members, but in several other cases the presence of UK representatives has only been extended for a limited period or their status has been reduced to "guests"'. Some have categorically refused to allow UK representatives to continue to attend, with the only argument that there is no legal obligation. Another consequence of such decisions is that matters that have an impact on the UK and one Member State are no longer considered as transnational, and therefore no information and consultation have to take place.

3. There is no guarantee that UK activities will be within the scope of future EWCs and SE RBs.

19. WORKERS' RIGHTS

1. Non-regression

A number of UK government announcements or legislative proposals over the past months could constitute a breach of its non-regression commitments in the Level Playing Field chapter of the TCA if put into place[9]. These include:

GDPR

In September 2021, the UK government consulted on plans to deviate from the EU General Data Protection Regulations (GDPR), including by:

- diluting the powers held by the Information Commissioner's Office
- reducing the protections against automated decision-making by removing Article 22 of the UK GDPR, allowing solely automated decision-making where it has lawful grounds in data protection legislation
- placing less emphasis on the importance of the needs of the individual data subject when assessing whether processing of data is lawful by removing the legitimate interests "balancing test"
- relaxing protections for personal data used for research purposes, which might lead to the appropriation of health data from patients in the UK's National Health Service databases without their express consent
- introducing fees for data subject access requests
- reducing or removing the protections against automated decision-making

[9] Findings of a legal opinion by Professor Federico Ortino that were referenced by DAG members at the 2nd EU DAG meeting on 4 February 2022. See full report published at https://www.tuc.org.uk/research-analysis/reports/protecting-workers-rights-using-eu-uk-trade-and-cooperation-agreement .

The Data Protection and Digital Information Bill 2022-23 was introduced in July 2022 but it is currently stalled to give ministers more time to consider the bill and introduce further changes.***Review of retained EU law***

Following a number of announcements of the UK government over the course of 2021/2022 on planning a review of EU retained law[10], the Retained EU Law (Revocation and Reform) Bill was introduced in September 2022, and includes a sunset clause: after 31 December 2023 all EU derived laws will cease to apply unless replaced (though such deadline can be extended to 2026).

The UK government has provided no assurance that EU-derived rules will eventually be replaced by UK-specific laws. Both business and trade unions have jointly called for the bill to be scrapped as it would create legal chaos, threaten to remove fundamental rights and undermine the government's commitments under the TCA.[11]

The scope of the Bill includes Northern Ireland and risks being at odds also with commitments undertaken by the UK government in the framework of the Northern Ireland Protocol to the Withdrawal Agreement.[12]

Strikes (Minimum Service Levels) Bill

In January 2023, the UK government also published the Strikes (Minimum Service Levels) Bill that would require that in the event of industrial action, a 'minimum service level' would have to be maintained in fire, ambulance, transport, health services, education, nuclear decommissioning and border security. This would further restrict the ability of trade unions to strike without negotiations, compensatory measures, or an independent arbitrator as set out in International Labour Organisation (ILO) jurisprudence.

Thus, if it becomes law, the bill would undermine UK government commitments under the TCA to uphold fundamental ILO conventions, including that on freedom of association.

2. Failure to effectively enforce domestic labour law

In a range of ways, the UK government is failing to adequately enforce employment law in the UK, which the TCA commits it to do under Chapter 6, Article 388.

Labour inspectors

The UK does not have adequate numbers of labour inspectors to enforce minimum wage, health and safety, and licensing standards in exploitative sectors, and agency worker legalisation. Analysis of labour market enforcement statistics shows that the UK would

[10] "Brexit opportunities: review of retained EU law", see https://questions-statements.parliament.uk/written-statements/detail/2021-12-09/hlws445

[11] Financial Times, Letter to the editor, 23 November 2022 https://www.ft.com/content/b894b195-6adc-48eb-80c3-efe7f818d452

[12] The Protocol contains a commitment to "no diminution of rights, safeguards and equality of opportunity" (article 2, Rights of Individuals).

need an additional 1 797 labour market inspectors to meet the ILO benchmark of one labour market inspector per 10 000 workers.[13]

A 2020 study of employment tribunal records by the Resolution Foundation think-tank found that since 2017 only one of the 141 firms found to have underpaid the minimum wage was subject to a financial penalty in addition to repaying the arrears owed.[14] The UK's HM Revenue & Customs does typically levy fines on employers who underpay workers, but in the fiscal year 2017/18 the average violation only incurred a penalty worth 90 per cent of the arrears owed. This is not a strong disincentive given the low chances of employers getting caught. There have been fewer than 20 criminal prosecutions for underpaying the minimum wage since 2007.

There are approximately 40 000 employment agencies operating in the UK yet there are only nineteen inspectors in the Employment Agency Standards Inspectorate to regulate the agency sector.[15]

The UK government's own research shows it is failing to enforce legislation around minimum wages and health and safety for workers on its Seasonal Worker pilot scheme. Its Home Office survey of workers on the scheme found[16]:

- 16 per cent of workers were not paid their wages in full;
- almost half of the workers had not received their employment contract in their native language;
- workers at four sites said their employers had not provided health and safety equipment as they are legally required to do;
- 15 per cent said their accommodation was neither safe, comfortable, hygienic nor warm, and 10 per cent said their accommodation had no bathroom, no running water, and no kitchen;
- 22 per cent of respondents said they were not treated fairly by firm managers. Workers reported racism, discrimination, or mistreatment by managers allegedly on grounds of workers' nationality by being subject to disrespectful language or passed over for better work or accommodation.

Enforcement

In March, the dismissal of 800 UK-based seafarers at P&O Ferries and their replacement with foreign agency workers who were paid less than the UK minimum wage revealed shortcomings in the UK's enforcement of retained EU law concerning collective redundancies. This applies where an employer proposes 20 or more redundancies, within a period of 90 days or less, at one establishment. When an employer proposes making collective redundancies

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[13] Published figures in the May 2021 report of the TUC on the reform of labour market enforcement, see in detail https://www.tuc.org.uk/research-analysis/reports/tuc-action-plan-reform-labour-market-enforcement

[14] https://www.resolutionfoundation.org/app/uploads/2020/01/Under-the-wage-floor.pdf

[15] See footnote 6, in particular reference there in footnote 5

[16] https://www.gov.uk/government/publications/seasonal-workers-pilot-review/seasonal-workers-pilot-review-2019

affecting more than 100 employees, the employer must consult with trade unions or elected worker representatives in good time and at the very least 45 days before the first dismissal takes effect. P&O Ferries has admitted that it breached the law in deciding not to fulfil its duties in this regard.[17] The low and predictable level of the protective award that might be given to affected workers meant it could instead budget to offer affected workers the equivalent of the protective award – without consulting with trade unions or elected worker representatives. On 20 August, it was announced[18] that P&O will not be criminally charged for the breach of law, meaning the UK government is not enforcing its own protective labour legislation.

20. ANIMAL WELFARE

1. Animal welfare

The TCA (in the SPS chapter) recognises animals as sentient beings and, for the first time in a trade agreement, the link between improved animal welfare and the sustainability of food production systems.

This is important to ensure animal welfare is not traded off when looking at solutions to improve our food production systems. Yet, the section on animal welfare, whilst welcomed, could have been stronger.

There is no concrete commitment to upward regulatory alignment nor any explicit mention of the setting up of a standing Working Group on animal welfare to structure cooperation between the partners and set out priority areas for the EU and UK to work on collaboratively in forums such as the Office International des Epizooties (OIE).

The TCA ensures tariff-free and quota-free trade in animal products that comply with the rules of origin. This ensures exchanges between the EU and the UK can continue at a similar level and that the EU does not have to turn to cheaper sources other than the UK where animal products are most often produced to lower standards.

However, animal welfare is not part of the provisions on Level Playing Field and the TCA does not contain any concrete commitments on the matter, not even a simple non-regression provision.

Should the UK diverge from EU standards – which is likely given the discussions in the UK about gene editing in farm animals, which would affect welfare as well – or should the EU improve significantly its standards – as planned in the EU's F2F strategy and with the ongoing revision of its animal welfare legislation – the TCA would lack the tools to prevent UK products produced with lower standards from entering the EU market at a preferential rate.

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[17] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1062461/Letter_from_PO_Ferries_to_Business_Secretary_Kwasi_Kwarteng_22_March_2022.pdf

[18] https://www.bbc.com/news/uk-62613625

21. CONSUMERS' RIGHTS

1. Cooperation between EU and UK regulators

Consumer organisations of the BEUC network see value in EU regulators cooperating with their counterparts in third countries. The TCA encourages cooperation on a range of topics: antimicrobial resistance, animal welfare, sustainable food production, competition policy, cybersecurity, health, and financial services. At the same time, cooperation on consumer rights enforcement is absent from this list, yet – in the BEUC's view – important.

2. Mobile roaming costs

The EU's external policy – whether in terms of trade or regulatory cooperation – should deliver for consumers. While trade deals cannot and should not make decisions on regulatory affairs, they can encourage the political will for more cooperation.

One practical example through which this can be done is, for instance, to reduce mobile roaming fees. Although some telecoms providers have not re-introduced such fees after the UK's exit from the EU, some have (or might in the future).

22. EU PROGRAMMES

Participation in EU programmes is part of the TCA, and it was agreed already there that the UK would have associated country status for a number of programmes, most importantly (in terms of budget and people involved) the Horizon Europe programme.

There were still final details to solve, but both sides explicitly saw them as unproblematic. The European Commission went as far as explicitly telling EU researchers to form consortia with UK partners before the association agreement with the UK was signed, as it was as good as certain that association would happen quickly.

However, in parallel with the disagreements regarding the Northern Ireland Protocol the process towards association of the UK to EU programmes stalled (without a formal explanation being given). In practice, the Specialised Committee on Participation in Union Programmes only met in late December 2021 without publishing a statement.

23. FISHERIES

1. Fisheries (non-customs issues)

EU-UK fisheries: certain progress in 2021, but overfishing persists.

On 21 December 2021, the EU and the UK reached an agreement on 2022 fishing limits, known as Total Allowable Catches (TACs), for shared fish populations in the Atlantic Ocean and the North Sea. The agreement covers 65 jointly managed fish populations and provisions for the exploitation of non-quota stocks as well.

The DAG member organisation Oceana welcomed this agreement on catch limits for 2022 and the continued commitment of the EU and the UK to cooperate on fisheries management despite other related disputes, such as the Jersey conflict on fishing licences. This agreement provides stability for the respective fleets during 2022.

However, the agreed ambition expressed in the TCA was that of following scientific advice and allowing the recovery of shared fish populations. This is lacking in the current agreement as certain fish populations, like West of Scotland herring, Irish Sea whiting or Celtic Sea cod, will continue to be overexploited in 2022.

A UK fisheries audit released by DAG member organisation Oceana in 2021 shows that only around 43% of fish stocks shared between the UK and the EU are known to be exploited at sustainable levels, whereas the rest of the stocks are either overfished or their exploitation status is unknown.

Negotiations on 2023 catch limits are expected to start in November and finish by 20th December 2022.

24. OVERARCHING AND GENERAL ISSUES

In addition to the sectorial and specific issues presented above, the EU DAG listed a number of overarching and general issues to be followed throughout the DAG work and activities.

25. INSTITUTIONAL FRAMEWORK AND ENFORCEMENT

26. UK TRADE WITH THE REST OF THE WORLD

Including the impact of the UK trade negotiating agenda on the EU-UK trade relation, on the implementation of the TCA and on EU trade relations with other third countries.

27. NORTHERN IRELAND PROTOCOL

With focus on monitoring the implications for Ireland and Northern Ireland and the link to the Protocol on Ireland and Northern Ireland.

TRADE

With focus on the Level playing field and on Trade in goods, including rule of origin, technical barriers, customs & trade facilitation.

28. DIGITAL

Inquiry into UK-EU governance – Written evidence submitted by Cillian Lohan, Chair of the EU-UK Follow-up Committee

Introduction

The **European Economic and Social Committee (EESC)**[1] contributes to strengthening the democratic legitimacy and effectiveness of the European Union by enabling civil society organisations from the Member States to express their views at European level.

This EESC fulfils three key missions:

- helping to ensure that European policies and legislation tie in better with economic, social and civic circumstances on the ground, by assisting the European Parliament, Council and European Commission, making use of EESC members' experience and representativeness, dialogue and efforts to secure consensus serving the general interest;
- promoting the development of a more participatory European Union, which is more in touch with popular opinion, by acting as an institutional forum representing, informing, expressing the views of and securing dialogue with organised civil society;
- promoting the values on which European integration is founded and advancing, in Europe and across the world, the cause of democracy and participatory democracy, as well as the role of civil society organisations.

Committed to its monitoring role and acting as a bridge with UK civil society, in 2021 the EESC decided to set up the **EU-UK Follow-up Committee**[2] to continue maintaining and fostering relations with UK civil society. The overarching objectives of the EU-UK Follow-up Committee are as follows:

- building and fostering strong relations with key actors of the EU-UK relations, most importantly re-building bridges with UK civil society organisations, using outreach and strong communication;
- liaising with the main EU institutions (European Commission, European Parliament, Council, European External Action Service) as well as with UK institutional actors (UK Mission in Brussels, UK Houses of Parliament, devolved nations);
- monitoring the implementation of the most relevant EU-UK agreements, notably the EU-UK Withdrawal Agreement and the Protocol on Ireland and Northern Ireland/Windsor Framework;

[1] https://www.eesc.europa.eu/en/about

[2] https://www.eesc.europa.eu/en/sections-other-bodies/other/eu-uk-follow-committee

- monitoring other agreements and potential areas of cooperation;
- monitoring any element of the new EU-UK relationship with particular importance for civil society;
- centralizing EESC feedback on relevant EU-UK issues.

Evidence

At its plenary session on 24-25 January 2023 the EESC adopted the Information Report on the implementation of the EU-UK Withdrawal Agreement, including the Protocol on Ireland and Northern Ireland[3]. Given that the EU-UK Follow-up Committee can submit evidence only in the form of documents officially adopted by the EESC plenary session, its Chair and Vice-Chairs wish to hereby refer the Senedd's Legislation, Justice and Constitution Committee to the aforementioned Information Report (please find the relevant link in a footnote, and also attached), to the extent the relevant questions are covered in it, for the evidence requested. In line with the EESC's role, the evidence provided focuses primarily on the role of organised civil society in managing EU-UK relations. Please note that some questions by the Senedd's Legislation, Justice and Constitution Committee, may be covered by the evidence submitted by the Chair of the EU Domestic Advisory Group under the EU-UK Trade and Cooperation Agreement in a separate reply.

Furthermore, Mr Cillian Lohan, Chair of the EU-UK Follow-up Committee, and Ms Tanja Buzek, Chair of the EU DAG under TCA, are scheduled to meet the relevant Senedd representatives on 5 September 2023 from 13:30 to 14:30 in Wales House, Brussels, when they can orally complement the written replies by the EU-UK Follow-up Committee and EU DAG under TCA.

Finally, Mr Cillian Lohan wishes to draw attention to the upcoming EESC own-initiative opinion on EU-UK Youth Engagement, which is in course of approval by the EESC Bureau, after which the EU-UK Follow-up Committee will start its elaboration. The work on this own-initiative opinion will likely include a fact-finding mission to the four parts of the UK (to be confirmed), where Mr Cillian Lohan and the members of the EU-UK Follow-up Committee are very much looking forward to also engaging with relevant stakeholders in Cardiff.

Yours sincerely,
Cillian Lohan
Chair of the EU-UK Follow-up Committee

3 https://www.eesc.europa.eu/en/our-work/opinions-information-reports/information-reports/implementation-eu-uk-withdrawal-agreement-including-protocol-ireland-and-northern-ireland

European Economic and Social Committee

INFORMATION REPORT

European Economic and Social Committee

The Implementation of the EU-UK Withdrawal Agreement

The Implementation of the EU-UK Withdrawal Agreement, including the Protocol on Ireland and Northern Ireland

REX/563

Rapporteur: **Jack O'CONNOR**

www.eesc.europa.eu

EN

Legal basis	Rule 52(3) of the Rules of Procedure
Section responsible	Section for External Relations
Adopted in section	20/12/2022
Adopted at plenary	25/01/2023
Plenary session No	575
Outcome of vote (for/against/abstentions)	184/0/0

1. Background

1.1 The EU-UK Follow-up Committee was set up in March 2021 for the purpose of maintaining and strengthening relations between EU and UK civil society organisations (CSOs), as well as for monitoring the EU-UK Withdrawal Agreement[1] (EU-UK WA).

1.2 The EU-UK WA has significantly affected CSOs in both the EU and the UK, which makes its monitoring all the more important. In addition to its economic implications, challenges regarding the implementation of the Protocol on Ireland/Northern Ireland[2] (Protocol) have been particularly complex and politically sensitive.

1.3 Against this backdrop, the European Economic and Social Committee (EESC) organised a mission to the UK (England, Wales, Scotland, Northern Ireland) from 17 to 21 October 2022 to collect the views of UK CSOs on concerns arising from the EU-UK WA and from other developments in the UK following its withdrawal from the EU.

1.4 Based on fact-finding meetings, a targeted survey, and other relevant inputs, this information report examines the state of implementation of the EU-UK Withdrawal Agreement, as perceived by UK CSOs and other relevant stakeholders.

1.5 The purpose of the information report is to contribute to the political dialogue between the EU and the UK by providing reflections from CSOs and other stakeholders on their future relationship.

2. General observations

2.1 The relationship between the EU and the UK is of vital importance for the citizens of both the UK and the EU. Despite its limitations, implementation of the "zero tariff, zero quota" EU-UK Trade and Cooperation Agreement[3] (TCA) and the EU-UK WA still offers the best available avenue to a mutually beneficial, prosperous, and secure future for both the UK and the EU. However, this very much depends on developing a deeply constructive and cooperative EU-UK relationship, built on the secure foundations of the TCA and EU-UK WA and especially the former's level-playing field (LPF) provisions. It is widely believed that such a relationship would enhance the chances of resolving technical issues and that, accordingly, the Parties should invest their best and continued efforts in cultivating it.

2.2 At the moment, the EU-UK relationship is heavily burdened by the impasse over implementation of the Protocol on Ireland/Northern Ireland. Despite the fact the UK Government agreed the text of the Protocol and the UK Parliament ratified the Withdrawal Agreement to which the Protocol is annexed, the UK Government is insisting on "concessions" from the EU on the terms of the Protocol. Given the extreme gravity of the situation, it is

1 https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement_en

2 https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement/protocol-ireland-and-northern-ireland_en

3 https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement_en

imperative to find a sustainable solution. The stakes could hardly be any higher, as the impasse has the potential to have significant consequences for the TCA, and also threatens to reverse the gains made in the Northern Ireland peace process under the 1998 Belfast (Good Friday) Agreement. Conversely, a mutually agreed resolution of issues could be key to opening the way towards a constructive and mutually beneficial wider EU-UK relationship, optimising the potential that lies in the TCA. As evident in the inclusive approach observed in Wales and Scotland, such a course of action is entirely possible.

2.3 Enthusiasm for engagement and cooperation with the EU, its institutions and CSOs was expressed unanimously across the broadest spectrum of CSOs in each mission location. Given their welcoming and welcome disposition, it is vitally important for all EU institutions to reach out and explore every opportunity for optimising the potential for rebuilding relationships with CSOs in the UK, and conceiving and fostering new ones. However, unless civil society links are nurtured and sustained through formal structures, they will wither away.

2.4 While the domestic advisory groups (DAGs) and the civil society forum (CSF) are enshrined in the TCA as statutory mechanisms for CSOs to give their input and monitor its implementation, they need to be fleshed out, developed and supported. It is noteworthy that the DAGs set up under the TCA are the first to monitor an entire trade agreement as distinct from only the trade and sustainable development (TSD) chapters.

2.5 The proposals for a formal structure to facilitate participation by organised civil society in Northern Ireland, submitted following discussions involving business, trade unions and the third sector, would provide for the consultation and participation that is essential in the unique circumstances applying in Northern Ireland under the Protocol[4].

2.6 A new Civil Society Alliance UK to scrutinise and influence constitutional, administrative and legal changes was established in the UK following its withdrawal from the EU. The Alliance, along with the social partners, has the potential to be a vehicle for broadening the outreach of the UK DAG and the CSF to wider civil society, as well as for facilitating DAG/CSF engagement. It therefore deserves to be supported and resourced.

2.7 A UK Contact Group[5] has been established by the Committee of the Regions. The CoR's call for the recognition of local and regional authorities in the institutional framework in its opinion adopted on 28 April 2022[6] highlights an issue to be addressed in the 2025 review of the TCA. There is potential for working with the CoR to develop deeper linkages with CSOs in the UK.

2.8 The loss of free EU movement and people-to-people contacts arising from the UK's decision not to remain in EU programmes such as Erasmus+ are two of the most negative and undesirable consequences of Brexit. It is clearly regretted by young people in the UK and their peers across the EU. It is important for the EU and UK to find a way to reopen the opportunity for young UK

4 https://drive.google.com/file/d/1f7Q10W8T6zAO8I_2zZPIsoKPuM9ZdnEV/.

5 https://cor.europa.eu/en/about/Pages/cor-uk.aspx

6 https://cor.europa.eu/en/our-work/Pages/OpinionTimeline.aspx?opId=CDR-108-2022

citizens to participate in Erasmus+ and other youth programmes. At its meeting in London on 7-8 November 2022, the UK-EU Parliamentary Partnership Assembly unanimously agreed to raise the issue of a future mobility scheme for young people between the UK and the EU with the EU-UK Partnership Council. Regrettably, young people are not represented in either the EU or the UK DAGs. This requires rectification. The 2023 European Year of Skills[7] could also offer opportunities to involve young people from the UK, in addition to young people from the EU.

2.9 Progress has been made towards addressing concerns over the implementation of the provision of the EU-UK WA protecting the rights of citizens. However, many problems persist. These are causing considerable distress and inconvenience and could have dire consequences in the future[8]. Liberal democracies should not allow individual citizens and their families to become collateral damage of their political differences. In view of this, the EU and the UK, through the EU-UK Joint and Specialised Committees under the Withdrawal Agreement[9], should make it an urgent priority to resolve the issue of pre-settled status of EU citizens in the UK. Additional resources need to be made available to address ongoing technical issues, taking into account that this is a time-limited problem. In addition, "British in Europe", the largest organisation for UK citizens in the EU, should be provided with the necessary financial resources to revive and sustain its important work.

2.10 Business in the UK and the EU continues to experience increasing friction in the new EU-UK trade arrangements. This is particularly problematic for businesses operating with cross-border supply chains, which particularly affects small operators. Severe problems are also being experienced by providers of professional services and by performing artists. Farmers are worried about SPS border checks being introduced and increasing regulatory divergence between the UK and the EU. Trade in some products, like seed potatoes, has already become almost impossible. Labour shortages are acute in a number of sectors. These problems are primarily the result of the abrupt transition of the UK to third-country status and the limited provisions facilitating movement contained in the TCA. The general joint review of the implementation of the TCA and supplementing agreements, envisaged to take place five years after the TCA's entry into force, should be an opportunity to move towards a more positive and constructive "partnership", possibly leading to some amelioration of these problems. The situation facing business is further complicated by uncertainties surrounding future regulatory divergence between the UK and the EU both generally and in the specific context of LPF commitments. These issues cannot be made to disappear, but they can be managed. In this regard, there is considerable merit in the concept of an EU-UK regulatory monitoring mechanism or forum[10].

2.11 It would be enormously beneficial to the fishers on both sides if the EU and UK would reach a consensus, before 10 December of each year, on the Total Allowable Catches (TACs) for the

7 https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=10431&furtherNews=yes

8 https://www.theguardian.com/politics/2022/nov/01/home-office-is-putting-26m-eu-citizens-at-risk-of-removal-court-hears

9 https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement/meetings-eu-uk-joint-and-specialised-committees-under-withdrawal-agreement_en#meetingsofthejointcommittee

10 https://ukandeu.ac.uk/research-papers/uk-eu-regulatory-divergence-tracker-fifth-edition/

following year for the shared stocks, as it would guarantee stability and legal certainty. It would also be equally beneficial if both parties could reach agreement with Norway and other coastal states as soon as possible.

3. Relations between EU and UK civil society

3.1 The absence of any structured social dialogue in the UK exacerbates the challenge of ensuring effective civil society involvement in policy-making, (e.g. the UK does not have an economic and social council as is commonly found in EU Member States). On the other hand, there is a strong culture of devolved government engagement with CSOs, particularly in Wales and also in Scotland.

3.2 Throughout the EESC's mission meetings, UK CSOs expressed no desire to revisit the divisive debate which accompanied the 2016 referendum. At the same time, they are unanimously and enthusiastically in favour of reviving, renewing, maintaining or strengthening their cooperation with the EU, its institutions and organised civil society. This appears to coincide with the outlook of the wider UK population as reflected in polling, as reported in *Moving On: How the British Public Views Brexit and What It Wants From the Future Relationship With the European Union*[11], published by the Tony Blair Institute for Global Change.

3.3 The uncertainties and the insufficient consultation on the UK Shared Prosperity Fund (UKSPF) replacing the European Structural and Investment Funds are a cause for concern for UK CSOs, many of which are now facing a cliff edge as EU funding is ending while the delivery of the UKSPF is delayed. CSOs expect to have a far weaker role in the delivery and governance of these funds compared to arrangements with EU funding. They also expect the quantum of funding to be lower, which will further reduce the capacity to maintain and build relations, as will the loss of funding associated with the UK's non-participation in other EU programmes.

3.4 Given the higher workload involved in monitoring the entire TCA rather than just its TSD chapters, the EU and UK DAGs and the related CSF need to be better resourced. The fact that the UK government, in particular, does not provide the members of the UK DAG with the necessary human and financial resources presents an additional obstacle to the operation and development of links between EU and UK CSOs. The allocation of sufficient administrative support for the UK DAG and the reimbursement of costs incurred by its members attending meetings of the UK DAG and CSF would greatly contribute to the work of identifying problematic issues on the ground and reporting them to the relevant UK, and if appropriate, EU authorities, in order to facilitate their resolution.

3.5 In addition, UK CSOs expressed the view that the composition of the UK DAG appears to be imbalanced both in terms of proportionate representation of employers, workers, and the third sector, and in terms of proportionate geographical representation (CSOs from Northern Ireland, Scotland, and Wales said that they do not feel sufficiently represented).

11 https://institute.global/policy/moving-how-british-public-views-brexit-and-what-it-wants-future-relationship-european-union

4. Protocol on Ireland/Northern Ireland

4.1 The key issue impacting the EU-UK relationship is the impasse over the Protocol. The latter reflects the shared desire of the EU and the UK to protect the gains of the peace process in the island of Ireland as enshrined in the 1998 GFA. In order to avoid a hard border on the island of Ireland, the UK and the EU agreed that Northern Ireland would have unique access to the EU single market for goods, and certain EU laws would continue to apply there. With the UK excluding an EU-UK customs union arrangement and regulatory alignment, the nature of the TCA has meant that certain formalities, checks and controls are formally required on movements of goods from Great Britain into Northern Ireland. This creates new post-Brexit requirements for business, and people in Northern Ireland have expressed concern about certain practical consequences of the application of the Protocol. Some, notably in the unionist community (which supports Northern Ireland remaining part of the UK), have also voiced opposition to the Protocol relating to Northern Ireland's position in the UK and its internal market.

4.2 Although Northern Ireland's unique status under the Protocol – with unhindered access to both the EU internal market and the UK market – does attract majority support among voters in Northern Ireland, there are sizeable levels of opposition. Businesses engaged in cross-border trade on the island of Ireland and with the wider EU welcome the Protocol; those that rely on supplies from Great Britain are facing increased formalities and uncertainties from the rules that the Protocol imposes on GB-NI movements, and this is in a context where the Protocol is not being fully implemented. These and other issues of concern to stakeholders were highlighted by the House of Lords in the July 2022 Report from the Sub-Committee on the Protocol on Ireland/Northern Ireland[12].

4.3 Some limited progress has been made in addressing some issues, such as the EU amending its law to find a comprehensive solution to ensure the supply of medicines in Northern Ireland. The EU tabled proposals to address issues in "non-papers" in October 2021, two of which were updated in July 2022. Nonetheless, issues remain unresolved, and the UK Government is proceeding with its Northern Ireland Protocol Bill[13], which, involving the possibility of core elements of the Protocol being unilaterally disapplied by the UK, at the very least is a route into uncharted waters.

4.4 Business and civil society representatives in Northern Ireland have been engaging on an ad-hoc basis and informally with the European Commission and the UK Government to raise issues of concern and offer possible solutions. Such engagement has proven extremely valuable for the EU in understanding the practical implications of the Protocol. It also has potential for assuaging concerns identified by civil society players. The Commission has produced draft proposals for a more formal and regularised structure[14], and a more detailed proposal has been

12 https://committees.parliament.uk/committee/520/protocol-on-irelandnorthern-ireland-subcommittee/publications/

13 https://bills.parliament.uk/bills/3182

14 https://commission.europa.eu/system/files/2021-10/attachment_iv_ni_participation_non-paper.pdf

submitted by CSOs in response. A Civic Forum was actually established following the 1998 Agreement, but it only operated during 2000-2002.

4.5 The UK has also made an important commitment in Article 2(2) of the Protocol to continue to facilitate the work of the Human Rights Commission and the Equality Commission, established under the 1998 Agreement. However, since the rights protections provided for in the Protocol came into effect, the UK Government has proceeded with various legislative undertakings, including the Elections Act and the Nationality and Borders Act, which the Dedicated Mechanism (the Northern Ireland Human Rights Commission and Equality Commission for Northern Ireland) tasked with monitoring Article 2 compliance has identified as potentially breaching this commitment. Moreover, concerns exist regarding the re-accreditation of the NIHRC as a member of the UN Global Alliance of National Human Rights Institutions (GANHRI). The UN Sub-Committee on Accreditation in October 2021 deferred re-accreditation owing to concerns regarding adequate UK government funding for and the financial autonomy of the NIHRC and thus whether it can discharge its core statutory functions[15]. An independent review of the NIHRC has been taking place and it is envisaged that the NIHRC's application for re-accreditation will be given further consideration by the UN Sub-Committee on Accreditation in March 2023[16].

5. UK Government's legislative agenda

5.1 UK CSOs express deep concerns regarding the UK Government's legislative agenda. In addition to the Northern Ireland Protocol Bill, their concerns apply to the Retained EU Law (Revocation and Reform) Bill[17], which would place a "sunset" on retained EU law, which extends to at least 3 800 measures. It would cause almost all of them to expire at the end of 2023, unless they are specifically re-enacted or extended to 23 June 2026. UK CSOs are particularly concerned by the ambiguity, uncertainty and legal void that could emerge by default, entailing detrimental implications for the conduct of business, workers' rights, environmental protections, and fundamental human rights[18].

5.2 UK CSOs are also deeply concerned about the potential implications of the Bill of Rights Bill[19]. It aims to repeal and replace the Human Rights Act 1998[20]. A key driver of this bill is the fact that the Human Rights Act 1998 gives effect to the rights and freedoms enshrined in the European Convention of Human Rights[21].

15 https://www.ohchr.org/sites/default/files/2021-12/SCA-Report-October-2021_E.pdf

16 https://ganhri.org/wp-content/uploads/2022/11/SCA-Adopted-Report-October-2022-EN.pdf

17 https://commonslibrary.parliament.uk/research-briefings/cbp-9638/

18 https://publications.parliament.uk/pa/cm5803/cmpublic/RetainedEULawRevocationReform/memo/REULB10.htm

19 https://bills.parliament.uk/bills/3227

20 https://www.legislation.gov.uk/ukpga/1998/42/contents

21 https://www.echr.coe.int/documents/convention_eng.pdf

6. Devolution

6.1 The United Kingdom has been going through a process of devolution over the last 25 years. The devolved governments in Scotland and Wales strongly favour a more constructive, cooperative, and friendlier relationship with the EU than that which has been pursued by the UK Government. Both are also in favour of strong arrangements for dialogue with CSOs at all levels. The Northern Ireland Executive is not functioning at present due to a refusal on the part of the largest unionist party, the Democratic Unionist Party, to enter a new Executive until their concerns regarding the Protocol are addressed.

7. Rights of EU citizens in the UK

7.1 "Settlement" applications by non-Irish EU citizens are processed through the EU Settlement Scheme (EUSS). Nearly 6.9 million applications have been received[22], which equals roughly 10% of the UK population. Irish nationals do not need to apply for such status given the UK-Ireland Common Travel Area that predates ECC entry in 1973.

7.2 In the past, the EU highlighted its concerns as regards the compatibility with the Withdrawal Agreement of the UK's EU Settlement Scheme in that it did not make a clear distinction between the beneficiaries of the WA, (the so-called "true cohort") and non-beneficiaries who are granted status under domestic UK immigration law (the so-called "extra cohort")[23].

7.3 Progress has been made but serious problems persist. The position of the pre-settled category is particularly worrisome. Under the UK government's interpretation of the WA, the status of each individual expires after five years if they fail to apply for "settled" status. This raises the possibility of around 2.6 million EU citizens "falling off a cliff edge". The situation might get worse if for any reason people omit to register dependents, e.g. their children. The Independent Monitoring Authority[24] (IMA) has challenged the government's interpretation and the issue is currently pending adjudication in the courts.

7.4 Most EU citizens currently have a digital-only immigration status and can only prove their right to work/rent via a UK Government web portal[25]. Failure to comply with deadlines can result in the loss of their rights. The procedure for applying for digital status is so complex that even technically savvy people have problems with it, while others are in an even worse position. While it is difficult to assess the full scale of this issue, it is clear that vulnerable groups could be substantially affected by the requirement to acquire digital-only status. Also, the pace of processing is slower than desirable due to limited staff capacity in the Home Office, which is still receiving around 50 000 applications per month.

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22 https://www.gov.uk/government/statistics/eu-settlement-scheme-quarterly-statistics-september-2022/eu-settlement-scheme-quarterly-statistics-september-2022

23 https://ec.europa.eu/info/publications/joint-statement-following-meeting-specialised-committee-citizens-rights_en

24 https://ima-citizensrights.org.uk/

25 https://apply-to-visit-or-stay-in-the-uk.homeoffice.gov.uk/euss?_ga=2.248672199.170194755.1668509959-1954951806.1664869487

7.5 The exercise of EU citizens' rights in the UK still suffers from delays, backlogs, problems with digital-only status, data inadequacies, software glitches, and limited accessibility of helplines, all of which have aggravated the situation. Additionally, there are examples of serious problems being encountered by EU citizens while travelling abroad and returning home, and other issues.

7.6 The EU Delegation to the UK, with the support of and in close cooperation with the European External Action Service, the European Commission and Member States' embassies, has been very actively supporting and assisting EU citizens in the UK in exercising their rights arising from the EU-UK WA. In addition, through its service contract and grants to support *Building a new relationship with the United Kingdom – Policy support and public diplomacy*, the European Commission's Service for Foreign Policy Instruments (FPI) is playing an important part in fostering links between the EU and UK CSOs.

8. Rights of UK citizens in the EU

8.1 There are around 1.24 million UK citizens living in the EU[26], mainly in Spain, Ireland, France, Germany and Italy.

8.2 A key issue is the general lack of financial and human resources support for organisations looking after the rights of UK citizens in the EU, compared to their counterparts, which provide assistance for EU citizens in the UK.

8.3 EU Member States operate either declaratory residence schemes or constitutive residence schemes[27]. The deadlines have now all passed in EU countries that operate constitutive residence schemes. In countries such as Denmark and Sweden, anecdotally there appear to be high rates of refusal on late applications, while others, such as the Netherlands, are taking a more generous approach.

8.4 In EU Member States that operate declaratory residence schemes, e.g. Portugal, delays have been experienced in introducing WA-compliant documents. Residence documents for EU citizens have an expiry date there, leaving the UK citizens affected encountering problems. These range from being detained at Schengen frontiers to complications in their daily lives with entities that demand valid proof of residence. This can affect access to healthcare, other social provisions and employment contracts and compound issues of "misunderstanding" the status of UK citizens generally. The authorities there have taken steps to improve things, including the enactment of legislation. New documents are now being issued. However, there are reports of difficulties in securing appointments, and errors in the issued biometric cards. These can have a direct impact later on, for instance, regarding the ultimate conversion from temporary to permanent status.

8.5 Issues in other declaratory Member States, such as Italy, Spain and Germany, centre on inadequate communication from and across the relevant authorities, resulting in an uneven and inconsistent application of procedures. These can result in issues in transiting borders, as well as

26 https://www.statista.com/statistics/1059795/uk-expats-in-europe/

27 https://commission.europa.eu/system/files/2022-10/q-a-uk-citizens-declaratory-countries_en_0.pdf

the non-acceptance of employment contracts, medical appointments, etc. Delays in securing appointments continue and there are particular issues related to securing medical cards and converting temporary to permanent status in Italy.

8.6 There are additional issues around family reunification and the status of frontier workers, plus the combination of statuses, and increasingly, when it comes to securing permanent residence status as those UK citizens with temporary residence pass the point of five years' residence in their host state.

9. Outlook for EU/UK civil society relations

9.1 The findings of the EESC's mission clearly demonstrate an overwhelming desire across UK CSOs for a deeper, more cooperative, constructive relationship between the UK and the EU, which would optimise the potential of the WA and TCA.

Brussels, 25 January 2023

Christa Schweng
The president of the European Economic and Social Committee

APPENDIX

TECHNICAL REPORT
ON THE IMPLEMENTATION OF THE EU-UK WITHDRAWAL AGREEMENT, INCLUDING THE PROTOCOL ON IRELAND AND NORTHERN IRELAND

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1. Introduction

The European Economic and Social Committee (EESC) has drawn up an Information Report on the Implementation of the EU-UK Withdrawal Agreement (EU-UK WA), including the Protocol on Ireland and Northern Ireland (Protocol). The information report presents the views of representatives of civil society organisations (CSOs) and other stakeholders collected in the four parts of the UK (England, Wales, Scotland, Northern Ireland), as well as using other sources. It is accompanied by this technical report.

UK CSOs and other stakeholders were invited to present their views on the state of relations between EU and UK civil society, the state of implementation of the EU-UK WA, citizens' rights under the EU-UK WA, and the implementation of the Protocol. This technical report summarises the input received from the fact-finding meetings in the UK, replies to the online survey, and other relevant submissions.

The overarching objective of the information report and its technical report is to facilitate and encourage interaction between EU and UK CSOs for the purpose of reinvigorating and strengthening their relations.

Furthermore, the information report, together with the technical report, aims to feed into the political dialogue between the EU and the UK and to promote a joint reflection on their future relationship. To this end, it will be shared with the European Commission, the European Parliament (EP), the European External Action Service (EEAS), the Council, and other relevant EU and UK stakeholders.

2. Background

The UK is a closely situated European neighbour, which shares the EU's fundamental liberal democratic values. A highly developed economy, it accounted for 13% of the population of the EU, and 15% of EU GDP (second only to Germany) upon its withdrawal from the EU. Its population is one of the youngest in Europe, ranked by reference to median age[1]. However, it is the only G7 country that has not fully recovered to pre-pandemic output levels[2]. The UK Office of Budget Responsibility has consistently estimated the economic cost of leaving the EU at 4% of output[3].

A majority **(51.89%)** voted to leave the EU in the UK referendum held on 23 June 2016[4]. Extensive polling analysis concluded that the propensity to vote "Leave" increased with age, (according to Statista**,** the three oldest age groups voted "Leave" while the three youngest voted "Remain"[5]).

The referendum did not pronounce on what "Brexit" should ensue. That remained to be decided by parliament.

1 https://www.worlddata.info/average-age.php

2 https://www.ft.com/content/4edae69b-c82d-49fb-ae5a-03d14ca8caa6

3 https://obr.uk/forecasts-in-depth/the-economy-forecast/brexit-analysis/#assumptions

4 https://www.statista.com/statistics/568701/brexit-results-by-nation/

5 https://www.statista.com/statistics/520954/brexit-votes-by-age/

The UK Conservative Party won a commanding majority in parliament in the 2019 general election, campaigning on a hard "Get Brexit Done" manifesto. General elections in the UK are conducted on an exclusively "first past the post" geographic constituency system of voting[6]. Notwithstanding the impressive result for the Conservatives, a majority **(52.1%)** of those voting actually opted for parties which had advocated a "Remain" position in the referendum.

The UK Government had opted to pursue a "hard Brexit", accompanied by a legislative agenda to that end, including:

- the Bill of Rights Bill[7], which would repeal and replace the Human Rights Act 1998. (It is currently paused);
- the Retained EU Law (Revocation and Reform) Bill[8], which is known as the "Brexit Freedoms Bill";
- the Northern Ireland Protocol Bill[9];
- the Procurement Bill[10];
- the Financial Services and Markets Bill[11];
- the Genetic Technology (Precision Breeding) Bill[12];
- the Data Protection and Digital Information Bill[13] (paused);
- the Trade (Australia and New Zealand) Bill[14].

Since 1998 the United Kingdom of Great Britain and Northern Ireland has been going through an evolving process of asymmetric devolution. Governments have been established in Scotland, Wales and Northern Ireland each with their own specific devolved powers and responsibilities.

Scotland voted decisively for "Remain", **(62%)**, with every Council Electoral Area returning a "remain" majority. In the constituency vote in the Scottish Parliament elections in 2021, **77.5%** supported parties that had advocated "Remain" in the referendum. The Scottish Government, which is promoting independence from the UK, strongly favours EU membership and close ties in the interim.

Although Wales voted "Leave" **(52.49%)**, a majority of voters **(57.8%)** voted for parties that had advocated "Remain" in the 2019 general election and again in the 2021 Senedd (Welsh Parliament) election **(66.6%)**. Whereas the Welsh Government accepts the referendum result, it strongly favours strong ties with Europe and a constructive, cooperative, friendly relationship.

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6 https://www.legislation.gov.uk/ukpga/2011/1/notes/division/3/3/2

7 https://bills.parliament.uk/bills/3227

8 https://bills.parliament.uk/bills/3340/publications

9 https://bills.parliament.uk/bills/3182

10 https://bills.parliament.uk/bills/3159

11 https://bills.parliament.uk/bills/3326

12 https://bills.parliament.uk/bills/3167

13 https://bills.parliament.uk/bills/3322

14 https://bills.parliament.uk/bills/3152

Northern Ireland voted "Remain" **(55.78%)**. In the 2019 general election, a large majority **(66.2%)** voted for parties that had advocated "Remain", and **62.8%** supported such parties in the Assembly elections in 2022.

Northern Ireland is in a different situation to Scotland and Wales. In accordance with the 1998 Belfast/Good Friday Agreement (GFA), certain decisions of the Northern Ireland Assembly require cross-community consent.

Northern Ireland is also different in the post-Brexit context owning to the specific arrangements found in the Protocol on Ireland/Northern Ireland attached to the EU-UK WA.

Moreover, almost all persons born in Northern Ireland, regardless of the UK's withdrawal from the EU, either remain EU citizens or are entitled to be EU citizens by virtue of Irish citizenship. This is provided for by the Irish Constitution and under Irish legislation, and is endorsed and recognised by the UK in the 1998 Agreement. In addition, part of the constitutional governance arrangements for Northern Ireland are based on a treaty with Ireland, an EU Member State. Such arrangements are set out in Strand II of the GFA[15] and the bilateral treaties establishing (North-South) cross-border bodies.

Additionally, the Protocol provides that a body of EU law continues to apply to Northern Ireland, including provisions on the single market for goods and the customs union, but also equality and non-discrimination provisions relating to the non-diminution of certain GFA rights (Article 2 of the Protocol). There is also the context of Northern Ireland sharing a land border with a Member State, and the context of Irish and other EU citizens resident in the border area who in practice have lived fluid, unhindered cross-border lives for decades.

The arrangements for the devolved legislatures are underpinned by the "Sewel Convention"[16]. Essentially, this provides that the UK parliament will "not normally" legislate on matters that are devolved without the agreement of the devolved institutions through a process of "legislative consent". However, the European Union (Withdrawal Agreement) Act 2020[17], was enacted even though all three devolved legislatures had (for the first time) withheld consent.

The absence of any structured social dialogue in the UK does not help to address the challenge facing effective civil society intervention; e.g. the UK does not have an economic and social council of the type common in EU Member States. The National Economic Development Council, established in 1962 (by a Conservative government), known as Neddy, was abolished in 1992.

15 https://www.dfa.ie/our-role-policies/northern-ireland/the-good-friday-agreement-and-today/

16 https://www.parliament.uk/site-information/glossary/sewel-convention/

17 https://bills.parliament.uk/bills/2517

However, there is a strong culture of engagement with CSOs in the devolved nations, particularly in Wales, and also in Scotland. For example, the Welsh Senedd has enacted the ground-breaking Wellbeing of Future Generations Act[18], and the Social Partnership and Public Procurement Bill[19] is in progress. The latter will provide social partnership with a statutory footing in Wales. The "Third Sector Scheme", underpinned by statute, provides for ministerial engagement with and the promotion of voluntary organisations.

3. Main findings

3.1 General

UK CSOs displayed no wish to revisit the divisive debate which accompanied the referendum. However, they are unanimously and eagerly in favour of renewing, maintaining or strengthening their relations with the EU, its institutions and organised civil society, while acknowledging and respecting the UK's decision to withdraw from the EU. This appears to accord with the outlook of the wider population as reflected in polling data, for example in *Moving on: How the British public views Brexit and what it wants from the future relationship with the European Union*[20], by the Tony Blair Institute for Global Change.

The devolved governments of Scotland and Wales both strongly favour a more constructive, cooperative, and friendly relationship with the EU than that which seems to have been pursued by the UK Government to date. Neither the Northern Ireland Assembly nor the Northern Ireland Executive is functioning at present due to the impasse over the Protocol.

Business continues to experience difficulties on the movement of goods. Serious problems are also being experienced by companies providing professional services into the EU and by performing artists. Farmers are worried about SPS border checks being introduced and increasing regulatory divergence between the UK and the EU. Trade in some products, like seed potatoes, has already become almost impossible. Labour shortages are acute in a number of sectors. The situation generally for trade is further complicated by uncertainty arising from possible future regulatory divergence.

There is a widespread view that a more cooperative political atmosphere and the cultivation of trust between the partners would facilitate the resolution of technical challenges, leading to smoother trade. Some concern was expressed that the UK Government seems to be more focused on concluding trade agreements with countries like China and Japan, while access to the nearest and biggest market is hindered.

"Make UK" and the Northern Ireland Brexit Business Group put forward an interesting proposal for setting up a "Regulatory Divergence Monitoring Mechanism".

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18 https://gov.wales/well-being-of-future-generations-wales

19 https://gov.wales/social-partnership-and-public-procurement-wales-bill

20 https://institute.global/policy/moving-how-british-public-views-brexit-and-what-it-wants-future-relationship-european-union

The Retained EU Law (Revocation and Reform) Bill (REUL), which would "sunset" almost all retained EU law by the end of 2023 with an option to extend the timeframe until June 2026, is causing angst across CSOs. It is now estimated that it will extend to more than 3 800 individual measures. CSOs are especially concerned by the ambiguity, uncertainty and legal void that could emerge by default, entailing detrimental implications for business, workers' rights, environmental protections and fundamental human rights.

Similarly, the Bill of Rights Bill has given rise to extreme concern. This bill would repeal and replace the Human Rights Act (HRA) 1998, which gives effect to the rights and freedoms in the European Convention on Human Rights (ECHR).

Concerns also exist regarding several other aspects of the UK Government's legislative agenda related to the EU-UK WA.

Indeed, some stakeholders, particularly among trade unionists, environmentalists and human rights activists, suspect that the so-called "Singapore Model"[21] is the underlying objective of the whole Brexit project.

3.2 Participation and engagement by organised civil society

The removal of EU funding and insufficient or non-existent UK funding has significantly weakened relations between UK and EU CSOs, as well as between UK CSOs and the UK Government. In contrast to this, the UK CSOs with which we engaged are unanimous in their desire to restore and strengthen their relations with EU CSOs, as well as generally with the EU. In this context, UK CSOs express their deep concern about the absence of any UK economic and social structure as a counterpart to EU civil society.

In parallel, some new structures have emerged that support formal, structured relationships after Brexit. One example of such structures is the CoR-UK Contact Group[22], which was established in 2020 by the European Committee of Regions for relations with representatives of UK local government and devolved administrations to ensure that political dialogue with these representatives continues after the UK's withdrawal from the EU. A further example is the ad hoc stakeholder engagement being developed for Northern Ireland in the context of identifying and addressing issues of concern regarding the implementation of the Protocol

Civil society structures have so far been dependent on the legal requirements of the EU-UK Trade and Cooperation Agreement[23] (TCA), which prescribe the organisation of a UK-EU TCA Civil Society Forum[24] (CSF) and the setting up of domestic advisory groups (DAGs) by both sides. These are the statutory mechanisms enabling organised civil society to monitor and give its input on the implementation of the TCA. However, these have been subject to a learning curve, particularly on the

21 https://www.theguardian.com/politics/2019/jan/02/why-the-singapore-model-wont-work-for-the-uk-post-brexit

22 https://cor.europa.eu/en/about/Pages/cor-uk.aspx

23 https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement_en

24 https://www.gov.uk/government/collections/uk-eu-trade-and-cooperation-agreement-civil-society-forum

UK side, where the DAG's role is still developing. They are also subject to the constraints inherent to their respective attachments to the UK Government and the Commission. The most productive cross-border discussions have emerged from the joint meeting of the UK DAG[25] and EU DAG[26]. Under this informal structure, stakeholders on both sides have articulated a desire to see further cooperation in the future.

UK CSOs have expressed concerns that the UK Government does not provide the members of the UK DAG with the necessary human and financial resources, which presents an additional obstacle to the reinforcement of links between EU and UK civil society. The allocation of sufficient administrative support for the UK DAG and the reimbursement of costs incurred by UK DAG members attending DAG meetings and the Civil Society Forum would greatly contribute to the work of the UK DAG, which, together with the EU DAG, is charged with identifying issues on the ground and reporting them to the UK Government, and where appropriate to the Partnership Council.

Furthermore, in the view of UK CSOs, the composition of the UK DAG appears to be imbalanced in terms of proportionate representation of employers, workers, and the third sector, as well as in terms of geographical representation, where stakeholders from Northern Ireland, Scotland, and Wales feel that they are insufficiently represented.

The loss of mobility and exclusion from programmes such as Erasmus is clearly regretted by organisations of young people and those interfacing with them. They unanimously encourage all stakeholders to ensure that exciting and vital opportunities within Europe remain possible for young people in the UK.

3.3 EU-UK Withdrawal Agreement

Most UK CSOs maintain that there has been a lack of an adequate formalised structure to ensure that the voice of CSOs is heard in the implementation of the EU-UK Withdrawal Agreement.

Based on the survey results, the separation issues that have been the most challenging for UK CSOs following the implementation of the EU-UK Withdrawal Agreement have been:

- accessing citizens' rights as protected by part II of the EU-UK Withdrawal Agreement;
- the phasing-out of involvement in EU programmes;
- customs arrangements for the movement of goods.

The majority of UK CSOs active in the field contend that vulnerable EU nationals in the UK do not receive sufficient support from UK institutions to secure their rights under the EU-UK WA.

The Protocol on Social Security Coordination to the Trade and Cooperation Agreement covers fewer benefits than the Withdrawal Agreement. Almost no devolved social security benefits are included in the Protocol, and this affects their portability and how people can meet the residence requirements to be able to claim them. This affects both EU citizens with disabilities and their carers moving to the

25 https://www.gov.uk/government/groups/uk-eu-trade-and-cooperation-agreement-domestic-advisory-group

26 https://www.eesc.europa.eu/en/sections-other-bodies/other/eu-domestic-advisory-group-under-eu-uk-tca

UK after 1 January 2021, as well as people with disabilities and carers who move from the UK to EU countries.

3.4 Protocol on Ireland/Northern Ireland

A key concern of the EU and the UK during the withdrawal process was to agree arrangements that would support and protect the achievements, benefits and commitments of the peace process on the island of Ireland. The outcome was the Protocol on Ireland and Northern Ireland, the objectives of which are "to address the unique circumstances on the island of Ireland, to maintain the necessary conditions for continued North-South cooperation, to avoid a hard border and to protect the 1998 [Belfast (Good Friday)] Agreement[27] in all its dimensions".

To achieve these objectives, notably the avoidance of a hard border on the island of Ireland, the UK and the EU agreed that Northern Ireland would remain aligned with relevant EU customs and internal market legislation such that goods could move freely across the land border. The effect, however, was to require formalities, checks and controls on the movement of goods into Northern Ireland from elsewhere in the UK. With the UK excluding an EU-UK customs union arrangement and regulatory alignment with the EU, the limited nature of the EU-UK TCA has meant that certain formalities, checks and controls are formally required on movements of goods from Great Britain into Northern Ireland. This creates post-Brexit requirements for business, while people in Northern Ireland have expressed concern about certain practical consequences of the application of the Protocol. Some, notably in the Unionist community (which supports Northern Ireland remaining part of the UK), have also voiced opposition to the Protocol owing to its perceived and actual implications for Northern Ireland's constitutional position in the UK and participation in the UK internal market.

Although Northern Ireland's unique status under the Protocol – with unhindered access to both the EU internal market and the UK market – does attract majority support among voters in Northern Ireland, there are sizable levels of opposition. As far as businesses are concerned, those engaged in cross-border trade on the island of Ireland and with the wider EU welcome the Protocol; those that rely on supplies from Great Britain are dealing with increased formalities and uncertainties arising from the rules that the Protocol imposes on GB-NI movements, and this is without it having been fully implemented.

These and other issues of concern to stakeholders were highlighted by the House of Lords in the July 2022 report of its Sub-Committee on the Protocol on Ireland/Northern Ireland[28]. The report urged the UK and the EU, "together with the political parties and stakeholders in Northern Ireland, and the Irish Government, to make a renewed commitment to work together to put Northern Ireland's interests first, participate together in constructive engagement, rebuild trust and engage in effective relationship-building".

Business and civil society representatives have been engaging on an ad-hoc basis and informally with the European Commission and the UK Government to raise issues of concern and, importantly, offer possible solutions to address concerns and secure a smooth operation of the Protocol. When presenting

27 https://www.gov.uk/government/publications/the-belfast-agreement

28 https://committees.parliament.uk/committee/520/protocol-on-irelandnorthern-ireland-subcommittee/publications/

the European Commission's initial non-papers on the Protocol in October 2022, Vice-President Maroš Šefčovič noted: "I have listened to and engaged with Northern Irish stakeholders. Today's proposals are our genuine response to their concerns." On medicines, this led to changes to EU law to maintain uninterrupted supplies into Northern Ireland. There were also revised papers on customs and SPS in June 2022 following "extensive discussions" with stakeholders in Northern Ireland.

Particularly active has been the Northern Ireland Business Brexit Working Group (NIBBWG) which has been urging the EU and the UK Government to proceed with "ambition, flexibility and compromise" in addressing outstanding Protocol issues. It has also been identifying issues of concern as well as pragmatic and practical solutions to address them. These include: a significant reduction in customs bureaucracy for GB goods not at risk of entering the EU single market; bringing the range of traders in the "not at risk" category in line with the EU's definition of an SME; addressing tariff rate quotas such that the competitive position in the EU market of Northern Ireland and Ireland can be assured; and setting up a formal review mechanism that can assess regulatory challenges under the Protocol. The group is also seeking meaningful representation of Northern Ireland when EU policy and legislation impacting Northern Ireland is being discussed[29]. Business representatives in Northern Ireland have welcomed efforts by the Commission and the UK Government to identify possible ways forward in addressing their concerns and have engaged constructively in critical evaluation of both sides' proposals bearing in mind practicalities.

The NIBBWG is not alone is raising issues of concern about ensuring Northern Ireland's voice is heard in the governance arrangements for the Protocol. Currently, the main formal opportunity that Northern Ireland has to engage directly on the Protocol is through the "Democratic Consent" mechanism. This involves members of the Northern Ireland Assembly (MLAs), from 2024, and potentially every four years thereafter, voting on whether core elements of the Protocol – essentially those governing the movement of goods into the EU – should continue to apply. While the UK Government has been including representation from the Northern Ireland Executive in meetings of the bilateral EU-UK Joint Committee, and of the Specialised Committee on the implementation of the Protocol on Ireland and Northern Ireland and the Protocol's dedicated Joint Consultative Working Group, the Protocol contains no provision for regular and formal engagement with either Northern Ireland's political representatives or stakeholders from its business community or wider civil society.

Engagement with business representatives and representatives of wider civil society has been taking place, and the European Commission has produced proposals to formalise this engagement. Such engagement has proven extremely valuable for the EU in understanding the practical implications of the Protocol in Northern Ireland, and has potential for assuaging concerns that what is happening under the Protocol is being done "to" not "with" Northern Ireland. Civil society organisations – for which a "civic forum" was established following the 1998 Agreement, but which only operated between 2000 and 2002 – have collectively submitted proposals to the UK Government and the Commission on how stakeholder engagement under the Protocol might be developed[30]:

29 https://committees.parliament.uk/writtenevidence/113364/pdf/

30 https://drive.google.com/file/d/1f7Q10W8T6zAO8I_2zZPIsoKPuM9ZdnEV/view



Proposal for
Structured Civic Engag

The UK has also made an important commitment in Article 2(2) of the Protocol to continue to facilitate the work of the human rights and equality commissions established under the GFA. However, concerns exist regarding the re-accreditation of the NIHRC as a member of the UN Global Alliance of National Human Rights Institutions (GANHRI). The UN Sub-Committee on Accreditation in October 2021 deferred re-accreditation owing to concerns regarding to adequate UK government funding for and the financial autonomy of the NIHRC such that it can discharge its core statutory functions[31]. An independent review of the NIHRC has been taking place and it is envisaged that the NIHRC's application for re-accreditation will be given further consideration by the UN Sub-Committee on Accreditation in March 2023[32].

Regulatory Divergence Monitoring Forum

A central feature of Brexit is the potential for regulatory divergence between the UK and the EU. How such divergence is to be pursued and monitored and its consequences managed are issues of major concern to stakeholders. Except where it has obligations towards the EU in terms of maintaining a level playing field under the TCA and with regard to Northern Ireland under the Protocol, there are no limits to how far the UK may diverge from the EU acquis. In addition, developments in its acquis will see the EU develop legislation that will not apply in the UK. The resultant regulatory divergence will have implications for UK-EU trade and for business certainty. It will also impact on trading arrangements between Great Britain and Northern Ireland under the Protocol. There is also a fear among UK stakeholders that citizens' rights and, for example, environmental standards, could be threatened. Concerns around regulatory divergence and the uncertainty it is likely to create have recently been heightened by the publication of the UK Government's Retained EU Law (Revocation and Reform) bill which includes a "sunset" clause that envisages EU laws being disapplied at the end of 2023. Suggestions that the UK and EU establish a regulatory divergence monitoring forum might usefully be considered as a means of tracking and assessing the implications of new UK and EU regulation for trade relations.

The UK and EU engage directly but on a generally ad hoc basis with civil society and stakeholders in Northern Ireland to try to resolve the issues arising from the Protocol. If regularised and formalised, such arrangements could serve as a model for EU-UK relations generally. Agreements can cause unforeseen issues, which can be understood only by listening to and taking into account multiple voices. Only when these views are understood, can they be communicated as a basis for finding solutions. For example, civil servants can design a system for the status of citizens, but they cannot see what is happening on the ground.

31 https://www.ohchr.org/sites/default/files/2021-12/SCA-Report-October-2021_E.pdf

32 https://ganhri.org/wp-content/uploads/2022/11/SCA-Adopted-Report-October-2022-EN.pdf

3.5 Citizens' rights

3.5.1 EU citizens in the UK

The process of implementing the WA has affected a huge number of EU citizens in the UK, whose total number is estimated to be as high as up to 10% of the entire UK population.

Some progress has been made, but the exercise of citizens' rights still suffers from delays, backlogs, problems with digital-only status, data inadequacies, software glitches, and limited accessibility of helplines, which have all aggravated the situation.

In their written submission, the organisation "the3million"[33] reported on their follow-up on freedom of information (FOI) requests regarding the performance of the EU Settlement Resolution Centre's helpline:

- The first FOI response[34], dated 1 December 2021, has attached data for the 12-month period November 2020-October 2021[35]. The3million wrote to the Home Office about this data on 13 December 2021, and received a reply in January 2022[36].
- The second FOI provided data for the twelve months from 22 September 2021 to 22 September 2022[37]. The average percentage of calls accepted was 80% in this time period, versus 44% in the period covered by the first FOI.

In addition, the3million provided data on how long people remain in the EU Settlement Scheme backlog:

- The3million recently submitted an FOI to ask for the number of applications that had been outstanding for more than 18 months at the end of each reporting quarter. The document inserted below shows that the number has been steadily rising. The latest figure shows that more than 12 000 applications had been outstanding for more than 18 months as at the end of June 2022.



EUSS_applications_o
utstanding_18+montl

Putting numbers on those affected by digital-status problems is hard to do with the resources available to the3million. It was explained that one cohort involved people randomly affected by digital status system glitches, whereby regardless of how digitally literate a status-holder is, they would not be able

33 https://the3million.org.uk/

34 What do they know Response Antoni

35 What do they know Response Antoni Annex

36 https://the3million.org.uk/publication/2022012101

37 https://www.whatdotheyknow.com/request/900854/response/2143763/attach/3/FOI%20Response%2071969.pdf

to prove their status. The3million received hundreds of reports of various such glitches through their Report-It tool[38]. Therefore, extrapolating that to the millions of status-holders who do not know about reporting to the3million, this is likely to be a huge problem. The other cohort is those who struggle with a digital status due to their digital exclusion. In May this year, the3million wrote a briefing to the House of Lords, which includes on its last page some data on digitally excluded cohorts[39]. EU Settlement Scheme statistics are available on the dedicated UK Government website[40]. Further information on the implementation of the rights of EU citizens in the UK under the EU-UK WA are also available in the Independent Monitoring Authority's Annual Report to the Specialised Committee and the Joint Committee[41].

Another citizens' rights organisation, Settled, shares the concerns of the3million, highlighting the significant difficulties for those reliant on digital status, where even digitally literate people have difficulties. The situation is so much worse for less digitally literate people, let alone for those without any technical knowledge or hardware.

These issues are compounded by problems faced by the elderly, and particularly the Roma, as well as by communities not living in cities. Their general lack of technical knowledge/skills means that they can hardly meet any requirements applying to application for (pre-)settled status or follow up on any update requests. This proves the rigidity of application of the rules, which cannot be adapted to the capacities and capabilities of various groups of persons affected.

Latest EUSS information[42]:
The report[43] covers data from the private testing phases in 2018, up to end of Q3 of 2022 (30 September 2022).

Headlines by 30 September 2022:

- **6.9 million (6,874.700)** applications had been received;
- Highest number of applications: RO (1.35 million); PL (1.17 million); IT (600,000);
- There were 800,000 applications received after the grace period: 334,000 late applications; 273,000 repeat applications (includes those moving from pre-settled status to settled status); 200,000 joining family members; 6,000 derivate rights;
- **6.7 million (6,686.530) applications had been concluded**
    - Of which: 3.3 million settled status results; 2.6 million pre-settled status results; 375,000 refusals;
- **Backlog: 188,000,** of which 153,000 applications have been submitted after the grace period. This means there are 35,000 applications submitted before the deadline who have yet to be

38 https://the3million.org.uk/report-it

39 https://the3million.org.uk/sites/default/files/documents/t3m-JCWI-HKinB-briefing-HoLPhysicalDocsSIDebate-31May2022.pdf

40 https://www.gov.uk/government/collections/eu-settlement-scheme-statistics

41 https://ima-citizensrights.org.uk/publications/

42 The headlines, graphs and explanatory notes were provided by the EU Delegation to the UK.

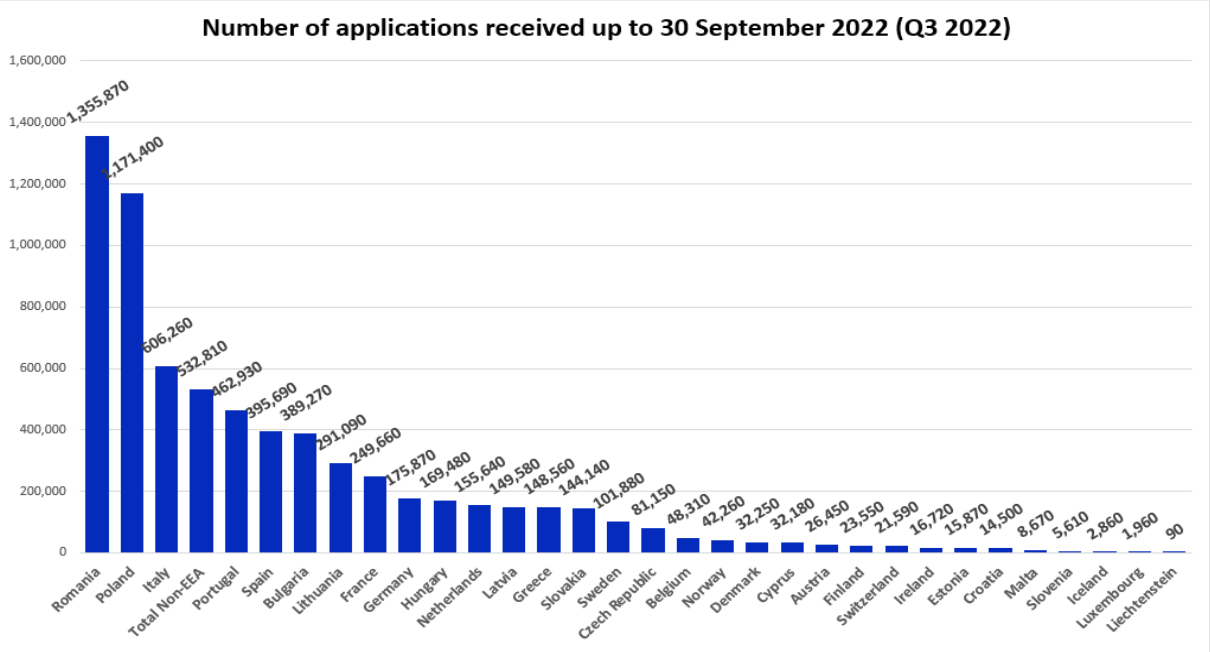
43 https://www.gov.uk/government/statistics/eu-settlement-scheme-quarterly-statistics-september-2022

decided and have been waiting for 12 or more months in the backlog. Following a recent meeting with the Home Office, the current backlog has further reduced to 182,000.

- **The total number of applications waiting for a decision is over 188,000 with around 160,000 (85%) from EU citizens. Of those waiting for a decision the highest numbers are from RO (66,000), PL (17,000), BG (16,500) and PT (9,000). The highest backlog rate (number of pending applications in view of total applications submitted) is from RO (4.9%), SE (4.4%), BG (4.3%) and SK (3.7%) citizens.**
- **Over 532,000 non-EU family members applications have been submitted out of which 506,000 have received an outcome with 26,000 still waiting a decision.**
- **Home Office assesses that 5.5 million applicants had obtained a grant of status – when accounting for repeat applicants.**

CR issues log 28112022.pdf

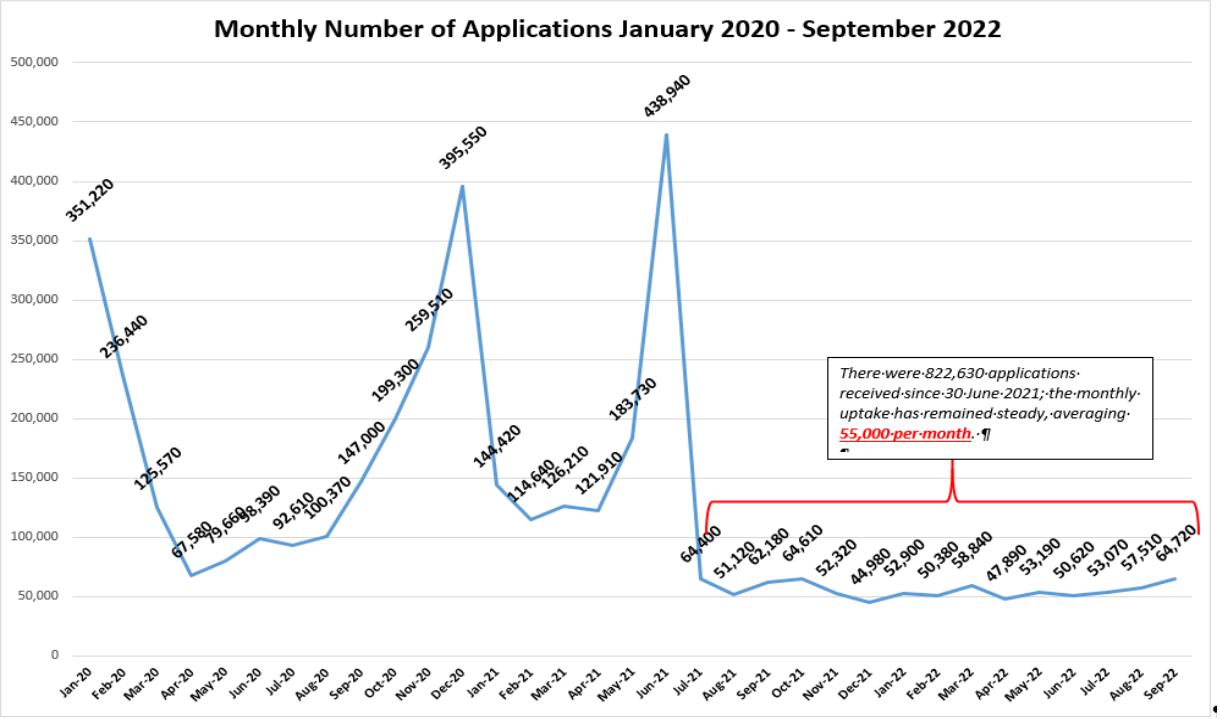
Graph 1: **Number of applications received up to 30 September 2022 (Q3 2022)** in descending order, showcasing which are the largest nationalities in the EUSS uptake.



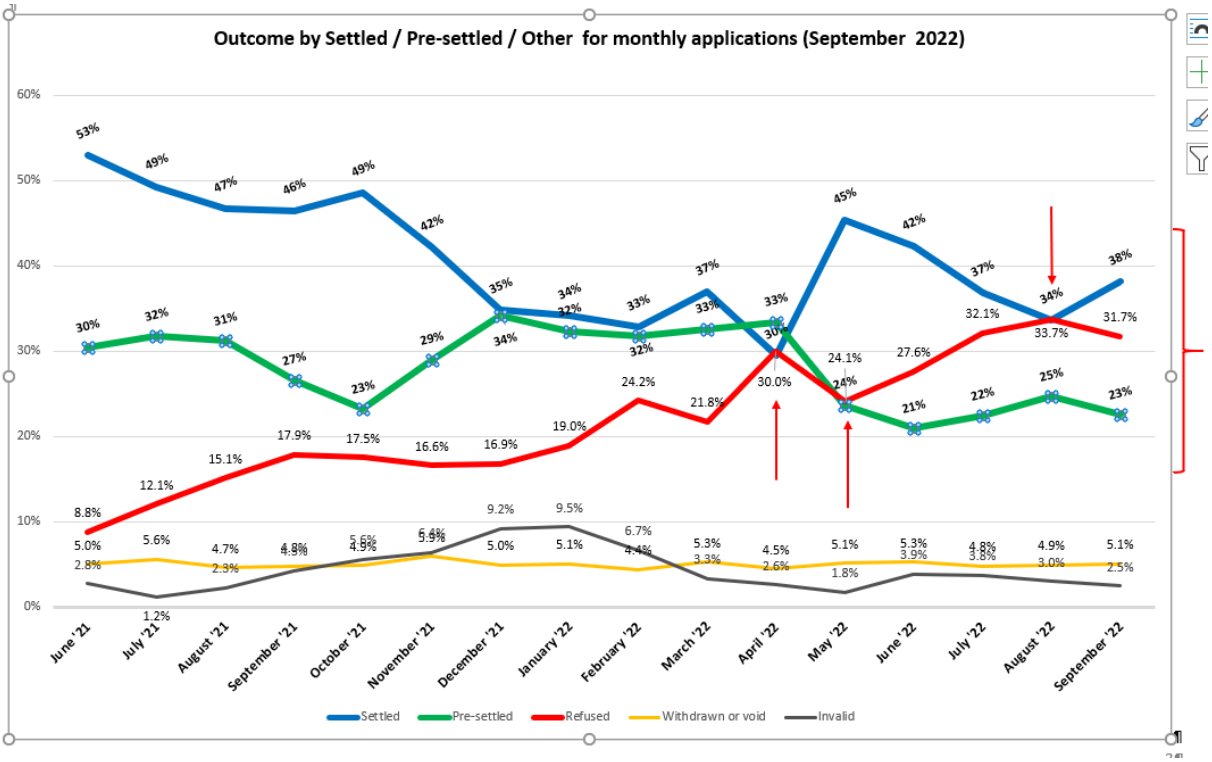
Total·no·of·received·applications—6,874,700·of·which·**EU27:·6,274,550**¶

- → ***Romanian**·nationals·accounted·for·**a·third·(33%)**·of·all·applications·received·from·1·July·2021·to·30·September·2022.*¶

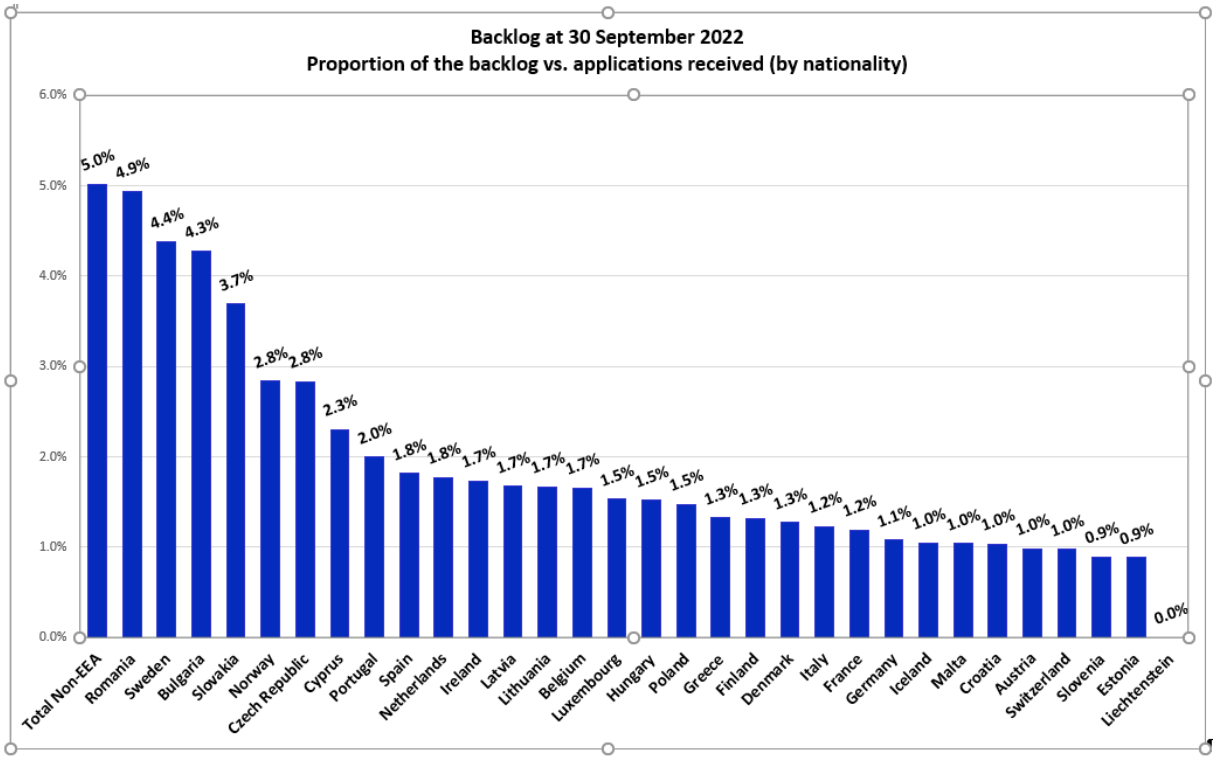
Graph 2: **Monthly number of applications at the end of Q3**: you can see the 3 historic peaks around key dates and negotiation announcements up to the end of the grace period. From then on, you can note a 15 mos. steady intake averaging 55 000 applications per month.



***Graph 3*: Outcome proportions per month** – It showcases 3 meaningful events in the applications solved post-grace: *April, May and August 2022* have seen the number of rejected applications being equal or overtaking slightly the number of Settled or Pre-settled grants.

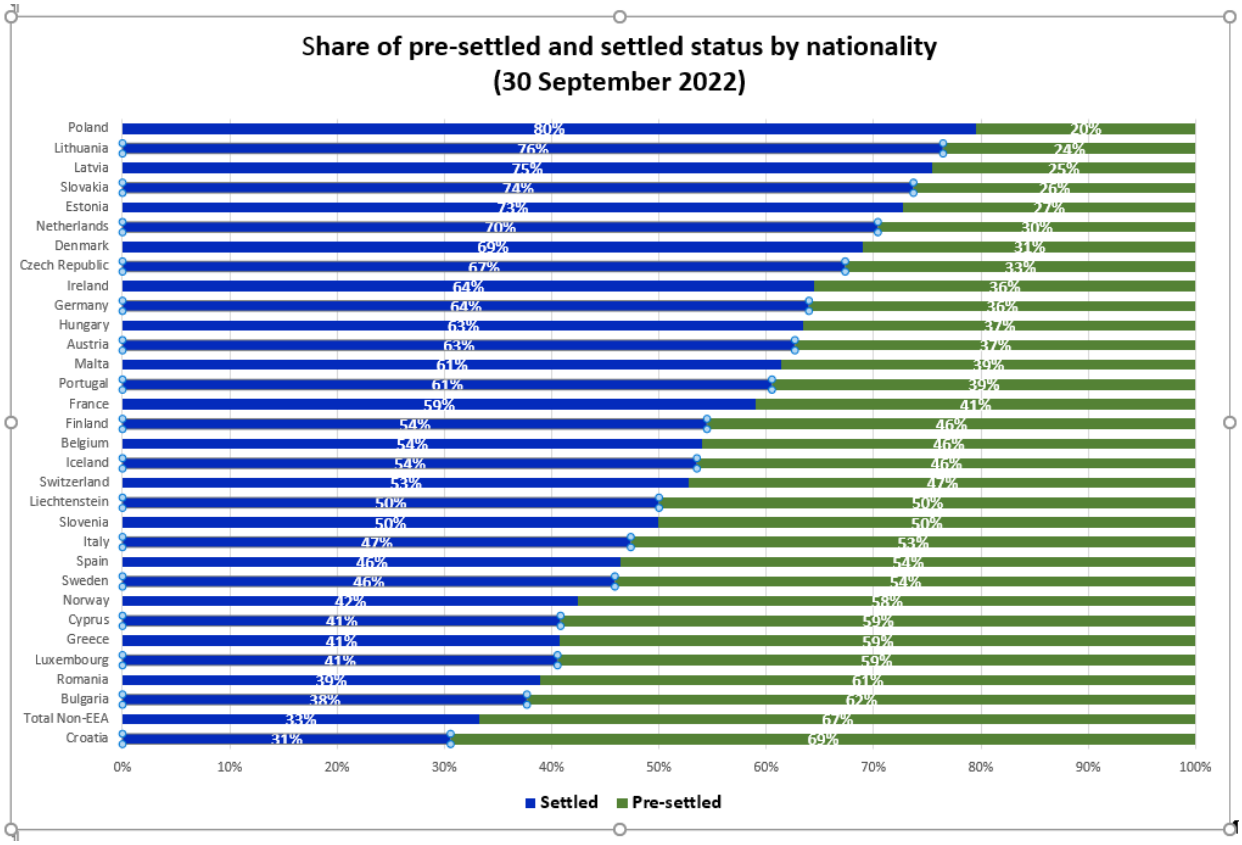


***Graph 4*: Backlog at 30 September** – around 188,000 at 30 September 2022. At the nationality level, non-EEA nationals and RO have 5% of the total applications send to the Scheme waiting in the backlog to be solved, followed by SE, BG, SK and NO



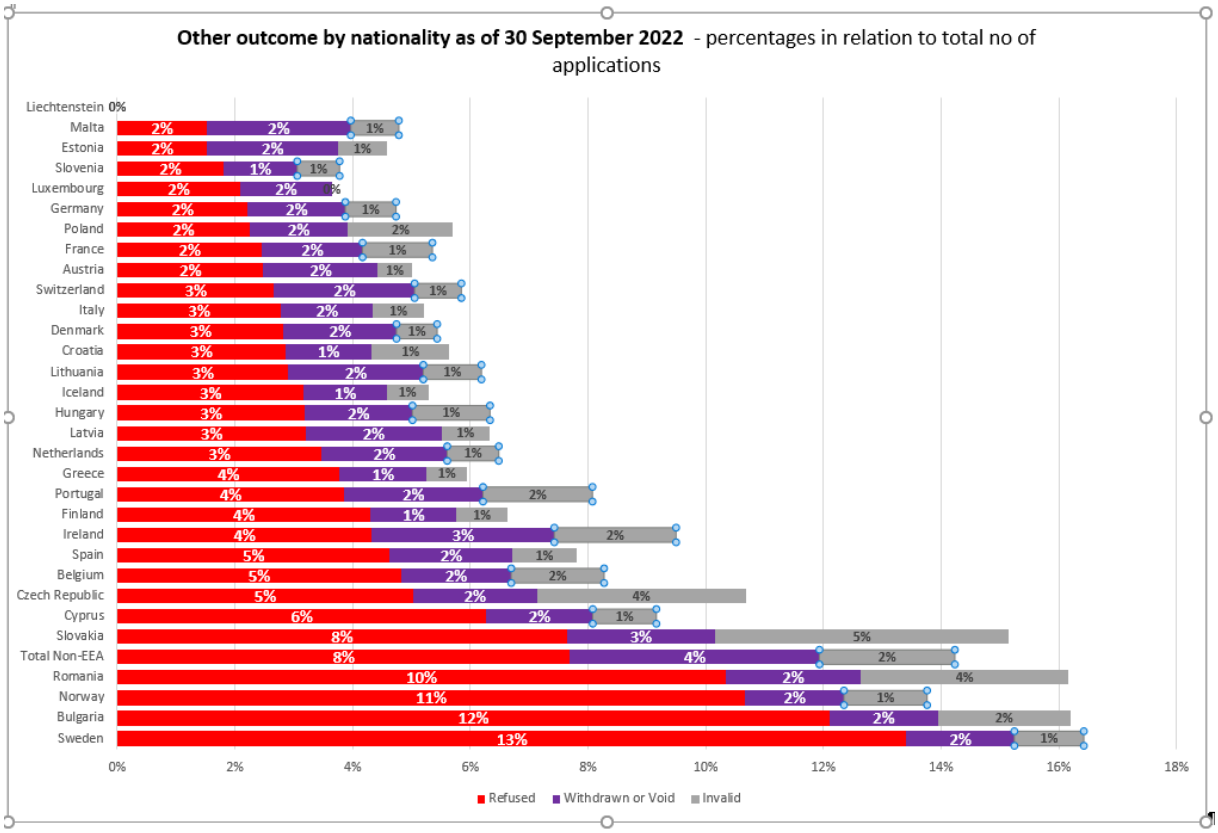
***Graph 5*: Pre-settled and settled outcomes by nationality** and their pondering in the overall results obtained. The graph helps us visualise which EU nationalities have the highest rates of pre-settled status results and where we have EU nationals at risk of lapsing out of their immigration status if they are not able to exchange the PSS for SS.

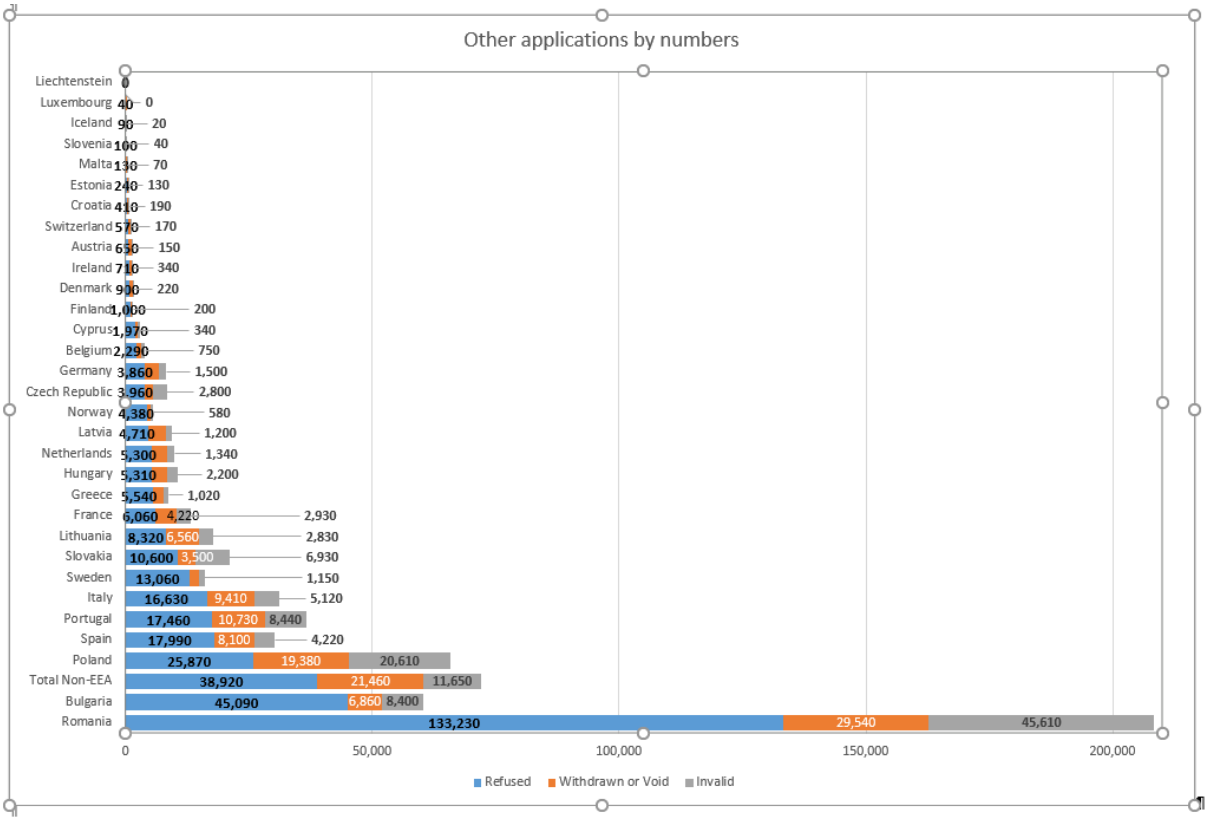
- The largest communities with pre-settled status holders are from RO (660,000), IT (298,000), PL (222,000) BG (194,000), Spain (191,000) and Portugal (164,000). The average rate of upgrading to settled status among pre-settled status holder has so far been 16%. Nationalities that are doing better than this average rate include Italy (23.7%), HU (22.9%), PT (20.0%) and SI (20.1%). Lagging behind the average are BG (11.7%), CY (11.4%), DK (10.8%), SK (11.6%), DE (12.9%), CZ (13.5%) and BE and LT (both 13.7%).



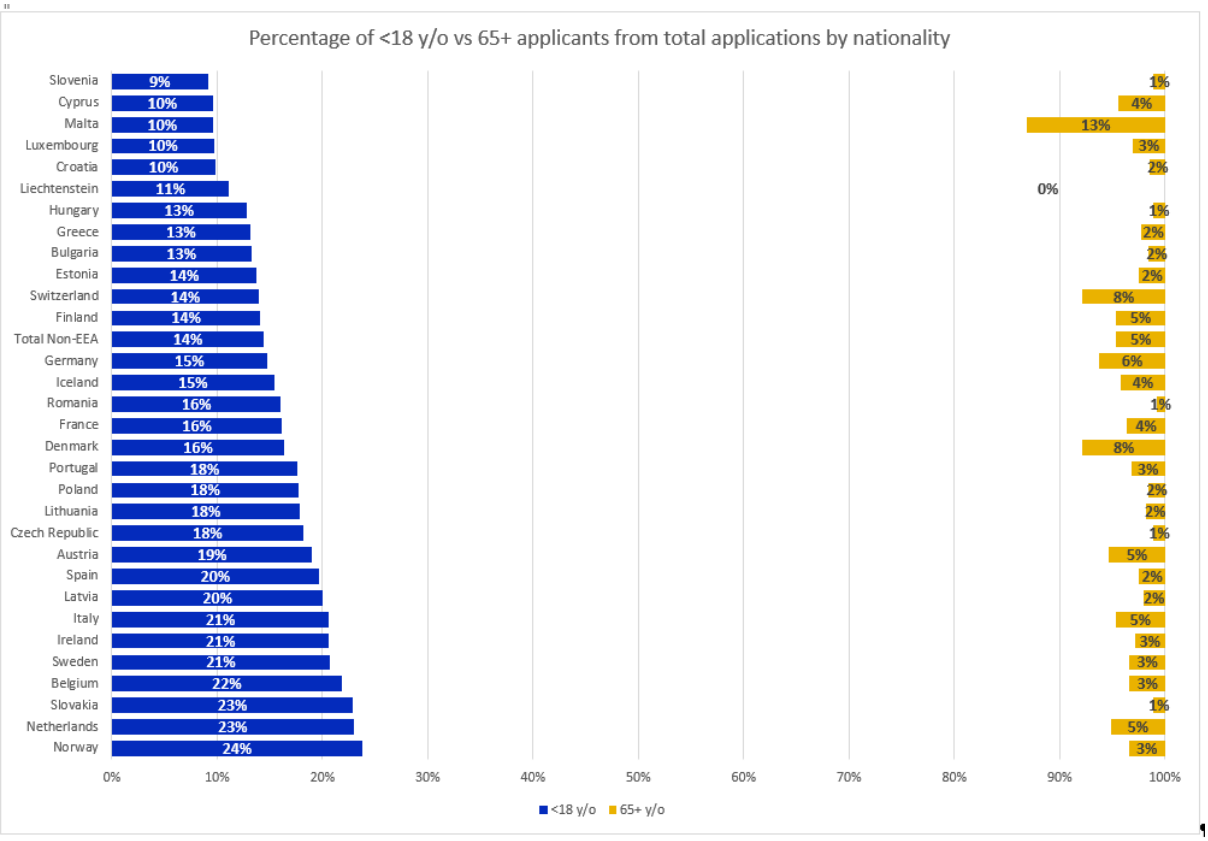
Graphs 6 and 7: **Other outcomes by nationality:** Refusals, Withdrawn/Void applications and Invalid applications to understand which nationalities are struggling with higher rejections rates.

- Within the total no of rejections there are 331,000 EU citizens refused, the average rate of refusal across all EU nationalities has been 3.9%. The highest rate of refusals occurred within SK (7.5%), RO (5.8%), CZ (5.7%), IE (5.2%) and PT (4.2%) citizens. The lowest refusal rates have been among citizens from LU (1.8%), SI (2%), FI (2.3%), IT (2.4%) and AT (2.5%). The highest number of refused citizens are from RO (133,000), BG (45,000), Spain (18,000) and IT (16,500).


Other outcome by nationality as of 30 September 2022 - percentages in relation to total no of applications
Liechtenstein 0%
Malta 2% 2% 1%
Estonia 2% 2% 1%
Slovenia 2% 1% 1%
Luxembourg 2% 2% 1%
Germany 2% 2% 1%
Poland 2% 2% 2%
France 2% 2% 1%
Austria 2% 2% 1%
Switzerland 3% 2% 1%
Italy 3% 2% 1%
Denmark 3% 2% 1%
Croatia 3% 1% 1%
Lithuania 3% 2% 1%
Iceland 3% 1% 1%
Hungary 3% 2% 1%
Latvia 3% 2% 1%
Netherlands 3% 2% 1%
Greece 4% 1% 1%
Portugal 4% 2% 2%
Finland 4% 1% 1%
Ireland 4% 3% 2%
Spain 5% 2% 1%
Belgium 5% 2% 2%
Czech Republic 5% 2% 4%
Cyprus 6% 2% 1%
Slovakia 8% 3% 5%
Total Non-EEA 8% 4% 2%
Romania 10% 2% 4%
Norway 11% 2% 1%
Bulgaria 12% 2% 2%
Sweden 13% 2% 1%
0% 2% 4% 6% 8% 10% 12% 14% 16% 18%
Refused
Withdrawn or Void
Invalid


Other applications by numbers
Liechtenstein 0
Luxembourg 40 0
Iceland 90 20
Slovenia 100 40
Malta 130 70
Estonia 240 130
Croatia 410 190
Switzerland 570 170
Austria 650 150
Ireland 710 340
Denmark 930 220
Finland 1,000 200
Cyprus 1,970 340
Belgium 2,290 750
Germany 3,860 1,500
Czech Republic 3,960 2,800
Norway 4,380 580
Latvia 4,710 1,200
Netherlands 5,300 1,340
Hungary 5,310 2,200
Greece 5,540 1,020
France 6,060 4,220 2,930
Lithuania 8,320 5,560 2,830
Slovakia 10,600 3,500 6,930
Sweden 13,060 1,150
Italy 16,630 9,410 5,120
Portugal 17,460 10,730 8,440
Spain 17,990 8,100 4,220
Poland 25,870 19,380 20,610
Total Non-EEA 38,920 21,460 11,650
Bulgaria 45,090 6,860 8,400
Romania 133,230 29,540 45,610
0 50,000 100,000 150,000 200,000
Refused
Withdrawn or Void
Invalid

***Graph 8**:* A side by side comparison, by nationality of the 2 cohorts that are under-represented in the EUSS uptake: **minors and elderly EU nationals.**



According to the Migration Observatory there were 3.9m EU citizens in England and Wales on Census Day 2021, i.e. 1.6m fewer than the 5.5m applications to the EUSS.

3.5.2 UK citizens in the EU

A key issue is a general lack of support for UK citizens in the EU compared to EU citizens in the UK. While the Commission provides good assistance, it has limited resources for monitoring citizens' rights arising from the EU-UK WA. Resources are currently decreasing at UK and national level, including for information and communication. Applications under the EU-UK WA are not always straightforward and UK citizens facing issues in the EU often do not have funded organisations to turn to. Furthermore, there is a lack of specialised lawyers, especially in some countries.

Each EU Member State was required to choose between operating either a constitutive system or a declaratory system. In constitutive systems, the status depended on a successful application within a specific deadline. In certain countries (e.g. Sweden), there have been higher rates of refusal of status compared to other similar countries and more statistics are needed to pinpoint why. The deadlines have all passed in constitutive countries and UK citizens in the EU who did not apply (often due to weak outreach) may make late applications if justified by reasonable grounds. In certain constitutive countries (Denmark and Sweden), there appear to be high rates of refusal for late applications and data is needed to confirm why, while other countries (Netherlands) are taking a more generous approach.

UK citizens have also encountered difficulties in declaratory countries. Serious problems have been reported in Portugal due to delays in introducing EU-UK WA-compliant documents. The situation is acute as Portuguese residence documents for EU citizens have an expiry date, and many UK citizens now have expired documents and no replacement. Consequently, UK citizens have encountered problems, ranging from being detained at Schengen frontiers to complications in their daily lives with official and other entities that demand valid proof of residence, pending issuance of the new documents. This includes access to healthcare, other social provisions and employment contracts and compound issues of "misunderstanding" the status of UK citizens generally. The Portuguese authorities have taken measures to improve the situation, including the enactment of legislation. Portugal has now begun the process of issuing new documents; however, this process is slow and coverage is patchy, with difficulties in securing appointments, and reports of errors in the issued biometric cards. These errors then have a direct impact on, for example, the ultimate conversion from temporary to permanent status.

Issues affecting UK residents in other declaratory Member States (Italy, Spain, Germany) centre on inadequate communication from relevant authorities, resulting in inconsistent application of WA procedures. Problems at both national and local levels range from failure to recognise document status, resulting in issues in transiting borders, to non-acceptance when it comes to employment contracts, etc. Delays in securing appointments continue to be rife and there are particular issues related to securing medical cards and converting temporary to permanent status in Italy.

There are additional issues around family reunification and the status of frontier workers, plus the combination of statuses, and increasingly, securing permanent residence status as those UK citizens with temporary residence pass the point of five years' residence in their host state.

The Sixth joint report on the implementation of residence rights under part two of the Withdrawal Agreement[44] was published on 26 January 2022. The tables on pages 34-37 show the numbers of UK citizens in the EU as well as the numbers who had either successfully applied for their status or been refused in constitutive countries under the WA, and how many UK citizens in the EU had obtained residence cards proving their status deriving from the WA in declaratory countries.

On 4 November 2022, the Commission published its first annual monitoring report[45], together with an annex[46]. The report itself is a high-level summary, while the annex contains more detailed data. The problem is that the data is for 2021 and, in many cases, there is incomplete or missing data, for instance relating to refusals of residence applications, frontier worker status, and professional qualification recognition. There is also an evidently low level of applications in declaratory countries for residence cards overall in both the annual monitoring report and the Sixth joint implementation report. Given the poor communication campaigns across many EU countries for UK citizens in the EU, this is not surprising, but not positive, either. More up-to-date data is needed to check if this is still the case. Some countries seem to have higher levels of refusals than comparable countries, for instance Sweden, where about 9% of residence applications have been refused (in the Sixth implementation report, which is slightly more up to date, this figure appears closer to 11%) and a high

44 https://ec.europa.eu/info/system/files/final_sixth_joint_report_on_residence_rights.pdf

45 https://ec.europa.eu/info/sites/default/files/c_2022_7851_1_en_act_part1_v2-withdrawal-agreement-report_en.pdf

46 https://ec.europa.eu/info/sites/default/files/c_2022_7851_1_en_act_part1_v2-withdrawal-agreement-annex_en.pdf

level of frontier-worker status refusals. Again, more up-to-date data would be needed, given that many countries set their deadlines for the end of 2021, and full data is available only until the end of 2021. Therefore, there can be no real clarity regarding how many refusals and late applications there have been until data is published for 2022. Denmark already mentions late applications for 2021, which is strange, given that the deadline was 31 December 2021. For Portugal, it is known that, until recently, the estimated 34 500 UK citizens in Portugal were all facing problems as their cards had not been issued. The process has begun, but it appears to be very slow.

Another publication monitoring the rights of UK citizens in the EU is the YEA Annual Trends 2021[47]. The report shows that UK citizens residing in EU Member States inquired about the consequences of Brexit on their rights in their host Member State, where some administrations have appeared to be unfamiliar with the EU-UK WA. As a result, difficulties or excessive delays have been reported in obtaining relevant information. Administrative practices are often clearly in conflict with EU law. Excessive delays and formalities in obtaining residence were again reported. Additional documentation to support applications for residence cards was required. Some administrations question whether the conditions of the right to stay have been met and treat both EU citizens and their non-EU family members as though they are newcomers. Delays and excessive administrative formalities were reported. The COVID-19 crisis has intensified these issues.

3.6 Fishing industry

The issues around the fishing industry proved one of the most difficult during the negotiations on the TCA and they remain contentious. The subject is complex and multifaceted. One aspect was highlighted for our attention. According to Article 498(2) of the TCA, the UK and EU shall hold consultations annually to agree, by 10 December of each year, the TACs for the following year for the shared stocks. The Parties shall agree those TACs:
(a) on the basis of the best available scientific advice, as well as other relevant factors, including socio-economic aspects; and
(b) in compliance with any applicable multi-year strategies for conservation and management agreed by the Parties.
Unfortunately, the Parties have not been able to agree on this issue on time this year and have set provisional TACs following the procedures established in Article 499, creating uncertainty for fishers.

4. Methodology of data collection

The members of the EESC delegation collected the views of CSOs and other stakeholders via a number of sources: a fact-finding mission to the four parts of the UK, a targeted online survey, remote interviews with some CSOs that did not participate in the fact-finding meetings, and written contributions received from some CSOs.

The above information is complemented by secondary data in the form of previous work done by the EESC on the topic, as well as other relevant publications.

47 https://ecas.org/wp-content/uploads/2022/05/Your-Europea-Advice_YEA_Annual_Trends_Report_2021.pdf

4.1 Fact-finding meetings

The fact-finding meetings included interviews with local civil society organisations and representatives of public authorities, generally following the thematic structure of the online survey. The fact-finding meetings took place in the following locations:

- London, on 17 October 2022, in the premises of the EU Delegation to the UK;
- Cardiff, on 18-19 October 2022, in the premises of the Senedd and the Welsh Government;
- Edinburgh, on 20 October 2022, in the premises of St Andrew's House; and
- Belfast, on 21 October 2022, in the premises of the Northern Ireland Council for Voluntary Action (NICVA).

4.2 Other meetings

Given that not all CSOs could participate in the fact-finding meetings, the EESC delegation conducted a few remote meetings after the fact-finding mission, focusing on youth organisations that were under-represented in the fact-finding meetings. The two youth organisations that were interviewed were:

- Young Scott, interview conducted on 4 November; and
- the British Youth Council, interview conducted on 16 November.

In addition, an informal in-person meeting was held with representatives of the Committee of the Regions on 7 November in London. This meeting was followed by the 2nd EU-UK Parliamentary Partnership Assembly (PPA) on 7 and 8 November, which was attended by the Chair of the EU-UK Follow-up Committee and the Chair of the EU Domestic Advisory Group under the TCA, at which the Chair of the EU-UK Follow-up Committee presented the preliminary findings of the EESC delegation's mission.

The Chair of the EU-UK Follow-up Committee also held a few coordination meetings with representatives of the European Commission and the EEAS.

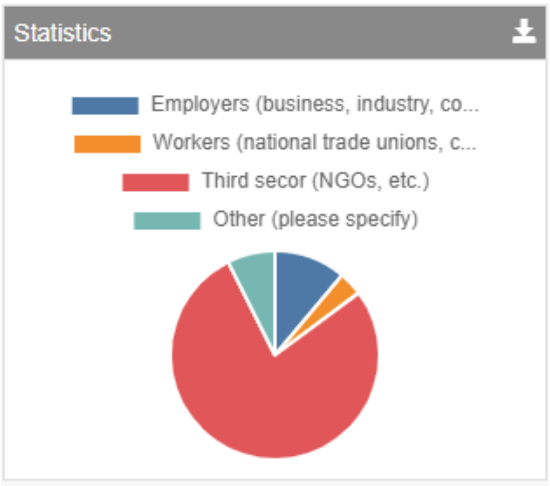
4.3 Survey

The survey was created on the EU Survey online portal, using a combination of closed, open-ended, and matrix questions. The survey consultation was open from 17 October to 8 November 2022. The purpose of the survey was to complement the information obtained from the fact-finding meetings, as well as to provide the meeting participants and other respondents with the possibility to contribute to the information report using an additional channel. The survey was distributed to CSOs headquartered in the four parts of the UK, and not only to CSOs that attended the fact-finding meetings, but also to other relevant organisations. It was distributed via the EESC's networks in the four parts of the UK, via Civil Society Alliance UK, as well as via the EU Delegation to the UK. The results of the open-ended questions of the survey are presented in chapter 6 of this technical report.

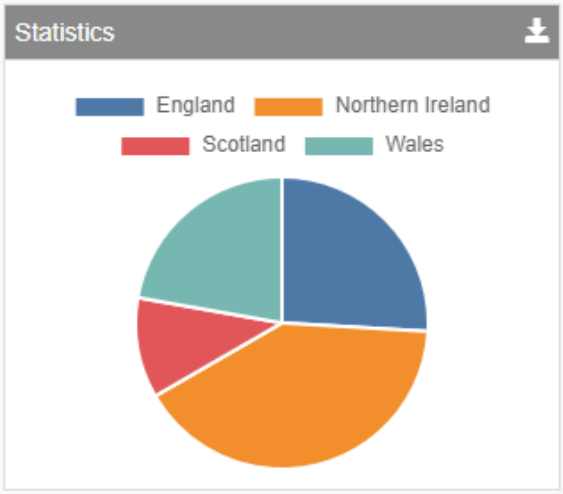
4.4 Respondent breakdown

For the purpose of collecting data for the information report, the EESC delegation consulted 69 CSOs and nine political bodies.

Twenty-seven contributions were collected via the online survey, including from three representatives of the business sector (11%), one representative of workers' organisations (4%), 21 representatives of various interest stakeholders (78%), and two representatives of "other" organisations (7%). The response rate was relatively low, particularly by business and workers' organisations, which is why the results of the survey function as complementary to the results of the fact-finding mission, rather than self-standing results.



Regarding the origin/headquarters of the responding organisations, 26% of the survey respondents were based in England, 22% in Wales, 11% in Scotland, and 41% in Northern Ireland.



The complete list of all organisations consulted is available in chapter 8 of this report.

5. Summary of views expressed by CSOs and other data collected

5.1 England

Ahead of the meetings with CSOs, the EESC delegation met with representatives of the EU Delegation to the UK (EU Delegation), led by the Deputy Head of the Delegation.

Rebuilding linkages and relationships between the EU and the UK has been the EU Delegation's key objective, which, however, was somewhat hindered by the COVID-19 pandemic. In the recent period, the EU Delegation has continued to engage with stakeholders, including UK MPs, civil society organisations and others.

The EESC delegation received an update on issues related to some of the devolved nations, starting with the state of play in Scotland. In power for 15 years, the SNP and their leader in particular are pushing for another independence referendum. Although the SNP had lost the 2014 independence referendum, there was a large Scottish majority in favour of remaining in the EU (62%) in the 2016 Brexit referendum. Following a profound change in context (Scotland was taken out of the EU against its democratic will), the SNP considers this to be the main argument for Scottish independence. The SNP is working on demonstrating how independence would work economically[48], as well as on explaining how Scotland could achieve EU membership.

The EESC delegation then received an update on Northern Ireland. While the Protocol remains a central outstanding issue, the Retained EU Law Bill[49] is becoming a new cause for serious concern. The 25th anniversary of the Belfast/Good Friday Agreement could be a key milestone, with the US President Joe Biden expected to visit Northern Ireland on this occasion[50]. In the meantime, it would be good if the parties focused on resolving technical issues with the implementation of the Protocol.

The EESC delegation was informed that the EU Delegation has good relations with representatives of all sections of civil society via direct contacts/meetings. The EU Delegation maintains particularly good engagement with citizens' groups on issues around the applications for settled status, as a condition to exercise citizens' rights. There are special concerns about marginalised/vulnerable groups, many of whom did not apply for (pre-)settled status. It was reported that the UK Government appears to have a different interpretation of the Withdrawal Agreement, whereby failure of citizens to comply with deadlines meant loss of rights. This issue has been taken to the courts by the Independent Monitoring Authority[51]. Some 500 000 people have been refused settled EU status to date; as the overall figures are so high, it is very likely that this will become a political issue at some point.

Business

Relations with the EU are essential for UK companies to do business with the rest of Europe, though new trade barriers flowing from the TCA are still hindering UK-EU trade. Nearly all companies have faced challenges during the transition, though the majority have adapted to the new circumstances. Companies based in Northern Ireland were considered to have significant benefits due to the Protocol. Despite difficulties, the overall situation is assessed to have improved recently.

Small businesses still view the EU as the most important market, which is why they are trying to preserve good relations with counterpart organisations. Like larger UK companies, small businesses are also keen to engage with the EU and counterpart organisations.

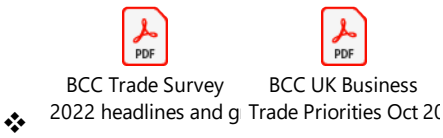
48 Building a New Scotland: A stronger economy with independence

49 https://bills.parliament.uk/bills/3340

50 https://www.belfasttelegraph.co.uk/news/northern-ireland/uk-eyeing-state-visit-for-biden-to-mark-25-years-since-good-friday-agreement-42010869.html

51 https://ima-citizensrights.org.uk/

According to the latest data from the British Chambers of Commerce (BCC), 61% of members have been able to meet the TCA requirements. On the other hand, there was not much evidence that trade with markets other than the EU market could compensate for the partial loss of EU trade. The key issues identified were transportation costs and disruption, tariffs, customs procedures, etc. There is a general dissatisfaction with the TCA, which from the point of view of business should offer more than just a mechanism for managing divergence.



At this point, Brexit has been generally accepted as a *fait accompli*, which, however, is accompanied by a desire for close and functional trade relations.

Insufficient supply of seasonal labour remains a serious concern in some sectors. Increased immigration from the rest of the world had failed to replace lost and more specialised and skilled EU labour. This is an issue for which it is difficult to see how it can be effectively addressed. Technical skills are vital but are not addressed via temporary immigration and in a context of a limited framework. Hiring suitable staff is reportedly a major issue for UK businesses across multiple sectors. They are therefore in favour of expanding the number of "shortage occupation" visas[52].

Companies including food and drinks producers are generally in favour of remaining in the single market. There is little appetite for opening up the re-join debate, which means that the focus is likely to be more on how to enhance the EU-UK trade relationship.

In this regard, business representatives stressed the need for negotiated Protocol solutions, disapproving of unilateral action. Indeed, UK business has been concerned by threats of unilateral action by the UK Government and the effects such action could have on Northern Ireland, as well as generally on EU-UK relations. There is thus a consensus on the need for the UK and EU to proceed in a more collaborative manner and in good faith in resolving differences over the implementation of the Protocol

Farmers

Farmers' representatives pointed to a fall in agri-food exports, which is most likely due to border controls (SPS checks). Consequently, some have abandoned the EU market due to rising costs. Some engagement has been maintained via Brussels offices and Copa Cogeca[53]. The mounting trade issues, including adaptation to post-CAP conditions and the removal of free movement of workers, have reinforced the need for ongoing engagement.

52 https://www.gov.uk/government/publications/skilled-worker-visa-shortage-occupations/skilled-worker-visa-shortage-occupations

53 https://copa-cogeca.eu/

EU citizens

Progress has been made but the exercise of citizens' rights still suffers from delays, backlogs, problems with digital-only status, data inadequacies, software glitches, and limited accessibility of helplines, which have all aggravated the situation.

In their written submission, the organisation "the3million"[54] reported on their follow-up on freedom of information (FOI) requests regarding the performance of the EU Settlement Resolution Centre's helpline:

- The first FOI response[55], dated 1 December 2021 has attached data for the 12-month period November 2020-October 2021[56]. The3million wrote to the Home Office about this data on 13 December 2021, and received a reply in January 2022[57].
- The second FOI provided data for the twelve months from 22 September 2021 to 22 September 2022[58]. The average percentage of calls accepted was 80% in this time period, versus 44% in the period covered by the first FOI.
- The3million recently submitted an FOI to ask for the number of applications that had been outstanding for more than 18 months at the end of each reporting quarter. In the resulting attached PDF, you can see that the number has been steadily rising. The latest figure shows that more than 12 000 applications had been outstanding for more than 18 months as at the end of June 2022.

EU Settlement Scheme statistics are available on the dedicated UK Government website[59]. In addition, the 3 million provided data on how long people remain in the EU Settlement Scheme backlog:



EUSS_applications_outstanding_18+montl

Putting numbers on those affected by digital-status problems is hard to do with the resources available to the3million. It was explained that one cohort involved people randomly affected by digital status system glitches, whereby regardless of how digitally literate a status-holder is, they would not be able to prove their status. The3million received hundreds of reports of various such glitches through their Report-It tool[60]. Therefore, extrapolating that to the millions of status-holders who do not know about reporting to the3million, this is likely to be a huge problem. The other cohort is those who struggle

54 https://the3million.org.uk/

55 https://www.whatdotheyknow.com/request/776525/response/1927535/attach/html/5/FOI%20Response%2066645%20A%20Antoni%20V1.0.pdf.html

56 https://www.whatdotheyknow.com/request/776525/response/1927535/attach/6/FOI%20Response%2066645%20Axel%20Antoni%20Annex.pdf

57 https://the3million.org.uk/publication/2022012101

58 https://www.whatdotheyknow.com/request/900854/response/2143763/attach/3/FOI%20Response%2071969.pdf

59 EU Settlement Scheme Statistics

60 https://the3million.org.uk/report-it

with a digital status due to their digital exclusion. In May this year, the3million wrote a briefing to the House of Lords, which includes on its last page some data on digitally excluded cohorts[61].

Another citizens' rights organisation, Settled, shares the concerns of the3million, highlighting the significant difficulties for those reliant on digital status, where even digitally literate people have difficulties. The situation is so much worse for less digitally literate people, let alone for those without any technical knowledge or hardware.

These issues are compounded by problems faced by the elderly, and particularly the Roma, as well as by communities not living in cities. Their general lack of technical knowledge/skills means that they can hardly meet any requirements applying to application for (pre-)settled status or follow up on any update requests. This proves the rigidity of application of the rules, which cannot be adapted to the capacities and capabilities of various groups of persons affected.

Equality

The UK Shared Prosperity Fund (UKSPF) is expected to replace the EU Structural and Investment Funds (ESIF). The ESIF funding was designed to promote equality of opportunity between people as well as places, with more than half of the GBP 9.3 billion allocated to the UK in 2014-2020 linked to equality objectives.

Equality activists insist that this level of investment and strategic focus must be sustained in the UKSPF, which should:

- provide *at least* the same level of investment in education, training and support to disadvantaged and discriminated against individuals and groups as the European Social Fund;
- fund provision missed by mainstream support, creating a clear route to employment and other support for individuals and groups furthest from the labour market; and
- hard-wire equality drivers into the UKSPF from the outset, with mandatory requirements to address equal opportunities and narrow employment gaps.

The GBP 2.6 billion UK-wide Shared Prosperity Fund – the second largest funding stream earmarked to tackle regional inequalities (behind the Levelling Up Fund) – illustrates the limitations of the government's approach. The Shared Prosperity Fund will be allocated over three years: GBP 400 million in 2022-23, GBP 700 million in 2023-24 and GBP 1.5 billion in 2024-25. This funding settlement, equivalent to GBP 873 million per year, falls short of its predecessor, the European Structural and Investment Funds, which provided businesses with GBP 1.5 billion each year over seven years. It is estimated that the Shared Prosperity Fund is the equivalent of a 43% cut in funding each year.

Environment

Environmental protections could be threatened by the UK Government's insistence on the Retained EU Law Bill, especially in the absence of any mechanisms for monitoring and/or assessing the effects of its enforcement.

61 https://the3million.org.uk/sites/default/files/documents/t3m-JCWI-HKinB-briefing-HoLPhysicalDocsSIDebate-31May2022.pdf

Trade unions

Workers' protections could also be threatened by the UK Government's insistence on the Retained EU Law Bill, especially in the absence of any mechanisms for monitoring and/or assessing the effects of its enforcement.

The UK Government is seeking to reduce the impact of EU law and principles to the greatest possible extent. The enactment of the Retained EU Law Bill would mean that the UK could revert to earlier laws, which in turn could remove or threaten many rights acquired through EU law, such as workers' rights, fundamental rights, maternity rights, etc.

In terms of social effects, concerns were expressed at potential job losses and additional administrative burdens on businesses, such as new checks and controls, especially in the textile industry, but also across all supply chains. There are also uncertainties around regulatory regimes (e.g. REACH), the movement of people, and the mutual recognition of professional qualifications, which are perceived as gaps in the TCA. Attacks on rights are reportedly coming from everywhere, particularly from the Retained EU Law Bill.

The question of what and how many rights might be removed by the Retained EU Law Bill was of particular concern to trade unions. They are interested in how the EU might respond in terms of ensuring level-playing field (LPF) compliance. Such an LPF compliance response would be welcomed by UK CSOs.

Other concerns are linked to ensuring and preserving equal pay[62], as referenced in EU law; the removal of equal pay clauses could lead to disarray. The social partners are concerned about MPs' apparent lack of understanding of the Retained EU Law Bill and its ramifications, and would very much welcome clear messages from the UK Government on what its plans are regarding rights.

The trade unions would welcome a UK structure along the lines of an economic and social council that would support the UK-EU Trade and Cooperation Agreement Domestic Advisory Group[63] (UK DAG), particularly because the Foreign, Commonwealth and Development Office provides very modest administrative support, thus making the participation of some UK DAG members very difficult.

5.2 Wales

The Welsh Government strongly supports a constructive and cooperative approach with the EU. It is also very firmly in favour of social dialogue.

Relations between civil society and the Welsh Government are still in the process of reinvigoration. There has been a fragmentation of civil society due to the removal of EU funding, an issue exacerbated by the fact that it has been difficult to sustain good relations due to political interventions. The trade effects of post-Brexit arrangements have been variable, while business is keen to play its role in maintaining and developing both cultural and trade links with the EU and its Member States.

62 https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/equal-pay_en

63 https://www.gov.uk/government/groups/uk-eu-trade-and-cooperation-agreement-domestic-advisory-group

Business has been exposed to the adverse effects of Brexit, which are still to be measured, given that they are difficult to disentangle from the effects of the pandemic. Concerns were expressed that the UK Government seems to be more focused on concluding trade agreements with countries like China and Japan, while access to the nearest and biggest market is hindered. On the other hand, EU businesses appear to be reluctant to include the UK in supply chains due to various complexities. The situation has been made worse by the massive loss of skilled labour since 2016. Combined with the COVID-19 pandemic and currency rate fluctuations, the UK has not been attractive for business. Certain high-tech operations, such as blood cancer treatment, have fully withdrawn from the UK market for these reasons.

While the effects of Brexit are still to be disentangled, there is still scope for Welsh companies to focus on the rest of the UK market, which is why the loss of the EU market has not been that consequential, especially because the vast majority of Welsh companies are small in size.

Serious issues have been caused by the increase in courier costs for EU trade, which, however, also need to be disentangled from the costs caused by other factors. Regardless of the causes, increases in most costs, particularly administrative costs, have been evident.

Although the UK Government has been working through a list of trade agreements that it plans to conclude, this seems to be without strategic intent, focusing on rolling over deals rather than on value.

The list of general post-Brexit challenges is fairly straightforward: the movement of goods, movement of people, loss of capacity and skills, loss of R&D expertise, loss of cultural exchange, potential for reduced education opportunities. These apply in either direction and are well known to both sides.

The Welsh Labour Party assesses Brexit to be a multidimensional failure. There is a need to re-establish human relations, as currently there is no real or substantial relationship between Wales and the EU. There is therefore a desire to get representation on the Committee of the Regions, to develop learning about policy implementation and to do so with other EU counterparts.

Some challenges remain the same as before Brexit, prompting the need to learn from each other. For the purpose of creating a framework for conversations, there is a need to develop and establish a secretariat, which the Welsh Government is willing to fund, for the moment focusing on the Committee of the Regions Contact Group.

Concerns were again expressed regarding the renewal of settled status, especially because marginal and vulnerable groups were not engaging with digital media campaigns.

There have been some serious issues surrounding fruit and vegetables arriving from continental Europe, including obstacles, delays, availability and quality; one particular issue for Wales has been very limited lamb exports to the EU. Though farming is not a major component of Welsh GDP, it is a formative element of its economy.

The Well-Being of Future Generations (Wales) Act requires public bodies to consider the longer-term impact of decision-making. This includes the need to adapt behaviours to address climate change.

There is scope for much greater day-to-day cooperation, which could be facilitated by new intergovernmental governance arrangements, including an independent secretariat and dispute-settlement mechanism. However, this architecture will only work if politicians and civil servants work together and with mutual respect.

Civil society concerns need to be taken into account by the UK Government within the framework of its relations with the EU; this is important, as there has been no consultation with civil society whatsoever on pursuing a combative relationship with the EU or on trade agreements, which, inter alia, could have ramifications on farmers.

EU-UK engagement could be strengthened to ensure a voice for Wales/Scotland by drawing on the experience of the Partnership Council, with the participation of ministers from the devolved governments.

The rush to pass the Retained EU Law bill creates a great deal of uncertainty, as the process appears to be rapid, with civil society effectively being locked out. The process of adoption of the Retained EU Law should at least be slowed down to ensure engagement and to avoid missing anything.

The devolved countries should take greater advantage of following relations/meetings between the EU and UK DAGs under the TCA and the joint DAG statements. The UK Government should be pushed to facilitate the related Civil Society Forum and involve Wales and Scotland, for example by not hosting DAG meetings only in London. Wales and Scotland should intensely promote this.

The EESC delegation was informed that the Senedd requested Welsh attendance at the Withdrawal Agreement Joint Committee to discuss a number of issues, but that this was rejected by the UK Government.

Wales is keen to ensure a positive working relationship with the EU and has structures in place to formalise relations, though there is also a need to ensure informal relations. Wales is also particularly keen on re-establishing links with the EU on research and student mobility.

The Welsh Government has launched a new international learning exchange programme called Taith, to try to partially offset the loss of Erasmus, etc. A fund of GBP 65m is being provided.

A possible approach to reset their relations and rebuild trust in each other would be for the EU and UK to identify up to ten issues that would be relatively easy to resolve, thus ensuring "quick wins", which could then serve as a basis on which to build the resolution of more serious issues.

While it is true that the relationship has not fully healed yet, that political tensions are high and that this makes UK-EU conversations about supporting structures for cooperation difficult (as evidenced at the recent Civil Society Forum), it is also clear that there is a time-sensitive risk of relations between Welsh-UK and EU civil society organisations diminishing over time.

Even after the UK's withdrawal from the EU, we have plenty of examples of how, when given the opportunity to cooperate, civil society players will get involved in innovative partnerships. There is

also no shortage of areas to share knowledge and good practice. Stakeholders at the Welsh meetings expressed fear that without structure, even basic information-sharing could vanish. A statement on the Settlement Scheme for EU Citizens, issued by the Catholic Bishops' Conference in December 2018, was also subsequently submitted.

A consensus seemed to emerge from the meetings that a structured, funded framework for UK-EU civil society relations, akin to the CoR Contact Group, is needed to ensure that information-sharing, and strategic partnerships continue to be a feature of the UK–EU relationship. It was also generally agreed that having an element of formality to these would be necessary so that they endure. Even if initially just to explore how these relations are changing, by mapping what is emerging, where gaps in cooperation are being felt the most and what long-term structures might be needed to reconfigure how UK and EU civil society organisations work together in such a way that is better suited to the new context and competing demands of the new UK–EU relationship, this would be worthwhile.

5.3 Scotland

Government

Every single Council Area in Scotland voted "Remain". The Scottish Government is promoting independence and re-joining the EU. A cooperative rather than an adversarial approach is favoured in UK -EU relations. The Scottish Government has decided to keep its Brussels office. There is considerable concern regarding the potential erosion of devolved powers in the aftermath of Brexit. Reliance on these mechanisms is envisaged as a means of preserving citizens' rights, which have evolved during the years of EU membership. The Government supports a culture of social dialogue and wishes to support engagement between Scottish and EU CSOs. A civic forum actually functioned there from 1999 until 2005, but was discontinued due to a lack of financial support.

Farmers

There was an understanding that the TCA would continue to provide fair-trade arrangements, provided there was no divergence in standards and that there were SPS checks regarding purchases of quality produce. However, this does not seem to be functioning as envisaged.

In addition, there are challenges concerning exports to EU Member States, which is why it must be ensured there would be no divergence in standards. There is a general perception that there has been a fall in EU trade. On the other hand, EU trade partners are reportedly keen to return to Scotland.

Scotland is committed to producing food at home and in a sustainable manner in a way that protects and enhances the environment. Scotland's objective is not to rely on others in terms of food production, but to achieve self-sufficiency. Scotland also prides itself on some of the best products in the world, like its whisky, beef and salmon.

Scotland wishes to avoid importing food from elsewhere, as this might deprive local populations elsewhere in the world of essential nutrition. In addition, a possible loss of critical-mass production might result in infrastructure collapse. Furthermore, this would also impact the labour force, as the agrifood industry is the biggest economic driver in Scotland in terms of jobs. Significant increases in labour costs and fuel prices have been a great cause of concern for agriculture.

There is a strong desire to preserve links with the EU and a belief that a more cooperative, constructive relationship would yield better results in terms of trade. The National Farmers Union (NFU Scotland) is committed to maintaining a Brussels office, along with the other UK farming organisations.

The UK DAG is a new structure whereby Scotland, via the UK, has an opportunity to monitor and oversee the TCA. Scotland is very satisfied that the CSF and DAG function as vehicles for communication, while looking for pragmatic solutions. In addition, Scotland also wishes to set up a

Scottish civil society forum that would listen to views from stakeholders across Scotland. A Civic Forum actually functioned there from 1999 until 2005, but was discontinued due to a lack of financial support.

Trade Unions and Women's Organisations

Brexit has been very disappointing for women from agricultural backgrounds, for fishing communities and for other rural communities. Women across Scotland hear that there are opportunities for them but these assurances do not seem to come to fruition; young women were particularly disappointed in Scotland being pulled out of the EU, which is also the main reason why many Scots in general want to vote for independence. They are convinced that the EU was one of the most positive things in their lives and therefore wish to get back to the EU.

The disproportionately large focus on the Retained EU Law Bill completely diverts attention from the Withdrawal Agreement and the TCA.

It was regrettable that the EU's role in funding major infrastructural and community projects had not been made clearer across the UK.

The issues faced by Scottish civil society organisations and Scottish society as a whole as a consequence of Brexit are multiple, and include:

- human rights;
- workers' rights and freedom of movement (for workers and volunteers);
- young people's rights and opportunities;
- commitment to addressing environmental issues;
- loss of European Structural Funds; the lack of EU funding also affects small businesses, the arts sector and others, which are particularly missing this funding;
- opportunities to participate in international research;
- general connectivity with what is happening in the EU;
- decline in the health service due to the lack of labour supply from Europe.

Business

The voice of global companies which have a locus in Scotland was expressed. The Scottish Council for Development and Industry was represented. Alongside business they also include civil society bodies and universities among their affiliates.

Brexit has had a severe economic impact on the Scottish economy, particularly on corporate industries such as the pharmaceutical industry, which has been faced with difficulties relating to health certificates and the availability of ingredients for products.

Edinburgh has been the second most important UK centre for financial services, and Scotland is therefore expecting the EU and UK to elaborate and agree on the structure for regulatory cooperation on financial services.

Services, including engineering services, are very important to Scotland and its world class universities need not be disadvantaged by Brexit.

There is a need to work with industry to understand the frictions and the details of those tough domestic issues through the TCA and try to minimise trade frictions caused by overseas offices.

The EU must work with UK counterparts to close any gaps, and deliver secure and digital borders. In addition, the UK should engage with the EU on policy development and impact assessment.

At the heart of those disadvantaged in Scotland are small enterprises – there is evidence that those exporting to EU businesses are likely to suffer the loss of potential to achieve market scale and to grow. There is a growing concern about the UK Government's reluctance to be involved in a dialogue with the EU.

Unless companies are thinking about environmental and social outcomes, alongside profitability, in five to ten years customers are not going to want to buy from them. Various organisations provide a platform to showcase companies' contribution towards social goals, and also to send the message that they are keen to work in partnership with the EU.

What constitutes a successful economy in north-east Scotland will be different from the Highlands. It is not a one-size-fits-all, which is something that needs to be considered in future decision-making for Scotland.

Some companies have had to make big changes, e.g. relocating storage units to EU countries.

Medicines regulation and policy: trade policy should increase regulatory coherence between the UK and its trading partners, and encourage all countries to regulate medicines to the highest international standards. Developing formal channels of cooperation on medicines regulation will remove duplicative processes that cause inefficiencies – leading to unnecessary costs and delays to patient access – and help to align important regulatory approaches as they emerge.

The Protocol on Ireland/Northern Ireland should be included on the agenda of the CSF as it relates to a variety of aspects important to the economic and social sectors – including the GFA, peace on the island of Ireland, trade and human rights. There are also "knock-on effects", for instance around the UK's association with Horizon Europe. The importance of the forthcoming REUL review taking account of the impact of any resultant divergence (active or passive) on Northern Ireland has been raised with the UK Government.

They expressed concern regarding deregulation-related complexity, red tape and the implications for financial services, mobility and rights of establishment. The loss of Erasmus was described as "a big miss". SMEs are the most severely affected part of the economy. The part of their activity that helps them "scale up", is the part that connects with the EU.

Business representatives were unanimously in favour of a cooperative relationship with the EU. Many of their affiliates would remain connected with their respective Brussels-based bodies.

The Third Sector

UK and Scottish civil society organisations are trying to survive, following the UK Government's cutbacks and the cost-of-living crisis. This effect has been exacerbated by Brexit. Although there are good relationships on specific themes, for instance there are connections between learning disability organisations, as well as connections on young people's issues, there is "no single point of contact" on broader issues. Also, there is no vehicle to find ways to improve relationships. There is also an understandable sense that European organisations do not really see the point of engaging with their UK counterparts any more.

From a Scottish perspective, people feel that they are associated with the antipathy towards Europe that is more prevalent in England, whereas in fact in Scotland there is a much stronger affection for Europe and desire to be European.

The formal mechanisms put in place by the UK Government to comply with the TCA do not appear to be inclusive. They are focused on business/the private sector, which some would not regard as part of "civil society" as such. For this reason, discussions have so far been focused on trade, rather than on social issues.

Scottish CSOs would need much better support from the Scottish Government in terms of providing mechanisms to participate. At the moment there is a will, but no resources to back that up.

Scotland did not vote for Brexit and the Scottish people see themselves as Europeans. However, the Scottish people are now faced with the cost-of-living crisis. Moreover, the view was expressed that Scotland feels that all workers' and women's rights are set to come under attack from the UK Government.

The whole of the TCA is underpinned by mutual respect for the European Convention on Human Rights. However, the UK Government has just introduced a bill to Westminster which, whilst technically involving the UK remaining a party to the ECHR, could "water down" human rights protections in law for people living in the UK. The proposed new law will repeal and replace the Human Rights Act (which incorporates the ECHR into UK law). It will make it more difficult for individuals to uphold their rights in court, and more likely for individuals to have to resort to Strasbourg for rights accountability, while watering down positive/proactive obligations on public authorities related to human rights. It would be very helpful for the CSF to consider recommendations around the mutual importance of not only remaining a party to the ECHR but retaining its fundamental place in protecting and advancing human rights both in EU countries and in the UK.

CSOs have already raised a range of issues that arise through the deregulation agenda, for example where there is divergence that does not trigger the non-regression/level playing field provisions but which nevertheless has an impact on civil society, for instance on human rights, data protection, labour rights, environmental standards and procurement.

The European Convention on Human Rights and the EU Charter of Fundamental Rights were the two human rights pillars for Scotland. Brexit has taken away one pillar, i.e. the EU Charter of Fundamental Rights, and has threatened the other pillar in the form of continued membership of the European Convention on Human Rights.

Three principles that should guide Scotland post-Brexit:

- to try to ensure lower divergence from the protections Scotland enjoyed in the EU;
- to keep pace with progressive developments in EU;
- to demonstrate leadership in advice and encouragement, which has led to the Human Rights Bill being prepared and introduced in the Scottish Parliament, reaffirming the rights in the European Convention on Human Rights that are at risk in the UK, as well as advancing rights in the economic, social, cultural and environmental spheres.

Strengthening relations between Scotland and the EU is the European Network of National Human Rights Institutions and the administrative rights commission as part of the Network.

While Scotland is forward looking and internationally engaged, there are divergences between the UK Government's views and the aspirations of the devolved jurisdictions and limits to how far devolved jurisdictions can go on issues such as migration or macroeconomics.

There are difficulties faced by the devolved countries, particularly in terms of what can be done from their point of view vis-à-vis the EU. These difficulties are even bigger for CSOs with their limited capacity to bring their experience into play. This is exacerbated by the absence of collaboration invitations and partnership opportunities.

Before Brexit, immigration advice was usually provided at a higher level. A long-term solution is needed to the fact that limited resources are being significantly restrained. In addition, there are massive evidential requirements that the Home Office is insisting on.

The Justice Together[64] initiative is an umbrella body of organisations that have pooled resources and ideas to ensure that people who use the UK immigration system can access justice fairly and equally.
Areas like immigration, asylum and equality standards are deteriorating in Scotland. There is a hope, however, that standards will improve with the adoption of the Human Rights Bill.

This may then have a knock-on effect, whereby people in England would see that the situation is better in Scotland, and would thus hold the UK Government accountable, to demand the same level of social and economic protection that people enjoy in Scotland. Similar actions are already taking place in Northern Ireland.

64 https://justice-together.org.uk/

Representatives of the youth organisation "Young Scott" submitted the following written statement: "The young people we work with always tell us how important international opportunities are for them. As such, we would like to do all that we can to encourage stakeholders to ensure these exciting and vital opportunities within Europe remain possible for young people in Scotland".

The Health and Social Care Alliance (a major third-sector organisation, also known as "the Alliance") would like to see increased consistency across the specialist committees and their approach, as there is a view that they are not currently functioning as efficiently as they could. The committees deal with thematic areas, but some of these can have a disproportionate effect on certain communities e.g. rural communities. It is not clear where the geographic approach fits in with the current structures. At present, all of the work is directed at specialist, technical areas, with little assessment of the impact on communities.

The Alliance also argued for further opportunities for civil society to come together, separate from the CSF and the DAGs, if it would be possible for the EESC to facilitate this in future.

The Social Security Protocol to the Trade and Cooperation Agreement covers fewer benefits than the Withdrawal Agreement. Almost no devolved social security benefits are included in the Protocol, and this affects their portability and how people can meet the residence requirements to be able to claim them. This affects both EU citizens with disabilities and their carers moving to the UK after 1 January 2021, as well as people with disabilities and their carers who move from the UK to EU countries. What is being done by the UK and the EU to make sure that people with disabilities can access social security benefits in all countries?

Blue badge: there are currently about 2.5 million people in the UK who have a Blue Badge parking permit, a permit that is essential to many people with disabilities being able to fully participate in society. This Blue Badge used to be valid across the EU but after the UK's withdrawal from the EU, it is no longer recognised in several countries, including France, Italy, Portugal and Croatia. It is understood that the UK Government is negotiating bilaterally with EU countries for recognition of the Badge for travellers with disabilities. The UK recognises the EU/EEA equivalent parking permit. The UK Government's recent response on this gap for travellers with disabilities is that they should "check with embassies" before travelling, which seems a completely unacceptable response to a negative impact of leaving the EU. The CSF could usefully recommend that agreement on mutual recognition of the Blue Badge and its equivalents is hurried up and clarified to make this much easier for drivers with disabilities

5.4 Northern Ireland

The discussions had a significant focus on the question of civil society and engagement mechanisms on the EU-UK WA.

As pointed out by the Centre for Cross Border Studies (CCBS), Northern Ireland is in a different situation to other jurisdictions that are part of the third countries to the EU. This includes the significant differences between Northern Ireland and Great Britain. These differences are not limited to the specific arrangements for Northern Ireland in the WA, including the Protocol. Northern Ireland

is a jurisdiction whereby almost all persons born there now and in the future, regardless of the UK exit from the EU, either remain EU citizens or are entitled to be so by virtue of optional Irish citizenship. This is provided for by the Irish Constitution and under Irish legislation and is endorsed and recognised by the UK in the 1998 Good Friday/Belfast Agreement (GFA). In addition, part of the constitutional governance arrangements for Northern Ireland are treaty-based with Ireland, an EU Member State. Such arrangements are set out in Strand II of the GFA and the bilateral treaties establishing (north-south) cross-border bodies.

Furthermore, the Protocol provides that a body of EU law continues to apply to NI, which includes provisions relating to the single market for goods and the customs union, but also equality and non-discrimination provisions relating to the non-diminution of certain GFA rights (Article 2 of the Protocol), and other supporting provisions of EU law that have provided a legislative underpinning to GFA rights in NI. There is also the context of NI sharing a land border with a Member State, and the context of Irish and other EU citizens resident in the border area who in practice have lived fluid unhindered cross-border lives for decades.

Despite these particular differences, civil society in NI can be considered in the same way as Great Britain and essentially as any other third country for the purposes of institutional engagement with the EU, with little by the way of specific structured provision made. This is not to say there has not been an openness and access for engagement with EU officials dealing with the implications of Brexit – this has occurred to a significant and meaningful extent and continues but is on an ad-hoc basis rather than through a standing structure. The broader issue, however, relates to other engagement with the EU, as not only has NI lost representation in the EP, the main vehicle for civic society to engage with the EU, but also in other relevant EU structures. For example, the EU Fundamental Rights Agency and Fundamental Rights Platform, in which Northern Ireland civic society could previously participate is only open to civil society organisations that operate within a Member State or within a state with observer status – no specific provision is made for the above particular circumstances of Northern Ireland.

There are standing structures under the TCA in which NI civic society can participate (on the same basis as UK bodies); we consider, however, that there is a significant gap in view of the particular circumstances of Northern Ireland relating to the WA – in relation to the Protocol on Ireland/Northern Ireland and the Part II citizens' rights provisions which are of particular relevance to civil society players in Northern Ireland.

The UK has also made an important commitment in Article 2(2) to continue to facilitate the work of the human rights and equality commissions established under the GFA. In practice, however, the UK has acted incompatibly with this commitment, in particular in running down the NI Human Rights Commission to such an extent that the UN accreditation committee has declined to renew its "UN A Status" on the grounds that it does not comply with core provisions of UN rules for national human rights institutions (the Paris Principles.). The key problems relate not to the work of the NIHRC itself but to the UK authorities' actions in stripping the NIHRC of resources to the extent that it cannot discharge its core statutory functions. In October 2022, the UN accreditation committee deferred a

decision to formally strip the NIHRC of its UN status on the grounds that the UK authorities have agreed to conduct a short review of the NIHRC arrangements[65].

Bearing in mind that the primary function of the Centre for Cross-Border Studies (CCBS) is to support, promote and advocate for improved cross-border cooperation between all sectors, particularly in terms of cooperation between Northern Ireland and the Republic of Ireland, but also in terms of cooperation between the island of Ireland and Great Britain, and between these islands and counterparts in the EU, the most pressing issues faced by organisations involved in cross-border cooperation resulting from the UK's withdrawal from the EU are:

- the predominantly negative political context and relations between the UK and the EU, as well as between London and Dublin, and between a certain political faction in Northern Ireland and the Irish Government;
- the emergence of obstacles to cross-border cooperation and mobility resulting from the fact that although the Protocol on Ireland/Northern Ireland gives Northern Ireland access to the single market for goods, it does not do so in terms of the single market for services. One of the most pressing issues as a result of the latter is the difficulty in obtaining cross-border insurance.

The CCBS's quarterly surveys on north-south and east-west cooperation and its engagements with a range of civic society organisations involved in such cooperation point to the emergence of an initial trend (which hopefully will dissipate, if mitigating measures are put in place) where CSOs in the Republic of Ireland (particularly smaller ones with more limited resources) are reducing their collaborations with counterparts in Northern Ireland. The reasons for this are the "chilling effect" arising from the negative political context and relations surrounding discussions on the Protocol, and the emergence of obstacles to cooperation. This means that such organisations begin to prioritise their activities within their own jurisdiction, as well as within the European networks they may be involved in, where it is reported that there is no longer a presence of counterparts from Great Britain and, in some cases, of counterparts from Northern Ireland.

From the particular perspective of the CCBS, as a founding member of the Transfrontier Euro-Institut Network (TEIN)[66], which brings together CSOs and academic institutions from across the EU involved in cross-border cooperation, the CCBS remains committed to maintaining relations with EU counterparts. Moreover, from its engagements with other organisations in Northern Ireland, the CCBS has witnessed the same determination to continue relations and collaborations with CSOs in the EU.

However, given the UK's withdrawal from the EU, and the pressures placed on organisations within Northern Ireland to address the consequences of Brexit (with the added pressures arising from the cost-of-living crisis), the ability of organisations to commit the necessary resources to maintaining their relations with EU counterparts will be restricted unless mitigations are put in place. This will be even more important as pre-Brexit platforms, supported by the EU, are no longer accessible to UK CSOs.

65 https://thedetail.tv/articles/un-decision-on-accreditation-of-ni-human-rights-commission-deferred-again

66 https://transfrontier.eu/

An immediate mapping of the existing channels of communication and collaboration between EU and UK CSOs should be undertaken. What are the networks that were established pre-Brexit, and which of those are continuing with full representation from UK CSOs? Within the UK, support should be given to CSOs to continue their relations with EU CSOs, and efforts have been made in this direction by, for example, the Welsh Government.

Of course, the mechanisms established under the Trade and Cooperation Agreement offer some means for relations between UK and EU CSOs, but this is limited to monitoring the implementation of the TCA and can only involve a small number of CSOs.

The deterioration in the political context as a result of political divisions regarding the Protocol has led to uncertainty and to an unsatisfactory landscape for those organisations involved in cross-border cooperation. From the discussions CCBS has had with other organisations on the island of Ireland, not least through its convening of the Ad-Hoc Group for North-South and East-West Cooperation, there is a clear sense that the views of CSOs are not being taken into account by the UK Government in its approach to the Protocol.

In order for the Protocol to be implemented in a way that does not undermine the necessary conditions for north-south cooperation, as per Article 11 of the Protocol, it is absolutely vital that CSOs involved in such cooperation are included within a formal and effective structure for engagement with the mechanisms established by the Protocol, namely the Specialised Committee and the Joint Consultative Working Group. Although the Centre and the Ad-Hoc Group for North-South and East-West Cooperation have been able to meet representatives from both these bodies on a number of occasions, as well as with the Joint Council, there is a clear lack of structured engagement and of engagement that takes into proper account the voices of CSOs.

The end of the recognition of professional qualifications is causing service delivery problems, particularly for all-Ireland bodies.

The area which appears most impacted is the higher education/research field due to current uncertainties around funding from EU programmes – a chilling effect in practice. Therefore, there is a need for a reset of the overall environment, including the development of new language and expectations of what a new relationship between the EU and UK might look like.

There is an evident reduction in "core" funding from EU sources, for instance from the ESF. This is a major risk for the third sector in Northern Ireland.

There is a risk of the Good Friday/Belfast Agreement being undermined, if issues of rights and unimpeded flows across the Irish border are not safeguarded.

There is a sense that civil society organisations in the UK are losing out from reduced participation – and opportunities to participate – in EU civil society networks. This has a detrimental impact on values and exchange of good practice.

There should be provision made for the UK – and specifically for Northern Ireland – for civil society organisations to continue participation in EU networks and initiatives.

The lack of a Northern Ireland voice is a major issue as is the potential for major disinformation, which is detrimental to community relations.

The trade unions expressed frustration that while workers' rights are a devolved competence there, progress is being impeded because the Executive is not functioning. There is a multiplicity of employer organisations, most of which do not have an industrial relations arm. Talks are conducted with Northern Ireland's Department for the Economy, but there has been no minister there for four of the past six years. There is no formal structure for social dialogue and the situation compares poorly with that of Wales and Scotland. The industrial unions do engage with the "Manufacturing NI" campaigning organisation. The uncertainty around the future of the Protocol as well as the "on/off" nature of the devolved government is hindering the potential to attract investment. Major reputational damage is being incurred and, even allowing for resolution, this will take time to heal. The establishment of a formal structured social partnership would introduce consistency and contribute to "certainty". Union members and working-class people are the "collateral damage" of the way politics is playing out. Even before Brexit, Northern Ireland was at a disadvantage because of its peripherality, and the competitive difference was reflected in lower wages. North-south relations are not as good as they should be and this is not helping.

Women's Platform is the Northern Ireland link to the European Women's Lobby, the largest network of women's organisations in Europe, and forms part of the UK membership of the Lobby, along with sister organisations in England, Scotland and Wales. The European Women's Lobby amended its statutes in 2019 to enable the UK to remain a member post Brexit, and therefore this mechanism for ongoing learning and information-sharing remains in place. The women's sector in Europe has been supportive of the UK throughout the process; however, collaboration on concrete projects is increasingly difficult as the context is different and reporting would need to be done separately for the EU and the UK.

The loss of membership of EU networks in general is an issue that is affecting access to information and also keeping pace with requirements under Article 2 of the Protocol on Ireland/Northern Ireland. For example, the UK is no longer a member of the European Institute for Gender Equality, and therefore comparable data are no longer routinely available. There is also the potential for divergence in available statistics over time, which will act as a further barrier to monitoring the realisation of rights.

As noted above, relations on the whole are positive, but practical collaboration beyond information-sharing is increasingly complex. In Northern Ireland, collaboration with civil society in Ireland continues with limited changes to date, which may be related to initiatives focused on exploring shared island action and networks, including the Irish Government's Shared Island initiative. However, relationships with organisations elsewhere in the UK vary in nature from a women's sector perspective, which may have longer term implications for UK-wide collaboration. The issue of the Protocol has limited or no relevance for women's organisations elsewhere in the UK, which is making it difficult for women's organisations to seek solidarity, while regulatory and policy divergence between the within the UK is also making concrete collaboration more complex. This appears, so far,

an anomaly in civil society, as collaboration in the human rights sector has strengthened, but it would be important to explore shared priorities across the UK as a mechanism for maintaining positive relationships.

Ensuring opportunities for collaboration exist and are strengthened would be important, through mechanisms such as the DAG. However, as participation in such high-level mechanisms necessarily is limited, options and additional mechanisms for sharing information and learning across civil society should be explored to ensure transparency and access to information across civil society. This is important especially for smaller organisations, which may not have the capacity to engage on an ongoing basis. Resourcing such work is vital, in particular considering the complex nature of much of the information shared.

The lack of clarity on the Protocol on Ireland/Northern Ireland continues to create instability and uncertainty in Northern Ireland, and the politicisation of the issues has contributed to deepening division and polarisation. This is nevertheless based on limited knowledge and understanding of the Protocol at a community level, since clear and fact-based communication is difficult to access, made even more complex by the technical nature of many of the issues addressed. This uncertainty is creating major challenges for civil society organisations in Northern Ireland, as it creates additional issues requiring resources and time. The lack of functioning institutions in Northern Ireland is related to these issues, but has impacts beyond this, as it prevents effective and meaningful action on concrete local issues, including cost of living rises, timely access to high quality healthcare and investment in education and services to underpin a modern future economy. It is very difficult for local people and communities to disentangle the impacts of different issues from each other, and this increases uncertainty and anxiety. Stability and clarity are urgently needed to enable Northern Ireland to begin charting a way forward and to rebuild trust across society.

The Retained EU Law bill stands to undermine Article 2 of the Protocol, which states that "the United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol".
The loss of EU funding is huge and negatively impacts a lot of civil society organisations in service delivery.

The risk to human rights means that organised civil society is now in a defensive position lobbying for rights and doing research, which is an unexpected use of time and energy. There is also a need to combat disinformation about what the NI Protocol actually means.

The Ulster Farmers' Union, the largest union of farmers in Northern Ireland expressed its views during the meeting in Belfast, summarised in their paper attached below.



Ulster Farmer Union
position on the NIP.pc

6. Survey results

The replies to the open-ended questions of the survey are summarised in Chapter 3 of this report, complementing the views collected via other channels (such as meetings and written submissions). This chapter therefore covers only replies to the closed questions, where the main results precede the inserted graphs.

6.1 Relations between EU and UK civil society

A significant majority of respondents (56%) either strongly disagree or disagree with the statement that adequate formalised structures have been put in place to ensure that the voice of CSOs is heard in the implementation of the EU-UK Withdrawal Agreement.

3.1) To what extent does your organisation agree with the following statements? : a) Adequate formalised structures exist to ensure the views of civil society organisations are heard in the implementation of the EU-UK Withdrawal Agreement.

		Answers	Ratio
Strongly agree		1	3.70 %
Somewhat agree		6	22.22 %
Neither agree nor disagree		4	14.81 %
Disagree		9	33.33 %
Strongly disagree		6	22.22 %
Don't know		1	3.70 %
No opinion		0	0.00 %
No Answer		0	0.00 %

An overwhelming majority of respondents (89%) agree that the CSF established under the TCA should annually review the implementation of the EU-UK Withdrawal Agreement.

3.1) To what extent does your organisation agree with the following statements? : b) The Civil Society Forum established by the EU-UK Trade and Cooperation Agreement should review annually the implementation of the EU-UK Withdrawal Agreement.

		Answers	Ratio
Strongly agree		20	74.07 %
Somewhat agree		4	14.81 %
Neither agree nor disagree		0	0.00 %
Disagree		0	0.00 %
Strongly disagree		1	3.70 %
Don't know		1	3.70 %
No opinion		1	3.70 %
No Answer		0	0.00 %

There is nearly unanimous (96%) support for the statement that the EU-UK Joint Committee should report annually on engagement with CSOs in the implementation of the citizens' rights provisions of the EU-UK Withdrawal Agreement.

3.1) To what extent does your organisation agree with the following statements? : c) The EU-UK Joint Committee should report annually on engagement with civil society organisations in the implementation of the citizens' rights provisions of the EU-UK Withdrawal Agreement.

		Answers	Ratio
Strongly agree		22	81.48 %
Somewhat agree		4	14.81 %
Neither agree nor disagree		0	0.00 %
Disagree		0	0.00 %
Strongly disagree		0	0.00 %
Don't know		0	0.00 %
No opinion		1	3.70 %
No Answer		0	0.00 %

Similarly, respondents (93%) nearly unanimously agree that the EU-UK Joint Committee should report annually on engagement with CSOs in the implementation of the Protocol.

3.1) To what extent does your organisation agree with the following statements? : d) The EU-UK Joint Committee should report annually on engagement with civil society organisations in the implementation of the Protocol on Ireland/Northern Ireland.

		Answers	Ratio
Strongly agree		23	85.19 %
Somewhat agree		2	7.41 %
Neither agree nor disagree		1	3.70 %
Disagree		0	0.00 %
Strongly disagree		0	0.00 %
Don't know		0	0.00 %
No opinion		1	3.70 %
No Answer		0	0.00 %

6.2 EU-UK Withdrawal Agreement

The three aspects of the EU-UK Withdrawal Agreement that are of the greatest concern to survey respondents are:

1. **Citizens' rights (78%)**
2. **Protocol on Ireland/Northern Ireland (56%)**
3. **Governance (44%)**

4.1) Which aspect(s) of the EU-UK Withdrawal Agreement has/have been of most concern/interest to your organisation?

		Answers	Ratio
a) Citizens' rights		21	77.78 %
b) Financial settlement		3	11.11 %
c) Governance		12	44.44 %
d) Protocol on Ireland and Northern Ireland		15	55.56 %
d) Protocol on Gibraltar		0	0.00 %
d) Protocol on Cyprus		0	0.00 %
e) Separation issues		5	18.52 %
No Answer		0	0.00 %

The most problematic separation issues for the members of the responding organisations are:

1. **Accessing citizens' rights as protected by part II of the EU-UK Withdrawal Agreement (78%)**
2. **Phasing out of involvement in EU programmes (78%)**
3. **Customs arrangements for the movement of goods (63%)**
4. **Functioning of the EU institutions, agencies and bodies (63%)**

4.2) To what extent have members of your organisation reported problems regarding the following separation issues? : a) Placing goods on the market

		Answers	Ratio
Major problems		3	11.11 %
Some problems		7	25.93 %
No problems		6	22.22 %
Don't know		11	40.74 %
No Answer		0	0.00 %

4.2) To what extent have members of your organisation reported problems regarding the following separation issues? : b) Customs arrangements for the movement of goods

		Answers	Ratio
Major problems		4	14.81 %
Some problems		13	48.15 %
No problems		3	11.11 %
Don't know		7	25.93 %
No Answer		0	0.00 %

4.2) To what extent have members of your organisation reported problems regarding the following separation issues? : c) Protection of intellectual property rights

		Answers	Ratio
Major problems		0	0.00 %
Some problems		9	33.33 %
No problems		5	18.52 %
Don't know		13	48.15 %
No Answer		0	0.00 %

4.2) To what extent have members of your organisation reported problems regarding the following separation issues? : d) Ongoing police and judicial cooperation in criminal matters

		Answers	Ratio
Major problems		1	3.70 %
Some problems		5	18.52 %
No problems		6	22.22 %
Don't know		15	55.56 %
No Answer		0	0.00 %

4.2) To what extent have members of your organisation reported problems regarding the following separation issues? : e) Ongoing judicial cooperation in civil and commercial matters

		Answers	Ratio
Major problems		0	0.00 %
Some problems		5	18.52 %
No problems		5	18.52 %
Don't know		17	62.96 %
No Answer		0	0.00 %

4.2) To what extent have members of your organisation reported problems regarding the following separation issues? : f) Data and information exchanged before end of transition

		Answers	Ratio
Major problems		3	11.11 %
Some problems		8	29.63 %
No problems		6	22.22 %
Don't know		10	37.04 %
No Answer		0	0.00 %

4.2) To what extent have members of your organisation reported problems regarding the following separation issues? : g) Ongoing public procurement

		Answers	Ratio
Major problems		3	11.11 %
Some problems		6	22.22 %
No problems		4	14.81 %
Don't know		14	51.85 %
No Answer		0	0.00 %

4.2) To what extent have members of your organisation reported problems regarding the following separation issues? : h) European Atomic Energy Community (Euratom)

		Answers	Ratio
Major problems		0	0.00 %
Some problems		1	3.70 %
No problems		5	18.52 %
Don't know		21	77.78 %
No Answer		0	0.00 %

4.2) To what extent have members of your organisation reported problems regarding the following separation issues? : i) Ongoing judicial and administrative procedures

		Answers	Ratio
Major problems		4	14.81 %
Some problems		11	40.74 %
No problems		2	7.41 %
Don't know		10	37.04 %
No Answer		0	0.00 %

4.2) To what extent have members of your organisation reported problems regarding the following separation issues? : j) Functioning of the EU institutions, agencies and bodies

		Answers	Ratio
Major problems		3	11.11 %
Some problems		14	51.85 %
No problems		4	14.81 %
Don't know		6	22.22 %
No Answer		0	0.00 %

4.2) To what extent have members of your organisation reported problems regarding the following separation issues? : k) Phasing out of involvement in EU programmes

		Answers	Ratio
Major problems		13	48.15 %
Some problems		8	29.63 %
No problems		2	7.41 %
Don't know		4	14.81 %
No Answer		0	0.00 %

4.2) To what extent have members of your organisation reported problems regarding the following separation issues? : l) Accessing citizens' rights as protected by part II of Withdrawal Agreement

		Answers	Ratio
Major problems		10	37.04 %
Some problems		11	40.74 %
No problems		3	11.11 %
Don't know		3	11.11 %
No Answer		0	0.00 %

A considerable majority of respondents strongly disagree or disagree (55%) with the statement that vulnerable EU nationals in the UK receive sufficient support from UK institutions to secure their rights under the EU-UK Withdrawal Agreement.

4.3) To what extent does your organisation agree with the following statements? : a) Vulnerable EU nationals in the UK receive sufficient support from UK institutions to secure their rights under the Withdrawal Agreement

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		5	18.52 %
Neither agree nor disagree		1	3.70 %
Disagree		7	25.93 %
Strongly disagree		8	29.63 %
Don't know		5	18.52 %
No opinion		1	3.70 %
No Answer		0	0.00 %

Close to half of respondents strongly disagree or disagree (48%) with the statement that vulnerable EU nationals in the UK receive sufficient support from UK institutions to access WA rights after those rights have been secured.

4.3) To what extent does your organisation agree with the following statements? : b) Vulnerable EU nationals in the UK receive sufficient support form UK institutions to access Withdrawal Agreement rights after those rights have been secured.

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		2	7.41 %
Neither agree nor disagree		2	7.41 %
Disagree		6	22.22 %
Strongly disagree		7	25.93 %
Don't know		8	29.63 %
No opinion		2	7.41 %
No Answer		0	0.00 %

Some 41% of respondents strongly disagreed or disagreed with the statement that vulnerable WA beneficiaries in the UK are known to UK governmental support institutions. A relatively large share of respondents (30%) replied that they did not know whether these vulnerable beneficiaries are known to UK governmental support institutions.

4.3) To what extent does your organisation agree with the following statements? : c) Vulnerable beneficiaries of the Withdrawal Agreement in the UK are known to UK governmental support institutions.

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		3	11.11 %
Neither agree nor disagree		4	14.81 %
Disagree		6	22.22 %
Strongly disagree		5	18.52 %
Don't know		8	29.63 %
No opinion		1	3.70 %
No Answer		0	0.00 %

6.3 Protocol on Ireland/Northern Ireland

Nearly two thirds of respondents (63%) strongly disagree or disagree that the views of CSOs are appropriately heard in the implementation of the Protocol. On the other hand, a mere 7% of respondents somewhat agree with this.

5.1) To what extent does your organisation agree with the following statements? : a) The views of civil society organisations are being appropriately heard in the implementation of the Protocol.

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		2	7.41 %
Neither agree nor disagree		1	3.70 %
Disagree		6	22.22 %
Strongly disagree		11	40.74 %
Don't know		1	3.70 %
No opinion		6	22.22 %
No Answer		0	0.00 %

Around 44% of respondents strongly disagree or disagree that the views of business are appropriately heard in the implementation of the Protocol.

5.1) To what extent does your organisation agree with the following statements? : b) The views of business are being appropriately heard in the implementation of the Protocol.

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		4	14.81 %
Neither agree nor disagree		1	3.70 %
Disagree		7	25.93 %
Strongly disagree		5	18.52 %
Don't know		2	7.41 %
No opinion		8	29.63 %
No Answer		0	0.00 %

An overwhelming majority of respondents (74%) strongly disagree or disagree that the UK's approach to the implementation of the Protocol delivers certainty for civil society.

5.1) To what extent does your organisation agree with the following statements? : c) The UK's approach to the implementation of the Protocol delivers certainly for civil society.

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		0	0.00 %
Neither agree nor disagree		1	3.70 %
Disagree		6	22.22 %
Strongly disagree		14	51.85 %
Don't know		1	3.70 %
No opinion		5	18.52 %
No Answer		0	0.00 %

A significant majority of respondents (55%) strongly disagrees or disagrees that the UK's approach to the implementation of the Protocol delivers certainty for business.

5.1) To what extent does your organisation agree with the following statements? : d) The UK's approach to the implementation of the Protocol delivers certainly for business.

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		0	0.00 %
Neither agree nor disagree		3	11.11 %
Disagree		5	18.52 %
Strongly disagree		10	37.04 %
Don't know		2	7.41 %
No opinion		7	25.93 %
No Answer		0	0.00 %

Nearly one third (30%) of respondents strongly disagree or disagree with the statement that the Protocol ensures no diminution of rights under the Good Friday/Belfast Agreement as a consequence of Brexit. At the same time, the same share (30%) of respondents agrees with this statement, and another third of respondents have no opinion on this issue.

5.1) To what extent does your organisation agree with the following statements? : e) The Protocol ensures no diminution of rights under the 1998 Belfast (Good Friday) Agreement as a consequence of Brexit.

		Answers	Ratio
Strongly agree		3	11.11 %
Somewhat agree		5	18.52 %
Neither agree nor disagree		1	3.70 %
Disagree		3	11.11 %
Strongly disagree		5	18.52 %
Don't know		2	7.41 %
No opinion		8	29.63 %
No Answer		0	0.00 %

Around 41% of respondents strongly disagree or disagree with the statement that the Protocol as it is currently being implemented provides an appropriate means to address the challenges that Brexit poses for the unique circumstances in the island of Ireland. Less than a quarter (22%) of respondents agree with this statement, and another 22% have no opinion on this.

5.1) To what extent does your organisation agree with the following statements? : f) The Protocol as it is currently being implemented provides an appropriate means to address the challenges that Brexit poses for the unique circumstances in the island of Ireland.

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		6	22.22 %
Neither agree nor disagree		2	7.41 %
Disagree		2	7.41 %
Strongly disagree		9	33.33 %
Don't know		2	7.41 %
No opinion		6	22.22 %
No Answer		0	0.00 %

More than half of respondents (52%) strongly agree or somewhat agree that the Protocol should be developed as a framework for developing Northern Ireland's unique position in the UK-EU relationship. Only 11% of respondents disagree with this statement.

5.1) To what extent does your organisation agree with the following statements? : (g) The Protocol should be developed as a framework for developing Northern Ireland's unique position in the UK-EU relationship.

		Answers	Ratio
Strongly agree		8	29.63 %
Somewhat agree		6	22.22 %
Neither agree nor disagree		2	7.41 %
Disagree		1	3.70 %
Strongly disagree		2	7.41 %
Don't know		1	3.70 %
No opinion		7	25.93 %
No Answer		0	0.00 %

Around 41% of respondents strongly disagree or disagree that adequate means exist to communicate to the UK government problems arising out of the implementation of the Protocol. Only one respondent strongly agrees with this statement.

5.1) To what extent does your organisation agree with the following statements? : (h) Adequate means exist to communicate to the UK government problems arising out of the implementation of the Protocol.

		Answers	Ratio
Strongly agree		1	3.70 %
Somewhat agree		2	7.41 %
Neither agree nor disagree		3	11.11 %
Disagree		6	22.22 %
Strongly disagree		5	18.52 %
Don't know		4	14.81 %
No opinion		6	22.22 %
No Answer		0	0.00 %

On the other hand, around 38% of respondents strongly disagree or disagree that adequate means exist to communicate to the European Commission problems arising out of the implementation of the Protocol. None of the respondents strongly agrees with this statement.

5.1) To what extent does your organisation agree with the following statements? : (i) Adequate means exist to communicate to the European Commission problems arising out of the implementation of the Protocol

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		4	14.81 %
Neither agree nor disagree		2	7.41 %
Disagree		7	25.93 %
Strongly disagree		3	11.11 %
Don't know		5	18.52 %
No opinion		6	22.22 %
No Answer		0	0.00 %

A relatively large share of respondents (48%) strongly disagrees or disagrees that the UK has ensured that no diminution of rights, safeguards or equality of opportunity has resulted from its withdrawal from the Union, as per Article 2 of the Protocol.

5.1) To what extent does your organisation agree with the following statements? : j) The United Kingdom has ensured that no diminution of rights, safeguards or equality of opportunity has resulted from its withdrawal from the Union (Article 2 of the Protocol on Ireland/Northern Ireland).

		Answers	Ratio
Strongly agree		1	3.70 %
Somewhat agree		1	3.70 %
Neither agree nor disagree		2	7.41 %
Disagree		9	33.33 %
Strongly disagree		4	14.81 %
Don't know		3	11.11 %
No opinion		7	25.93 %
No Answer		0	0.00 %

Around 30% of respondents strongly disagree or disagree with the statement that the UK has ensured that the Common Travel Area and the rights and privileges associated therewith have continued to apply without affecting the obligations of Ireland under Union law. On the other hand, 22% strongly agree or agree with the same statement.

5.1) To what extent does your organisation agree with the following statements? : k) The United Kingdom has ensured that the Common Travel Area and the rights and privileges associated therewith have continued to apply without affecting the obligations of Ireland under Union law (Article 3 of the Protocol on Ireland/Northern Ireland).

		Answers	Ratio
Strongly agree		4	14.81 %
Somewhat agree		2	7.41 %
Neither agree nor disagree		1	3.70 %
Disagree		5	18.52 %
Strongly disagree		3	11.11 %
Don't know		5	18.52 %
No opinion		7	25.93 %
No Answer		0	0.00 %

The three areas in which members of the respondents' organisations have experienced the most problems (either "major problems" or "some problems") in relation to Brexit/Protocol issues in the last twelve months were:

1. **Availability of up-to-date information on the requirements of the Protocol (52%)**
2. **Willingness of suppliers from Great Britain to complete additional paperwork to move goods to Northern Ireland (48%); and**
3. **The need to complete additional paperwork for the movement of goods from Great Britain to Northern Ireland (41%)**

5.2) To what extent have members of your organisation reported actual or potential problems in the last twelve months regarding the following Brexit/Protocol issues? : a) The need to complete additional paperwork for the movement of goods from Great Britain to Northern Ireland.

		Answers	Ratio
Major problems		3	11.11 %
Some problems		8	29.63 %
No problems		6	22.22 %
Don't know		10	37.04 %
No Answer		0	0.00 %

5.2) To what extent have members of your organisation reported actual or potential problems in the last twelve months regarding the following Brexit/Protocol issues? : b) Willingness of suppliers from Great Britain to complete additional paperwork to move goods to Northern Ireland.

		Answers	Ratio
Major problems		3	11.11 %
Some problems		10	37.04 %
No problems		6	22.22 %
Don't know		8	29.63 %
No Answer		0	0.00 %

5.2) To what extent have members of your organisation reported actual or potential problems in the last twelve months regarding the following Brexit/Protocol issues? : c) Arrangements for VAT under the Protocol.

		Answers	Ratio
Major problems		2	7.41 %
Some problems		4	14.81 %
No problems		8	29.63 %
Don't know		13	48.15 %
No Answer		0	0.00 %

5.2) To what extent have members of your organisation reported actual or potential problems in the last twelve months regarding the following Brexit/Protocol issues? : d) Arrangements for excise duties under the Protocol.

		Answers	Ratio
Major problems		2	7.41 %
Some problems		3	11.11 %
No problems		9	33.33 %
Don't know		13	48.15 %
No Answer		0	0.00 %

5.2) To what extent have members of your organisation reported actual or potential problems in the last twelve months regarding the following Brexit/Protocol issues? : e) The availability of medicines in Northern Ireland.

		Answers	Ratio
Major problems		3	11.11 %
Some problems		7	25.93 %
No problems		6	22.22 %
Don't know		11	40.74 %
No Answer		0	0.00 %

5.2) To what extent have members of your organisation reported actual or potential problems in the last twelve months regarding the following Brexit/Protocol issues? : f) The availability of foodstuffs in Northern Ireland.

		Answers	Ratio
Major problems		2	7.41 %
Some problems		9	33.33 %
No problems		6	22.22 %
Don't know		10	37.04 %
No Answer		0	0.00 %

5.2) To what extent have members of your organisation reported actual or potential problems in the last twelve months regarding the following Brexit/Protocol issues? : g) Movement of pets from Great Britain to Northern Ireland.

		Answers	Ratio
Major problems		3	11.11 %
Some problems		6	22.22 %
No problems		5	18.52 %
Don't know		13	48.15 %
No Answer		0	0.00 %

5.2) To what extent have members of your organisation reported actual or potential problems in the last twelve months regarding the following Brexit/Protocol issues? : h) Movement of animals/animal products from Great Britain to Northern Ireland.

		Answers	Ratio
Major problems		1	3.70 %
Some problems		9	33.33 %
No problems		5	18.52 %
Don't know		12	44.44 %
No Answer		0	0.00 %

5.2) To what extent have members of your organisation reported actual or potential problems in the last twelve months regarding the following Brexit/Protocol issues? : i) Movement of plants/plant products from Great Britain to Northern Ireland .

		Answers	Ratio
Major problems		2	7.41 %
Some problems		8	29.63 %
No problems		6	22.22 %
Don't know		11	40.74 %
No Answer		0	0.00 %

5.2) To what extent have members of your organisation reported actual or potential problems in the last twelve months regarding the following Brexit/Protocol issues? : j) Arrangements regarding the single electricity market under the Protocol.

		Answers	Ratio
Major problems		1	3.70 %
Some problems		4	14.81 %
No problems		7	25.93 %
Don't know		15	55.56 %
No Answer		0	0.00 %

5.2) To what extent have members of your organisation reported actual or potential problems in the last twelve months regarding the following Brexit/Protocol issues? : k) Tariffs being applied on goods moving from Great Britain to Northern Ireland.

		Answers	Ratio
Major problems		2	7.41 %
Some problems		6	22.22 %
No problems		7	25.93 %
Don't know		12	44.44 %
No Answer		0	0.00 %

5.2) To what extent have members of your organisation reported actual or potential problems in the last twelve months regarding the following Brexit/Protocol issues? : l) Availability of up to date information on the requirements of the Protocol.

		Answers	Ratio
Major problems		3	11.11 %
Some problems		11	40.74 %
No problems		6	22.22 %
Don't know		7	25.93 %
No Answer		0	0.00 %

5.2) To what extent have members of your organisation reported actual or potential problems in the last twelve months regarding the following Brexit/Protocol issues? : m) Movement of goods from Northern Ireland to Great Britain.

		Answers	Ratio
Major problems		1	3.70 %
Some problems		4	14.81 %
No problems		11	40.74 %
Don't know		11	40.74 %
No Answer		0	0.00 %

5.2) To what extent have members of your organisation reported actual or potential problems in the last twelve months regarding the following Brexit/Protocol issues? : n) Movement of goods across the border on island of Ireland.

		Answers	Ratio
Major problems		1	3.70 %
Some problems		4	14.81 %
No problems		10	37.04 %
Don't know		12	44.44 %
No Answer		0	0.00 %

5.2) To what extent have members of your organisation reported actual or potential problems in the last twelve months regarding the following Brexit/Protocol issues? : o) Provision of services on the island of Ireland.

		Answers	Ratio
Major problems		2	7.41 %
Some problems		7	25.93 %
No problems		6	22.22 %
Don't know		12	44.44 %
No Answer		0	0.00 %

6.4 Citizens' rights

Around one quarter of respondents (26%) strongly disagree or disagree that the Withdrawal Agreement rights of EU citizens in the UK are being upheld. A significant share of respondents (41%) does not know whether the Withdrawal Agreement rights of EU citizens in the UK are being upheld or not.

6.1) To what extent does your organisation agree with the following statements? : a) The Withdrawal Agreement rights of UK citizens in the EU are being upheld.

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		3	11.11 %
Neither agree nor disagree		1	3.70 %
Disagree		5	18.52 %
Strongly disagree		2	7.41 %
Don't know		11	40.74 %
No opinion		5	18.52 %
No Answer		0	0.00 %

Roughly one third of respondents (33.3%) strongly disagree or disagree that the WA rights of EU citizens in the UK are being upheld. On the other hand, around 26% somewhat agree that these rights are being upheld.

6.1) To what extent does your organisation agree with the following statements? : b) The Withdrawal Agreement rights of EU citizens in the UK are being upheld.

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		7	25.93 %
Neither agree nor disagree		1	3.70 %
Disagree		5	18.52 %
Strongly disagree		4	14.81 %
Don't know		7	25.93 %
No opinion		3	11.11 %
No Answer		0	0.00 %

Nearly half of respondents (48%) strongly disagree or disagree that clear and accurate information on the WA rights of EU citizens in the UK is freely available via the UK Government.

6.1) To what extent does your organisation agree with the following statements? : c) Clear and accurate information on the Withdrawal Agreement rights of EU citizens in the UK is freely available via the UK government.

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		6	22.22 %
Neither agree nor disagree		0	0.00 %
Disagree		8	29.63 %
Strongly disagree		5	18.52 %
Don't know		5	18.52 %
No opinion		3	11.11 %
No Answer		0	0.00 %

A good quarter of respondents (26%) strongly disagree or disagree that clear and accurate information on the WA rights of EU citizens in the UK is freely available via the European Commission. However, by far the largest share (41%) do not know whether this is the case.

6.1) To what extent does your organisation agree with the following statements? : d) Clear and accurate information on the Withdrawal Agreement rights of UK citizens in the EU is freely available via the European Commission.

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		2	7.41 %
Neither agree nor disagree		2	7.41 %
Disagree		6	22.22 %
Strongly disagree		1	3.70 %
Don't know		11	40.74 %
No opinion		5	18.52 %
No Answer		0	0.00 %

Less than a quarter (22%) of respondents strongly disagree or disagree that clear and accurate information on the WA rights of EU citizens in the UK is freely available via the EU Member State governments. Again, nearly half (48%) of respondents have no knowledge on this.

6.1) To what extent does your organisation agree with the following statements? : e) Clear and accurate information on the Withdrawal Agreement rights of UK citizens in the EU is freely available via the EU member state governments.

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		1	3.70 %
Neither agree nor disagree		2	7.41 %
Disagree		5	18.52 %
Strongly disagree		1	3.70 %
Don't know		13	48.15 %
No opinion		5	18.52 %
No Answer		0	0.00 %

A significant majority of respondents (55%) strongly disagree or disagree that WA beneficiaries in the UK can easily demonstrate their status when required.

6.1) To what extent does your organisation agree with the following statements? : f) The beneficiaries of the Withdrawal Agreement in the UK can easily demonstrate their status when required (e.g. when entering the UK, applying for a job, renting a house, accessing the NHS).

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		1	3.70 %
Neither agree nor disagree		1	3.70 %
Disagree		11	40.74 %
Strongly disagree		4	14.81 %
Don't know		7	25.93 %
No opinion		3	11.11 %
No Answer		0	0.00 %

More than 55% of respondents strongly disagree or disagree that the WA beneficiaries in the UK know where to turn in order to protect their rights.

6.1) To what extent does your organisation agree with the following statements? : g) The beneficiaries of the Withdrawal Agreement in the UK know where to turn to in order to protect their rights.

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		2	7.41 %
Neither agree nor disagree		1	3.70 %
Disagree		10	37.04 %
Strongly disagree		5	18.52 %
Don't know		6	22.22 %
No opinion		3	11.11 %
No Answer		0	0.00 %

The respondents strongly disagree or disagree that the following WA rights of EU citizens in the UK are being upheld:

1. **Right to access UK Government-funded social assistance (44%)**
2. **Right to access the NHS healthcare services free of charge (44%)**
3. **Right to work in the UK (41%)**
4. **Right to redress and challenge negative residence applications (i.e. refusals of EUSS status) (37%)**
5. **Right to enter the UK (33%)**
6. **Right to rent in England (33%)**
7. **Right to equal treatment (33%)**
8. **Right to vote and stand as a candidate at local elections in the UK (22%)**

9. Right to recognition of qualifications (14%)

6.2) To what extent does your organisation agree that the following Withdrawal Agreement rights of EU citizens in the UK are being upheld: : a) Right to enter the UK

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		9	33.33 %
Disagree		6	22.22 %
Strongly disagree		3	11.11 %
Don't know		6	22.22 %
No opinion		3	11.11 %
No Answer		0	0.00 %

6.2) To what extent does your organisation agree that the following Withdrawal Agreement rights of EU citizens in the UK are being upheld: : b) Right to work in the UK

		Answers	Ratio
Strongly agree		1	3.70 %
Somewhat agree		7	25.93 %
Disagree		9	33.33 %
Strongly disagree		2	7.41 %
Don't know		5	18.52 %
No opinion		3	11.11 %
No Answer		0	0.00 %

6.2) To what extent does your organisation agree that the following Withdrawal Agreement rights of EU citizens in the UK are being upheld: : c) Right to rent in England

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		3	11.11 %
Disagree		7	25.93 %
Strongly disagree		2	7.41 %
Don't know		11	40.74 %
No opinion		4	14.81 %
No Answer		0	0.00 %

6.2) To what extent does your organisation agree that the following Withdrawal Agreement rights of EU citizens in the UK are being upheld: : d) Right to access UK government funded social assistance

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		3	11.11 %
Disagree		7	25.93 %
Strongly disagree		5	18.52 %
Don't know		8	29.63 %
No opinion		4	14.81 %
No Answer		0	0.00 %

6.2) To what extent does your organisation agree that the following Withdrawal Agreement rights of EU citizens in the UK are being upheld: : e) Right to access the NHS healthcare free of charge

		Answers	Ratio
Strongly agree		0	0.00 %
Somewhat agree		6	22.22 %
Disagree		6	22.22 %
Strongly disagree		4	14.81 %
Don't know		8	29.63 %
No opinion		3	11.11 %
No Answer		0	0.00 %

6.2) To what extent does your organisation agree that the following Withdrawal Agreement rights of EU citizens in the UK are being upheld: : f) Right to vote and stand as a candidate at local elections in the UK

		Answers	Ratio
Strongly agree		3	11.11 %
Somewhat agree		3	11.11 %
Disagree		5	18.52 %
Strongly disagree		1	3.70 %
Don't know		10	37.04 %
No opinion		5	18.52 %
No Answer		0	0.00 %

6.2) To what extent does your organisation agree that the following Withdrawal Agreement rights of EU citizens in the UK are being upheld: : h) Right to equal treatment

		Answers	Ratio
Strongly agree		1	3.70 %
Somewhat agree		4	14.81 %
Disagree		6	22.22 %
Strongly disagree		3	11.11 %
Don't know		10	37.04 %
No opinion		3	11.11 %
No Answer		0	0.00 %

6.2) To what extent does your organisation agree that the following Withdrawal Agreement rights of EU citizens in the UK are being upheld: : i) Right to recognition of qualifications

		Answers	Ratio
Strongly agree		2	7.41 %
Somewhat agree		3	11.11 %
Disagree		3	11.11 %
Strongly disagree		1	3.70 %
Don't know		14	51.85 %
No opinion		4	14.81 %
No Answer		0	0.00 %

6.2) To what extent does your organisation agree that the following Withdrawal Agreement rights of EU citizens in the UK are being upheld: : j) Right to redress and challenge negative residence applications (i.e. refusals of EU Settlement Scheme status)

		Answers	Ratio
Strongly agree		1	3.70 %
Somewhat agree		2	7.41 %
Disagree		6	22.22 %
Strongly disagree		4	14.81 %
Don't know		11	40.74 %
No opinion		3	11.11 %
No Answer		0	0.00 %

7. Trending

7.1 Spotlight on UK public opinion

On 18 October 2022, the Tony Blair Institute for Global Change published a UK-wide poll on how the British public views Brexit and what it wants from the future relationship with the European Union[67].

7.2 Spotlight on EU citizens in the UK

- On 1 November 2022, the Guardian published an article reporting a claim that the UK Home Office was putting 2.6 million EU citizens at risk of removal[68].
- On 12 November, the Guardian published an article describing the story of parents separated from their child due to Brexit delays[69].

7.3 Spotlight on UK citizens in the EU

- On 13 November, the Guardian published an article reporting the story of a British citizen being deported due to submitting relevant paperwork with a four-day delay[70].

7.4 Spotlight on Northern Ireland

- On 10 November 2022, the FT published an article on the meeting between UK Prime Minister Rishi Sunak and Taoiseach Micheál Martin on the Protocol on Ireland/Northern Ireland[71].
- On 7 November, the Irish News published an article on the meeting between UK Prime Minister Rishi Sunak and President of the European Commission Ursula von der Leyen[72].

7.5 Spotlight on comparing the UK, EU and Welsh approaches to developing and assessing international trade policy post-Brexit

Since the UK withdrew from the EU, it has taken back exclusive competence for international trade negotiations. However, the development of a consistent approach to this, and of an international trade policy generally, has been challenging and, arguably, at least at the UK level, ideologically driven. The UK also lacks a formal structured process for scrutinising and consulting on trade. This has led to several challenges for UK civil society organisations which, previously reliant on EU expertise, procedure and capacity, are now learning to lead on this domestically. International

67 https://institute.global/policy/moving-how-british-public-views-brexit-and-what-it-wants-future-relationship-european-union

68 https://www.theguardian.com/politics/2022/nov/01/home-office-is-putting-26m-eu-citizens-at-risk-of-removal-court-hears

69 https://www.theguardian.com/uk-news/2022/nov/12/couple-separated-from-baby-post-brexit-visa-delays-settled-status

70 https://www.theguardian.com/world/2022/nov/13/denmark-british-man-being-deported-over-late-post-brexit-paperwork

71 https://www.ft.com/content/65c8d322-b877-4e53-9334-36c546f8717b

72 https://www.irishnews.com/news/northernirelandnews/2022/11/07/news/sunak_and_ursula_von_der_leyen_seek_resolution_to_post-brexit_trading_tensions-2886845/

relations are a reserved competence for the UK Government; however, the devolved governments and legislatures have an interest as agreement implementation is devolved. As a result, significant differences in how international trade is perceived and impact-assessed have emerged in Wales which can provide an example of the need to maintain support for future cross-border information-sharing activities.

I. Civil society organisations that used to rely on EU-based capacity to lead on trade and to feed into the dialogue and scrutiny processes have seen the nature of those relationships change by virtue of the UK and EU now having separate responsibilities for trade;

The EU has exclusive competence to negotiate trade agreements for the Member States with the Commission leading on this and having significant experience in the field. When the UK withdrew from the European Union, naturally competence for negotiating and implementing trade agreements was repatriated. Owing to past reliance on EU activity here, the UK and devolved governments have had to invest significantly in training programmes to fill a capacity and skills gap.

In terms of civil society organisations, they now find themselves needing to work with the UK and devolved governments in an incredibly challenging domestic policy space with little experience, capacity and no funding to adapt to these new pressures. They are also no longer able to rely on their EU counterparts who used to provide leadership and proximity to a much more open policy-making nexus. **This provides an example of where UK-EU civil society relations have necessarily changed as a result of divergence.**

II. Understanding and navigating the UK's domestic tensions and why these play a role in how civil society engages with work that might be relevant for UK/EU civil society relations

The domestic constitutional landscape and territorial governance in the UK in this space is particular because while international trade is reserved to the UK Government, implementation of trade agreements is devolved. The Welsh Government and UK Department for International Trade have a good working relationship at the level of officials, but there are **sharply different strategic visions around the UK's approach to post-Brexit trade negotiations**.

The UK Government seems intent on making political statements, securing as many agreements in as little time as possible, while the devolved governments are in favour of a more substantive measured approach. Yet, the UK lacks appropriate systems for:

- consulting and scrutinising negotiation mandates;
- parliamentary scrutiny of trade agreements;
- wider systems of civic society involvement and consultation in and around trade policy;
- any meaningful system for devolved involvement in trade policy establishment and trade negotiation despite implementation being a devolved competence;
- trade policy impact assessment.

As a result, not least because negotiations have been done at pace, it has been impossible to conduct meaningful consultation on the UK's trade policy. In fact, the UK has not taken the time to develop a formal trade policy, so there has been no overarching consultation on crucial questions like intergovernmental cooperation across central and devolved governments on trade, nor on how we ensure connectivity across policy areas which intersect with trade: a crucial question for modern trade deals. **So, there is significant tension between the UK and devolved levels in this space. This has underpinned and driven forward work on distinct approaches for assessing the social dimension of trade policy at the Welsh level.**

III. Within these challenges there are examples of why it is crucial for UK, devolved and EU civil society to have frameworks for sharing information and good practice

Lessons from the UK-EU level around the pursuit of human rights through trade policy:

The EU is tackling human rights in supply chains at an overarching cross-sectoral level (see the Directive on Corporate Sustainability), while the UK is taking a more targeted approach so far with instruments like a recent amendment to its Health and Care Bill to tackle modern slavery in those supply chains. A comparison over time of these approaches could yield useful lessons for both parties and could synergise well with other UK-wide initiatives like academic research being done on inclusive trade policy (which has seen very significant investment across several major universities in the form of the new Centre for Inclusive Trade Policy).

b. Lessons emerging from Wales's approach – the Wellbeing of Future Generations (Wales) Act 2015

While the UK is seriously lacking in its consideration and impact assessment of the raft of trade deals it is pursuing, there is a body of work taking place in Wales to assess trade through the lens of its internationally ground-breaking Wellbeing of Future Generations legislation. This places a duty on public authorities to consider the long-term impacts of their decisions and policy on future generations. Working with civil society, the Welsh Government and Senedd are refining a holistic approach to assessing the UK's trade agreements by considering their impact on the legislation's seven "wellbeing goals". These focus on: **prosperity, resilience, equality, health, community cohesion, culture & language and global responsibility**. WCVA[73] and the Forum are involved in a pilot project called Trade Justice Wales, trying to build capacity around this approach, advocating for these types of impact assessments to be recognised more widely in the UK's approach to trade.

Other organisations like Public Health Wales are at the forefront of advancing this work and building our understanding of the public health dimensions of trade policy. **These types of highly innovative approaches illustrate how progressive and inclusive approaches to trade policy are being developed in the space created by the UK's withdrawal from the EU at the devolved level in the UK. Over time, these could contribute to an agenda for cross-border knowledge-sharing activities. It also provides a strong example of why there would need to be formal structures and funded support in place to enable organisations to form partnerships around these topics – because capacity for this work domestically is already incredibly thin. Our own Trade Justice project is likely to see an interruption in its funding from February 2023, for example.**

7.6 Spotlight on the Taith Programme

Meaning "journey" in Welsh, the Taith programme[74] was mentioned by several participants in the meetings. It is the Welsh Government's International Exchange Programme designed to fill some of the gap left by the UK's withdrawal from Erasmus+. In yet another example of why it is important to highlight the devolved dimension to these issues, it also contrasts sharply with the UK Government's Turing programme[75]. There are three main reasons for this:

- Taith is reciprocal. It recognises the importance of cultural exchange and therefore

73 https://wcva.cymru/

74 https://www.taith.wales/

75 https://www.turing-scheme.org.uk/

provides funded opportunities in support of both **outgoing and incoming learners**.

- Unlike Turing, which targets only some formal educational settings, **Taith is open to learners, staff and volunteers in all education settings**. This is crucial for the voluntary sector because it fills some of the gap left by the loss of the European Solidarity Corps as well as Erasmus+.
- Unlike Turing, Taith **can fund strategic partnerships in addition to direct educational mobility**.

7.7 Spotlight on the WCVA and Foundations for the Third Sector

The WCVA has been heavily involved in a post-Brexit Erasmus+ funded strategic partnership with organisations in Ireland, Finland and Germany called Foundations for the Third Sector[76]. The project aims to upskill new employees in the voluntary sector by developing an entry-level induction training programme. The skills gained by the participants in the programme will be validated using digital badges which can be used for personal development and career progression.

7.8 Spotlight on I-Portunus – Mobility for artists, creators and cultural professionals[77]

Post-dating the initial stages of the UK's withdrawal from the EU, this programme was funded by the EU Commission and piloted in 2019. It was initially made open to UK organisations where it received some interest, including from Wales. It provides an example of how post-Brexit structures can still be put in place to provide for ongoing and deeper cooperation in the context of the new relationship. This is certainly what civil society players seem to universally desire in Wales and was echoed by both UK and EU civic society at the DAGs and Civil Society Forum under the TCA. From 2022, I-Portunus is being integrated into Creative Europe, a consequence of which will be to exclude future UK cultural professionals from participation. Given its success this should provide a source of reflection for both UK stakeholders around the UK's involvement in EU programmes as the review of the TCA approaches, and for stakeholders in the EU in terms of what can be established that is inclusive and supportive of EU-UK civic society relations.

8. List of organisations consulted

Name of civil society organisation	Part of UK	Consulted via meetings	Consulted via survey
Make UK	England	yes	
Federation of Small Businesses (FSB)	England	yes	yes
British Chambers of Commerce (BCC)	England	yes	
National Farmers' Union (NFU)	England	yes	
Trades Union Congress (TUC)	England	yes	yes
Unison	England	yes	
the3million	England	yes	yes
Equally Ours	England	yes	yes
Settled	England	yes	
Civil Society Alliance UK	England	yes	yes
National Council for Voluntary Organisations	England	yes	

76 https://www.f4s3.eu/about

77 https://www.i-portunus.eu/

(NCVO)			
Greener UK and Green Alliance	England	yes	
Public Law Project	England	yes	
British Youth Council	England	yes (remotely)	
Rights of Women	England		yes
Here for Good	England		yes
Federation of Small Businesses (Wales FSB)	Wales	yes	
South Wales Chambers	Wales	yes	
GMB Wales	Wales	yes	
Unison Cymru	Wales	yes	
Unite Wales	Wales	yes	
Wales Arts International	Wales	yes	
Settled	Wales	yes	yes
Cytûn: Churches together in Wales	Wales	yes	yes
National Farmers Union Cymru	Wales	yes	
Welsh Centre for International Affairs	Wales	yes	
WCVA	Wales	yes	
Independent Monitoring Authority	Wales	yes	
Citizens Advice Bureau	Wales	yes	
Chambers Wales	Wales		yes
NFU Scotland	Scotland	yes	
Scottish Women's Convention	Scotland	yes	
ABPI Scotland	Scotland	yes	
Scottish Council for Development and Industry	Scotland	yes	
Scottish Council for Voluntary Organisations (SCVO)	Scotland	yes	yes
Human Rights Consortium Scotland	Scotland	yes	
National Collaborative	Scotland	yes	
The ALLIANCE	Scotland	yes	yes
Settled Scotland	Scotland	yes	
Young Scott	Scotland	yes (remotely)	
University of Glasgow	Scotland		yes
NI Chamber of Commerce	Northern Ireland	yes	
KPMG Ireland	Northern Ireland	yes	
Manufacturing NI	Northern Ireland	yes	yes
Logistics UK	Northern Ireland	yes	
Asda/Northern Ireland Retail Consortium	Northern Ireland	yes	
Confederation of British Industry (CBI)	Northern Ireland	yes	
NERI institute	Northern Ireland	yes	
SIPTU	Northern Ireland	yes	
Unison	Northern Ireland	yes	
Unite	Northern Ireland	yes	
ICTU	Northern Ireland	yes	
Unite	Northern Ireland	yes	
Migrant Centre NI	Northern Ireland	yes	
Rural Community Network	Northern Ireland	yes	
Committee on the Administration of Justice (CAJ)	Northern Ireland	yes	
Centre for Cross Border Studies (CCBS)	Northern Ireland	yes	yes
Women's Platform	Northern Ireland	yes	yes
Human Rights Consortium Northern Ireland	Northern Ireland	yes	
Consumer Council	Northern Ireland	yes	

The Northern Ireland Council for Voluntary Action (NICVA)	Northern Ireland	yes	
Here NI	Northern Ireland	yes	yes
Co-operation Ireland	Northern Ireland	yes	
Ulster Farmers' Union	Northern Ireland	yes	yes
Doire Lochain Caoimhín de Barra	Northern Ireland		yes
Ulster Community Investment Trust Ltd T/A Community Finance Ireland	Northern Ireland		yes
Middletown Centre for Autism	Northern Ireland		yes
Social Change Initiative	Northern Ireland		yes

Government/parliamentary bodies consulted	**Part of UK**	**Consulted via meetings**	**Consulted via survey**
EU Delegation to the UK	England	yes	
Senedd representative UK-Committee of the Regions Contact Group	Wales	yes	
Chair of the Equality and Social Justice Committee	Wales	yes	
Chair of the Legislation, Justice and Constitution Committee	Wales	yes	
Senedd Presiding Officer and Deputy Presiding Officer	Wales	yes	
Senedd representative UK-Committee of the Regions Contact Group	Wales	yes	
Welsh Government officials from the International Relations Team on Wales-EU engagement	Wales	yes	
Welsh Government Migration Policy Team	Wales	yes	
Scottish Government - Director of External Affairs and his team	Scotland	yes	

9. Literature review of EESC work and other sources

9.1 European Economic and Social Committee

1) Implementation and enforcement of the UK Withdrawal Agreement[78], 15/06/2022

The EESC:

- acknowledges that the proposed Regulation empowers the EU Commission to adopt and apply certain measures for the exercise of the Union's rights under the provisions of the EU-UK Withdrawal Agreement and of the EU-UK Trade and Cooperation Agreement.
- acknowledges that the Parties to the relevant Agreements are the United Kingdom and the Union only. It therefore agrees that it is entirely appropriate that initiation of any action would lie at Union level, with recourse to comitology procedures, as set out in the proposed Regulation.
- agrees that the Union needs an agile and effective procedure in the event of the United Kingdom's non-compliance with the Withdrawal Agreement and/or the Trade and Cooperation Agreement.
- agrees that the recourse to comitology procedures as a way to empower the Commission to adopt and apply certain measures in the event of breaches of or non-compliance with the relevant Agreements is fully justified, and is in accordance with the principles of proportionality and subsidiarity that necessarily determine EU action.
- welcomes the proposal for a review of the Regulation five years after its entry into force, and notes that this would be in line with similar provisions in the relevant Agreements.
- supports the proposed Regulation. Furthermore, it maintains that this is an excellent inter-institutional compromise to deal with any eventualities arising from a breach of or non-compliance with the Withdrawal Agreement and/or the Trade and Cooperation Agreement.

2) Brexit Adjustment Reserve[79], 24/02/2021

The EESC:

- Considers that Brexit is a very complex and difficult exercise. The EU-UK Trade and Cooperation Agreement alleviates some of the economic and social damage of a "no-deal" scenario, but the future economic and financial losses are very difficult to quantify at such an early stage.
- Observes already the negative impacts on cross-border mobility and barriers to trade in goods and services. This could result in job losses and businesses going bankrupt, especially SMEs.
- Welcomes the creation of the Brexit Adjustment Reserve (the "Reserve") within the special instruments outside of the EU budget ceilings of the Multiannual Financial Framework (MFF). It considers that cohesion and solidarity between Member States are fundamental EU values and appreciates the retroactive application of the Reserve going back to July 2020.

78 https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/implementation-and-enforcement-uk-withdrawal-agreement

79 https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/brexit-adjustment-reserve

- Believes that workers' rights have to be protected immediately and the mutual recognition of qualifications must be further negotiated. Also recommends that all Member States should immediately start organising information campaigns to raise awareness among citizens regarding the new rules in place. Suggests that the fisheries sector should have a completely separately designed reserve that will support this sector only. Special attention should be paid to other sectors, such as tourism and agriculture, for example.
- Expects prolonged discussions between stakeholders on who gets the biggest slice of the Reserve and considers that additional funds should be immediately provided for.
- Calls on all Member States to act responsibly and direct the available funds towards the regions, companies, workers and citizens that need them the most.
- Believes that the eligibility period could be extended by two more years, just to make sure that the Member States have adequate time to make use of their share of the Reserve and absorb the shock waves from the UK's withdrawal.
- Considers that a small part of the Reserve should be earmarked for technical assistance purposes, for when a new management system is created. However, strongly believes that the largest part of the Reserve should be allocated to supporting employment and economic activities.
- Is asking for specially designed measures to support the SMEs which are particularly affected by the newly introduced customs procedures, regulatory burdens and rising transport costs.
- Recommends that the simplified costs option be used. Simplified rules and less bureaucracy in the implementation process will contribute to faster distribution of the financial resources.
- Calls for the creation of a monitoring committee in each Member State with the main purpose of eliminating possible risks that could appear in the implementation process, while ensuring the formal involvement of civil society in the process.
- Proposes that more clarity should be provided in terms of governance by clearly designating a management body for the Reserve.
- Calls for an intermediary performance framework to be created, based on specific performance-driven indicators to be established by the Member States and evaluated by the European Commission yearly.
- Finally, suggests that the European Commission report on its evaluation of the Reserve's effectiveness to the European Parliament and the Council within three months from the assumed deadline.

Other related EESC opinions:

1) Recovery plan for Europe and the Multiannual Financial Framework 2021-2027[80]
2) Modification of the Solidarity Fund – No Deal Brexit[81]
3) PEACE IV - Continuation of the cooperation programmes[82]
4) Regulation on the European Regional Development Fund and Cohesion Fund[83]

80 https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/recovery-plan-europe-and-multiannual-financial-framework-2021-2027

81 https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/modification-solidarity-fund-no-deal-brexit

82 https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/peace-iv-continuation-cooperation-programmes

9.2 European Committee of the Regions

1) Opinion on strengthening the EU-UK relationship at subnational level and remedying the territorial impact of the UK's withdrawal from the EU[84], 28/04/2022

The European Committee of the Regions

- regrets that the Trade and Cooperation Agreement (TCA) lacks "territorial depth" and does not duly recognise the role of local and regional authorities (LRAs) in the EU-UK relationship;
- stresses that the CoR-UK Contact Group (CG), established in February 2020, is the only[85]institutional channel for providing a forum for continued dialogue and political partnership between the EU and UK LRAs and for exchanging know-how, in particular on territorial cooperation and cross-border issues, and calls for its formal recognition under the TCA in order to provide an assessment of the subnational dimension of the key policy and legislative issues that will have an impact on the UK-EU bilateral relationship;
- and encourages the European Parliament (EP) to adopt a formalised interaction between the CoR and the EP's Delegation to the UK (D-UK) to the EU-UK Parliamentary Partnership Assembly (PPA) to provide territory-based evidence about the implementation of the TCA;
- welcomes the CoR study on *New trade and economic relations between EU-UK: the impact on regions and cities* which concludes that Brexit effects are asymmetric across sectors and EU regions, impact more heavily on smaller companies, may reduce human capital mobility and cooperation between EU and UK enterprises, and negatively affect regions and communities involved in interregional projects with the UK;
- insists that the provisions of the Brexit Adjustment Reserve (BAR) Regulation relating to the involvement of regions and local communities in the implementation of the BAR and the reporting at NUTS 2 level are fully respected;
- sees untapped prospects for cooperation between EU and UK LRAs in jointly engaging on common challenges, such as providing humanitarian assistance, the sustainable management of the North Sea, the Channel and the Irish Sea, as well as the global fight against climate change, the implementation of the Sustainable Development Goals at local and regional level and the shift towards more sustainable and digital tourism.

9.3 Council of the EU

1) EU-UK negotiations (background information and timeline)[86]
2) Council decision establishing the working party[87]

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83 https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/regulation-european-regional-development-fund-and-cohesion-fund

84 https://cor.europa.eu/en/our-work/Pages/OpinionTimeline.aspx?opId=CDR-108-2022

85 https://www.consilium.europa.eu/en/policies/eu-relations-with-the-united-kingdom/post-brexit-agreements/eu-uk-negotiations-on-the-future-relationship/

86 https://www.consilium.europa.eu/en/policies/eu-relations-with-the-united-kingdom/post-brexit-agreements/eu-uk-negotiations-on-the-future-relationship/

87 https://data.consilium.europa.eu/doc/document/XT-21004-2020-INIT/en/pdf

Relevant press releases

1) EU-UK Relations: the Council adopts legislation to ensure continued supply of medicines[88], 12 April 2022
2) Council updates EU fishing rights for 2022 to reflect agreement with UK[89], 31 March 2022
3) EU-UK relations: the Council adopts its mandate on the proposals aiming to ensure continued supply of medicines[90], 9 March 2022
4) Council approves EU-UK Fishing Deal[91], 22 December 2021
5) EU-UK relations: Council authorises the start of negotiations for an agreement in respect of Gibraltar[92], 5/10/2021
6) Council approves EU-UK agreement on fishing opportunities[93], 11 June 2021
7) European Council conclusions on Russia, UK, Middle East and Mali[94], 24 May 2021
8) EU-UK trade and cooperation agreement: Council adopts decision on conclusion[95], 29 April 2021
9) EU-UK trade and cooperation agreement: Council requests European Parliament's consent[96], 26 February 2021

9.4 European Commission

1) Implementing the Withdrawal Agreement[97]
2) Meetings of the EU-UK Joint and Specialised Committees under the Withdrawal Agreement[98]
3) Citizens' Rights[99]
4) Protocol on Ireland and Northern Ireland[100]

88 https://www.consilium.europa.eu/en/press/press-releases/2022/04/12/council-adopts-directive-ensure-continued-supply-of-medicines/

89 https://www.consilium.europa.eu/en/press/press-releases/2022/03/31/council-updates-eu-fishing-rights-for-2022-to-reflect-agreement-with-uk/

90 https://www.consilium.europa.eu/en/press/press-releases/2022/03/09/relations-ue-royaume-uni-le-conseil-adopte-son-mandat-sur-les-propositions-visant-a-assurer-la-continuite-de-l-approvisionnement-en-medicaments/

91 https://www.consilium.europa.eu/en/press/press-releases/2021/12/22/council-approves-eu-uk-fishing-deal/

92 https://www.consilium.europa.eu/en/press/press-releases/2021/10/05/eu-uk-relations-council-authorises-the-start-of-negotiations-for-an-agreement-in-respect-of-gibraltar/

93 https://www.consilium.europa.eu/en/press/press-releases/2021/06/11/council-approves-eu-uk-agreement-on-fishing-opportunities/

94 https://www.consilium.europa.eu/en/press/press-releases/2021/05/25/european-council-conclusions-on-russia-uk-middle-east-and-mali-24-may-2021/

95 https://www.consilium.europa.eu/en/press/press-releases/2021/04/29/eu-uk-trade-and-cooperation-agreement-council-adopts-decision-on-conclusion/

96 https://www.consilium.europa.eu/en/press/press-releases/2021/02/26/eu-uk-trade-and-cooperation-agreement-council-requests-european-parliament-s-consent/

97 https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement/implementing-withdrawal-agreement_en

98 https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement/meetings-eu-uk-joint-and-specialised-committees-under-withdrawal-agreement_en

99 https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement/citizens-rights_en

100 https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement/protocol-ireland-and-northern-ireland_en

5) The EU-UK Security of Information Agreement[101]
6) The EU-UK Agreement for cooperation on the safe and peaceful use of nuclear energy[102]
7) Meetings of the EU-UK Partnership Council and Specialised Committees under the Trade and Cooperation Agreement[103]
8) European Commission proposal regarding stakeholder engagement for the Protocol[104], and related Infosheet[105]

Relevant press releases

1) Meetings of the EU-UK Partnership Council and Specialised Committees under the Trade and Cooperation Agreement[106]
2) Speech by Vice President Šefčovič at British-Irish Association Conference[107], 2 September 2022
3) Protocol on Ireland/ Northern Ireland: Commission launches four new infringement procedures against the UK[108], 22 July 2022
4) Northern Ireland: PEACE PLUS programme will support peace and prosperity across Northern Ireland and the border counties of Ireland[109], 13 July 2022
5) Speech by Vice President Šefčovič at Bloomberg on EU-UK relations[110], 29 June 2022
6) Remarks by Vice President Šefčovič at the press conference on the Protocol of Ireland/Northern Ireland[111], 15 June 2022
7) Commission launches infringement proceedings against the UK for breaking international law and provides further details on possible solutions to facilitate the movement of goods between Great Britain and Northern Ireland[112], 15 June 2022

9.5 European Parliamentary Research Service

1) Brexit Adjustment Reserve[113], 9/11/2022

101 https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement/eu-uk-security-information-agreement_en

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103 https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement/meetings-eu-uk-partnership-council-and-specialised-committees-under-trade-and-cooperation-agreement-0_en

104 https://ec.europa.eu/info/publications/protocol-ireland-and-nothern-ireland-non-paper-engagement-northern-ireland-stakeholders-and-authorities_en

105 https://ec.europa.eu/info/sites/default/files/uktf_factsheet_stakeholder_final_0.pdf

106 https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement/meetings-eu-uk-partnership-council-and-specialised-committees-under-trade-and-cooperation-agreement-0_en

107 https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_22_5303

108 https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4663

109 https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4489

110 https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_22_4237

111 https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_22_3758

112 https://ec.europa.eu/commission/presscorner/detail/en/IP_22_3676

113 https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)690611

2) "Brexit Freedoms Bill"[114], 07/11/2022
3) United Kingdom climate change policies: State of play ahead of COP27[115], (27/10/2022)
4) The UK's Northern Ireland Protocol Bill[116], 25/07/2022
5) Implications of the Northern Ireland Assembly elections for EU-UK relations[117], 25/07/2022
6) United Kingdom: Economic Indicators and Trade with EU[118], 10/05/2022
7) Implementation of the UK Withdrawal Agreement: Financial provisions, citizens' rights and the Northern Ireland Protocol[119], 20/01/2022
8) Impact of the EU-UK Trade and Cooperation Agreement on fisheries and aquaculture in the EU – legal aspects[120], 18/01/2022
9) The United Kingdom's possible re-joining of the 2007 Lugano Convention[121], 18/11/2021
10) Global human rights sanctions – Mapping Magnitsky laws: The US, Canadian, UK and EU approach[122], 16/11/2021
11) EU-UK relations: Difficulties in implementing the Northern Ireland Protocol[123], 09/07/2021
12) UK banks in international markets - Implications of UK-euro area divergence in regulation and supervisory practice[124], 24/06/2021
13) Law enforcement and judicial cooperation in criminal matters under the EU-UK Trade and Cooperation Agreement[125], 27/05/2021
14) EU-UK Trade and Cooperation Agreement[126], 22/04/2021
15) EU-UK private-sector data flows after Brexit: Settling on adequacy[127], 09/04/2021
16) EU-UK relations in fisheries[128], 25/02/2021
17) EU-UK Trade and Cooperation Agreement: An analytical overview[129], 02/02/21
18) Post-Brexit fishing quota changes: 2021[130], 20/01/2022
19) Brexit: The EU-UK trade deal [What Think Tanks are thinking][131], 19/01/2021

114 https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2022)738200
115 https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)738189
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Welsh Government

Ein cyf/Our ref: MA/JJ/2233/23

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1 September 2023

Dear Huw,

Thank you for sending me the Legislation, Justice and Constitution Committee Report which was published on 14 July 2023 in relation to the Environment (Air Quality and Soundscapes) (Wales) Bill ("the Bill").

I thank the Committee for their conclusions and confirm that I have noted them. Please see my response in the Annex below to the set of recommendations within the report. I have also written today to the Chair of the Climate Change, Environment and Infrastructure Committee and the Chair of the Finance Committee to set out my response to their recommendations.

I have been able, in this case, to provide a response to most of the recommendations in the report in advance of the General Principles Debate. However, normal practice is that Ministers provide an explanation of the Government's response to the recommendations in each Committee report during the Stage 1 debate and in most, but not all, circumstances provide further detail through a formal letter. This response does not indicate a future departure from this practice.

I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

Yours sincerely,

Julie James

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

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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 Recommendations within the Legislation, Justice and Constitution Committee Report which was published on 14 July 2023 in relation to the Environment (Air Quality and Soundscapes) (Wales) Bill ("the Bill").

Recommendation 1

The Minister should respond to the conclusions and recommendations we make in this report at least 14 calendar days before the Stage 1 general principles debate takes place.

Please find this response as acceptance of this recommendation.

Recommendation 2

The Minister should advise the Committee of any response she receives from the UK Government regarding her correspondence in connection with paragraph 11(2) of Schedule 7B to the Government of Wales Act 2006.

At the time of responding, I have still not received a formal reply from a Minister of the Crown following my correspondence with them in connection with paragraph 11(2) of Schedule 7B to the Government of Wales Act 2006. I will update the Senedd on this matter in the General Principles debate on the Bill, and if a response has not been received by that time, I commit to updating the Senedd as and when a reply is received.

I therefore accept this recommendation.

Recommendation 3

The Minister should explain clearly why the Bill is needed at this time given that regulations under sections 1 and 2 of the Bill may not be brought forward in the next few years and given that there is an existing legislative framework in Part IV of the Environment Act 1995 which permits the setting of targets on air quality.

I accept this recommendation.

The Bill needs to be seen in a broader context, it is a crucial part of the package of measures to improve the air environment that are set out in our Clean Air Plan for Wales.

The Committee has correctly identified that the Welsh Ministers do have existing powers in relation to air quality. But we have identified some areas where we think new powers and duties will complement, strengthen and reinforce the existing legislative framework to deliver our policy aim. These are reflected in the proposals contained in the Bill.

The provisions in the Bill provide powers to set long-term targets and a duty to set a target in relation to $PM_{2.5}$ as well as introducing duties to monitor, review and report on these targets.

In addition, the Bill proposes to place a new duty on the Welsh Ministers to make arrangements for obtaining the air quality data they consider necessary to monitor the progress being made towards meeting any targets set under sections 1 and 2. This data must be published.

Recommendation 4

The Minister should consider tabling amendments to the Bill to incorporate Part IV of the Environment Act 1995 as a way of delivering a consolidated, bilingual and accessible piece of law on air quality.

Improving the accessibility of Welsh law is a well-established priority for this government and consideration was given to consolidating relevant parts of the Environment Act 1995 during the preparation of the Bill. However, to do so would result in a reduction in the executive competence of the Welsh Ministers due to constraints around Senedd legislative competence. In addition, as the Committee will understand, consolidation of existing legislation is a significant and complex task and we do not consider it necessary, at this time, in order to achieve our policy aims on air quality. On this basis, I do not accept this recommendation.

Recommendation 5

As regards the amendments we suggest in recommendation 4, the Minister should provide the text of the proposed amendments to this Committee and the Climate Change, Environment, and Infrastructure Committee by 31 August 2023.

For the reasons set out above, this recommendation is not accepted.

Recommendation 6

The Minister should confirm our understanding that there is nothing in the Bill or any other piece of legislation that will prevent any Welsh Minister - current or in the future – from using provisions in the Environment Act 1995 to set long-term targets for air quality and targets for the annual mean level of $PM_{2.5}$ in ambient air. If our understanding is incorrect, the Minister should explain why this is the case.

I accept this recommendation and can confirm that the Committee's understanding is correct, as the Bill provisions currently stand. Section 4(2) of the Bill also confirms this point. However, the Committee should note that as a result of our proposal to bring forward amendments in relation to maintaining air quality standards achieved under this Bill, a small restriction of the 1995 Act powers will be necessary to ensure that any standards achieved cannot be lowered or revoked unless specific criteria is met.

Recommendation 7

The Minister should table amendments to the Bill to insert overview sections in line with our comments in paragraph 71 to make the Bill more accessible.

I welcome the Committee's ongoing commitments to improving the accessibility of Welsh law, and the Committee will be aware the Government considers there is a role for overview sections in some Bills. In this case, we do not consider that the accessibility of the Bill would be enhanced with such a provision. The table of contents and the sections themselves, in addition to the Explanatory Notes to the Bill, are, in the Welsh Government's opinion, sufficiently clear.

Therefore, although we accept in principle the intent behind the Committee's recommendation, the Government does not intend to table an amendment to the Bill.

Recommendation 8

The Minister should state what priority the Welsh Government is attaching to consolidating law on the environment given her comments about its complexity and specifically, when law on air quality is likely to be consolidated in the future.

I accept this recommendation.

Environmental law comprises a significant proportion of the statute book in relation to Wales and it derives from a number of sources – which of course adds to its complexity. Improving the accessibility of all Welsh law, including the ultimate codification of environmental law, is a well-established priority of this and earlier Governments. As the Committee has highlighted, our commitments are now underpinned by Part 1 of the Legislation (Wales) Act 2019.

The Committee is aware of our programme of work, set out in *The Future of Welsh Law: a programme for 2021 to 2026*. This does not include a project to consolidate air quality legislation at the present time, and the Committee has taken evidence on this matter during its scrutiny of this Bill.

Nonetheless, I can reassure the Committee that this Government will keep environmental law in its sights. I am sure it will also be a matter of interest to future Governments. I will ensure that the Counsel General is aware of the Committee's remarks on this matter, given his responsibility for *The Future of Welsh Law* programme.

Recommendation 9

The Minister must urgently clarify the interdependencies between the matters dealt with in this Bill and the retained EU law listed on Schedule 1 to the 2023 Act relating to air quality, emissions and air pollution that will be revoked on 31 December 2023.

This recommendation is dealt with below, together with Recommendation 10.

Recommendation 10

The Minister should clarify whether the Welsh Government plans to preserve the retained EU law relating to matters dealt with in the Bill using powers granted to the Welsh Ministers by the 2023 Act. other than the power to exclude retained EU law from Schedule 1.

I accept recommendations 9 and 10. I do not believe there are interdependencies between the matters dealt with in this Bill and the retained EU law listed on Schedule 1 to the 2023 Act relating to air quality, emissions and air pollution that will be revoked on 31 December 2023. Therefore, in my view no issue arises in relation to the preservation of retained EU Law in connection with this Bill.

Recommendation 11

The Minister should address our concerns regarding the potential confusion by defining retained direct EU legislation as primary legislation in light of section 9 of the Retained EU Law (Revocation and Reform) Act 2023.

I accept this recommendation. I propose to table an amendment to remove the reference to retained direct EU legislation from section 26 of the Bill to address the Committee's concerns.

Recommendation 12

The Minister should table amendments to section 1 of the Bill:

- **to provide detail about the policy and principles (rather than the process) underpinning the setting of targets including detail about the specific purposes for which the powers will be used (covering for example the matters for which targets could be set);**
- **to detail any limitations on how the regulation-making power may be exercised.**

I understand the Committee's wishes to provide clarity in this area and agree with the spirit of this recommendation. However, having considered this recommendation, it is my view the policy and principles in relation to setting targets are already contained within the Explanatory Memorandum and Regulatory Impact Assessment. In particular, these contain policy about the use of section 1 powers. The details are intentionally broad, so the use of the powers is not constrained in advance of determining the targets necessary to achieve the overall objectives of the Bill.

The specific policy and principles of each target to be set will be within the regulations and their associated Explanatory Memoranda, alongside associated impact assessments. These will be subject to consultation and the affirmative procedure.

Recommendation 13

The Minister should table an amendment to the Bill to provide information about the actions that will be required to deliver the targets set by regulations under section 1 and to who those actions will apply.

I agree with the Committee that Welsh Ministers should provide information on action required to meet targets set by regulation under section 1. However, I do not think an amendment to the Bill is necessary as the national air quality strategy will outline the policies and cross-Government and sector measures to achieve our objectives for cleaner air in Wales. This will include action to ensure any new air quality targets are met.

Work to set targets will consider the range and scale of interventions that may be required to reach different target levels by different target dates. This is necessary to estimate how future concentrations may respond to specific interventions and how, taken as a whole, concentrations could change under particular scenarios. It is important that differing levels of interventions are explored to assess the future achievability of target levels but to also understand what it would require in terms of the interventions or restrictions on our everyday lives to reach different target levels, before these targets are set. It is not the intention to outline future cross-sector policy and legislative pathways for delivering the targets under the section 1 provisions.

Recommendation 14

The Minister should table an amendment to the Bill to place a duty on the Welsh Ministers to make regulations under section 1.

As this recommendation has potentially significant implications, we are in the process of considering it fully. The effects of accepting would be cross-cutting and detailed consideration must be given across multiple policy areas. In addition, factors including potential financial, health, environmental, economic and socio-economic impacts must be assessed. I will write back to you separately on this matter in due course.

Recommendation 15

The Minister should table an amendment to the Bill to require the Welsh Ministers to lay a draft of regulations under section 1 before the end of the period of 3 years beginning with date on which the Bill receives Royal Assent.

This recommendation needs to be read in conjunction with recommendation 14 above. As this recommendation has potentially significant implications, we are in the process of considering it fully. The effects of accepting this recommendation would be cross-cutting and detailed consideration must be given across multiple policy areas. In addition, factors including potential financial, health, environmental, economic and socio-economic impacts must be assessed. I will write back to you separately on this matter in due course.

Recommendation 16

The Minister should table an amendment to the Bill to provide information about the actions that will be required to deliver the targets set by regulations under section 2 and to who those actions will apply.

As stated in my response to Recommendation 13, I agree with the Committee that Welsh Ministers should provide information on action required to meet targets set by regulation under section 1. However, I do not think an amendment to the Bill is necessary as the national air quality strategy will outline the policies and cross-Government and sector measures to achieve our objectives for cleaner air in Wales. This will include action to ensure any new air quality targets are met.

Recommendation 17

The Minister should state whether or not the definition of ambient air is likely to change over time.

I accept this recommendation. The definition of ambient air, in terms of where it applies, is necessarily target specific to ensure the target is able to drive the actions necessary to achieve its objectives. Where targets apply, it is therefore necessary to define the term within the relevant regulations, which will be subject to public consultation and Senedd scrutiny. Therefore, the definition may be different depending on the context of the target being set. Section 2 of the Bill allows for more than one target to be set for $PM_{2.5}$ and different definitions of ambient air may be needed in each case. I intend to table an amendment to allow for this.

Recommendation 18

The Minister should table an amendment to section 2 of the Bill to include a definition of ambient air.

While I understand the Committee's position on the need for clarity on definitions, it would be unduly restrictive to define ambient air on the face of the Bill when targets for $PM_{2.5}$ are still under development. A definition in the Bill would preclude the possibility of having different definitions for different purposes. However, after considering the matter, I intend to accept recommendation 19, below to commit to defining ambient air in regulations.

Recommendation 19

If recommendation 18 is not accepted, the Minister should table an amendment to the Bill making it a duty to define ambient air in regulations.

I accept this recommendation. We can commit to tabling an amendment to the Bill which makes it clear that regulations setting a PM2.5 air target must make provision defining "ambient air".

Recommendation 20

The Minister should explain the implications, if any, of having two definitions of ambient air in legislation at the same time: a definition introduced as a consequence of this Bill and a definition in The Air Quality Standards (Wales) Regulations 2010.

I accept this recommendation. If regulations made under section 2 of the Bill include a definition of the term "ambient air" it will be for the purposes of those regulations only and specific to the target being set. The definition that exists in the Air Quality Standards (Wales) Regulations 2010 applies in relation to those regulations only. Whilst it is not uncommon for different pieces of legislation to contain definitions of the same term, we will ensure regulations made under section 2 and the accompanying documents make the application of the definition clear.

Recommendation 21

The Minister should table an amendment to the Bill to require a super-affirmative procedure to apply to the making of regulations under sections 1 and 2 of the Bill, following the procedure set out in section 53 of the Agriculture (Wales) Bill, as passed.

I resist this recommendation. It is my opinion that the affirmative procedure, coupled with the Welsh Government's commitment to consult on regulations, provides sufficient opportunity for the Senedd to scrutinise the target setting regulations made under sections 1 and 2 of the Bill.

The super affirmative procedure is only used in rare instances where affirmative procedure is considered to be insufficient, which is not considered to be the case in relation to sections 1 and 2.

In the Agriculture Act that has been cited as the example, it is worth noting the super affirmative procedure only applies to regulations that amend the definitions of "agriculture" and "ancillary activity", terms that are fundamental to the content of the Bill. There is a much stronger argument for using super affirmative procedure for those sections of the Agriculture Bill than there is for sections 1 and 2 of our Bill.

A super affirmative procedure along the lines suggested would necessarily lengthen the timetable for making the regulations and thus risk failing to comply with the statutory duty to lay regulations by 3 years post-Royal Assent.

Recommendation 22

If the Minister does not accept recommendation 21, the Minister should table an amendment to the Bill such that regulations to be made under sections 1 and 2 are subject to a duty to consult in line with section 87(7) of the 1995 Act as amended by section 12 of the Bill.

While I recognise the importance of consultation and agree with the spirit of this recommendation, I do not believe that a statutory duty to consult is required. I have already made a commitment to consult in relation to regulations made under sections 1 and 2. I restate that commitment here.

Recommendation 23

The Minister should table an amendment to the Bill to require the collection of data for the purpose of setting targets.

I fully appreciate the importance of the collection of data for the purpose of setting targets. It is not practically possible to set targets without robust, reliable data. Setting a target without giving due consideration to its achievability, how it may be achieved, along with the associated costs, benefits and social implications could lead to actions which are neither cost effective nor proportionate. However, I do not believe an amendment is necessary.

The steps to set a target are explained in the Explanatory Memorandum. As I have explained in Committee and set out in the technical briefing that was provided to the Climate Change, Environment and Infrastructure Committee in June, it is a complex process. It includes collecting data from a range of stakeholders and sources to underpin the modelling of future emission reduction scenarios and their effects. This is required to develop the cost-benefit analysis and socio-economic analysis associated with target proposals. These considerations are in turn necessary to ensure that, based on the best available evidence, proposed targets are achievable and affordable whilst able to drive the ambitious changes we need to the environment. These analyses are all integral components of any Regulatory Impact Assessment that would be prepared for future regulations. This work is already underway to develop the target proposals.

Recommendation 24

The Minister should table an amendment to the Bill to ensure that the arrangements it makes for obtaining data on air quality are published.

While I fully agree with the need for transparency in this area, the approach to, and arrangements for, setting targets is described within the Explanatory Memorandum. The outcome of the assessments will be provided within the Explanatory Memoranda and Regulatory Impacts Assessments supporting the target-specific regulations. Therefore, an amendment is not necessary.

Recommendation 25

The Minister should table an amendment to section 8 of the Bill to ensure that the Welsh Ministers are under a duty to promote the awareness of clean air as well as the risks associated with air pollution.

I am supportive of what the committee is trying to achieve. However, I do not, agree that an amendment to the Bill is necessary. In promoting awareness of the risks of air pollution, the benefits of non-polluted “clean” air will be implicit. As explained in the Explanatory Memorandum, the purpose of this provision is to raise awareness of the risks posed by air pollution to help reduce exposure and drive improvements in air quality. The focus of section 8 is therefore on raising awareness in relation to air pollution.

Highlighting the positive aspects of clean air is already part of our approach in promoting awareness, for example through ‘Clean Air Day’. We will make it clear in the Explanatory Memorandum and Explanatory Notes that promoting awareness of clean air is part of our approach.

Recommendation 26

The Minister should table an amendment to the Bill to place the Welsh Minsters under a duty to prepare a delivery plan setting out the actions the Welsh Government intends to take to promote awareness about the benefits of clean air and the risks associated with air pollution.

I have already committed to publishing a delivery plan in the Bill's supporting documents and this approach has broad support from stakeholders. I therefore do not believe that an amendment is necessary.

Recommendation 27

The Welsh Ministers should report annually setting out its progress in delivering its plan for promoting awareness about the benefits of clean air and the risks associated with air pollution.

I accept this recommendation. We have already committed to report annually on the national air quality strategy and are expecting the delivery plan to form part of this. Due to the timing of this report however, the delivery plan will need to be reported on separately in the first instance to meet this timescale. I am willing to make this commitment in the Explanatory Memorandum.

Recommendation 28

The Minister should table an amendment to the Bill to consolidate section 80 of the 1995 Act into the Bill and make it clear that it is the Welsh Ministers, not the Secretary of State, who is under a duty to prepare and publish an air quality strategy for Wales.

Whilst I agree this is a point that would benefit from clarity, there are many references to 'Secretary of State' on the statute book with regard to older legislation which need to be read in conjunction with applicable Transfer of Functions Orders and relevant provisions contained within the Government of Wales Act 2006. Making a change to the Secretary of State references in section 80 would create inconsistency and confusion. I can, however, commit to clarifying this point in the Explanatory Memorandum and/or the Explanatory Note.

With regard to consolidation, I refer you to my previous response in relation to recommendation 4.

Recommendation 29

The Minister should table an amendment to the Bill to place a duty on the Welsh Ministers to consult prior to the introduction of a trunk road charging scheme.

I fully understand and agree with the importance placed on public consultation by the Committee. In this case, however, a duty to consult would not add value considering the existing imperative to do so. I reiterate my commitment to consult before making a trunk road charging scheme for the purpose of reducing or limiting air pollution.

Furthermore, the Welsh Transport Appraisal Guidance (WelTAG) outlines the importance of stakeholder involvement and public engagement in gathering evidence of the need for an intervention. WelTAG is a collaborative process, requiring the involvement of people who may be affected by decisions whilst gathering evidence on the impacts of proposed options and the consequences of doing nothing.

Recommendation 30

The Minister should table an amendment to include a definition of soundscapes on the face of the Bill.

I agree that there needs to be clarity on the meaning of soundscapes but a definition on the face of the Bill would reduce flexibility and not allow us to be responsive to change. I agree instead to insert a definition into the Explanatory Memorandum as suggested by the Climate Change, Environment and Infrastructure Committee in their report on the Bill at Recommendation 32, as well as into the national soundscapes strategy itself.

Recommendation 31

In conjunction with recommendation 30, if necessary, the Minister should table an amendment to the Bill to permit the definition of soundscapes to be amended by regulations subjection to the affirmative procedure.

I resist this recommendation. I agreed in the response to recommendation 30 that a definition of soundscapes should be inserted into the Explanatory Memorandum and the national soundscapes strategy itself, therefore this suggested amendment is unnecessary.

Recommendation 32

The Minister should explain:

- **why it is necessary to use the Bill to take powers to amend the Environmental Noise (Wales) Regulations 2006;**
- **why the powers being taken are limited to regulations 7(2) and 17(3)(b) only;**
- **what the effect would be of not taking the powers;**
- **whether there are existing powers to amend the Environmental Noise (Wales) Regulations 2006.**

I accept this recommendation. The Environmental Noise (Wales) Regulations 2006 (the "2006 Regulations") set a cycle for the production of noise maps and the review of noise action plans. In future, the noise maps and noise action plans that are produced by the Welsh Ministers will form part of the national soundscapes strategy ("the Strategy"). The Strategy will be reviewed every 5 years, as set out in section 22 of the Bill, but there is provision in section 22(7) to allow this review cycle to be altered. For example, in the event of an extraordinary Senedd election. I am of the view that it is appropriate to take powers to amend the 2006 Regulations. This is because they enable amendment of the review cycles for the Welsh Ministers' noise maps and action plans in the regulations to keep them aligned with the review cycle for the Strategy. Broader powers were not considered necessary because it is only the maps and plans that are the responsibility of the Welsh Ministers which will form part of the Strategy.

Taking specific powers to amend the 2006 Regulations in the narrow circumstances prescribed, is necessary and it is highly likely that any use of these powers would be combined with section 22(7) of the Bill.

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

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref: CG/PO/296/2023
Ein cyf/Our ref: CG/PO/296/2023

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

4th September 2023

Dear Huw,

Thank you for your letter of 24 July in relation to my appearance at Legislation, Justice and Constitution Committee on 10 July. I welcomed the opportunity to speak to the Committee. I have provided a detailed response to your further questions in an Annex to this letter.

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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

1) **How will the Senedd be able to scrutinise the work that Dame Vera Baird is doing as an independent expert advisor on justice devolution?**

Dame Vera Baird KC was appointed to oversee the design and delivery of the workplan for justice devolution preparations. Her role mainly comprises providing advice to the Welsh Government and helping us find the best ways to deliver our ongoing policy work to prepare for devolution of justice. Her role is therefore predominantly consultative in nature and is not something that can readily be scrutinised by the Senedd. However, I can provide some reassurance that the work she undertakes is overseen by myself, the Minister for Social Justice and Chief Whip and a group of senior officials. Further to this, there is a standing item on justice devolution preparations at each Cabinet Sub-Committee on Justice whereby Dame Vera provides updates on progress on the justice devolution workplan. Minutes of these meetings are of course published.

The Senedd will be able to scrutinise the Welsh Government's proposals on how to take forward elements of justice devolution as they are published for consultation. These will be informed by Dame Vera's advice, as they will also be informed by the other pieces of work being undertaken specifically on youth justice and probation devolution, which I referenced in my oral statement on 27 June. Dame Vera is not responsible for undertaking the work to produce any of these outputs, nor is she responsible for drafting content. However, her role liaising with leads of individual projects, providing direction and sharing her experience and expertise will have an impact on the final products.

2) **Your comments during the meeting implied that the intergovernmental disputes resolution process cannot be used in relation to individual UK Bills making provision in devolved areas because of the timescales involved in such Bills passing through the UK Parliament. Is that correct? If so, how could disputes in relation to UK Bills be resolved? If disputes are not resolved, what impact does this have on the law made for Welsh citizens in devolved areas?**

The focus of the IGR Review is initially on dispute avoidance. We act in that spirit. Where we have concerns about a particular piece of UK legislation, we seek to work with UK Government in the first instance to ensure our positions are understood, with a view to them taking appropriate action to remedy the issue.

It is not the case that the dispute processes in the IGR Review cannot be used in relation to individual UK Bills; however, the associated timetabling would be likely be complex. It can sometimes be very late in a Bill's passage before it becomes clear that agreement at intergovernmental level cannot be reached, and whilst the dispute processes can run quickly, they do not override Parliament's ability to pursue and timetable legislative business.

We are naturally monitoring the UK Government's legislative programme at its widest, and continue to escalate issues – both in relation to individual Bills and cross-cutting matters – as needed. I am clear that the UK Government's continued disrespect for the Sewel Convention is indefensible and wholly inappropriate. The citizens of Wales rightly expect

that the law applicable to them will be made in a way that respects the constitutional conventions of the United Kingdom.

3) **How concerned are you that the increasing use of UK Bills to make (at times significant) provision in devolved areas is marginalising the opportunities for the public and stakeholders in Wales to engage with the making of that law given the different procedures that exist between the Senedd and the UK Parliament?**

It remains my view that there can be situations where it is both sensible and advantageous for UK Bills to make provision for Wales. However, I am acutely aware of the associated scrutiny concerns, both for the Senedd and the wider public and stakeholders. Inevitably, Senedd scrutiny for UK legislation will not be as detailed as that for legislation made in the Senedd.

For this reason, we continue to take the primary position that legislation for Wales should be made in Wales, in line with the devolution settlement; and where UK legislation is considered appropriate (in line with our principles), we are committed to ensuring as much scrutiny as possible through the LCM process.

We continue to seek to work with the UK Government and the other devolved governments to strengthen ways of working and improve UK Government engagement on its legislative programme, including respect for the Sewel convention.

4) **How do you monitor what legislative proposals in other parts of the UK could potentially have an impact on Welsh law as a result of the United Kingdom Internal Market Act 2020? Are you aware of any proposals that could impact in the near future?**

We maintain a regular dialogue with the other Devolved Governments to give and receive feedback on proposals that might have Internal Market Act implications. Our interaction with the UK Government is more sporadic and we would welcome closer collaboration with it in this space. While the Welsh Government does all that it can to monitor the legislative proposals from the UK Government this is often dependent on the level of interaction the UK Government provides.

We are aware of the position taken by the UK Government on the UK Internal Market Act with regard to Scottish Government's proposed deposit return scheme for drink containers and are reviewing how this impacts on the design and implementation of our own proposed scheme.

5) **What assessment has the Welsh Government made of how recently announced plans to introduce restrictions on the sale of high fat, sugar and salt products may be impacted by the UK Internal Market Act's market access principles?**

We have begun to consider whether the UK Internal Market Act will have any impact on the proposals. However, until final, detailed policy instructions have been finalised we cannot make a detailed assessment.

6) **In your statement on 1 July in relation to UK Bills being passed without Senedd consent you said, "We have never seen this level of strain in the devolution settlement during the entire 24 years of its existence". Can you set out why you believe this is the case and what action the Welsh Government is taking in response?**

The UK Government in recent years has taken a fundamentally disrespectful and destructive approach to the Sewel Convention, to devolution, and to the Union.

The Retained EU Law (Reform and Revocation) Act 2023 was a perfect example of this attitude – there is no rational argument that the Bill was exceptional, or urgent, yet the UK Government continued to move ahead regardless of the lack of Senedd consent.

I continue to make representations to UK Government at every opportunity, setting out the scale and nature of our concerns across their legislative programme.

We have seen progress in certain areas, for example the recent progress on the Levelling-Up and Regeneration Bill; however, there is still much work to be done. We are pressing UK Government for information ahead of their next legislative programme as early as possible, with a view to ensuring a sensible foundation for sound intergovernmental working as we move towards the next Parliamentary session.

I am also very mindful of the role of the House of Lords in this area. I attended a briefing session with the Lords in January to make our positions known, and I'm keen to continue that collaboration. I believe UK Government should provide a clearer articulation of their reasoning on legislative consent issues, and at an earlier stage in the process, so as to better inform Lords with sufficient time.

7) **In January this year you told us that you were not aware of any circumstance where the Welsh Government has requested that the UK Government legislate on its behalf. We have since learned that the Welsh Government did request to be included in the UK Government's Non-Domestic Rating Bill. Can you explain in detail:**

    a. **the process involved in using a UK Bill in circumstances where there is broad agreement to do so: when discussions start, who initiates them, what the timeframes are, the process for agreeing amendments etc.**
    b. **the sign-off processes in the Welsh Government Cabinet for using UK Bills throughout their passage through the UK Parliament.**

The Minister for Finance and Local Government drew attention to our involvement with the Non-Domestic Rating Bill via a written statement this March, further to the commitment I offered in my letter to this Committee of 30 June 2022.

UK Government engagement and Parliamentary processes and timings for individual UK Bills vary significantly. On the Non-Domestic Ratings Bill, official level engagement from UK Government was generally timely and effective, and involved discussions prior to introduction, ahead of an exploration with Ministers of the possibility for delivering provision for Wales through the UK Bill.

That situation is different to the process with the UK Infrastructure Bank Act 2023, for example, which we did not originally recommend the Senedd consent to on introduction. On the UKIB Bill, significant engagement and discussions subsequently took place with a view to achieving suitable provision for Wales, leading ultimately to amendments that enabled us to recommend consent be given by the Senedd. That was a long process, with the relevant amendments leading to our recommendation for Senedd consent being six months after the Bill's introduction.

These examples may be sharply contrasted with, for example, the Retained EU Law (Revocation and Reform) Act 2023; where the processes and discussions failed to keep pace with the passage of the Bill.

At a general level, Ministers take decisions for their areas in a manner consistent with our principles for UK Bills, which have been shared with the Senedd, and I am sighted across those decisions.

There are situations, as you have seen recently with Protection from Sex Based Harassment Bill, where wider Cabinet consideration was needed due to specific issues. The Memorandum of Understanding for commencement of the Protection from Sex Based Harassment Bill, which was ultimately agreed, was not our starting position. Our principles would have dictated commencement powers be conferred on the Welsh Ministers. However, on balance, with concessions from UK Government and the wider consideration of our principles for advantageous provision for the people of Wales, a wider decision was taken that recommending consent was the best option.

8) **In our consideration of the legislative consent memoranda on the Non-Domestic Rating Bill, we noted that the Bill is being used to change a scrutiny procedure for a delegated power which the Senedd itself only approved two years ago during the passage of the Local Government and Elections (Wales) Bill (now the 2021 Act). Can you set out your views on using UK Bills to make changes to scrutiny procedures agreed in Senedd legislation, and how appropriate you think this approach is?**

I'm aware that the Minister for Finance and Local Government set out a detailed response to the Committee on 30 June.

Constitutionally, the appropriateness of such a provision being made in a UK Bill is wholly connected with the legislative consent process. This is why this issue is brought to the attention of Members through our LCM.

If the Senedd is content for such a provision to be made in a UK Bill then it is appropriate. If not, then UK Government should amend the provision appropriately.

The Non-Domestic Rating Bill is an example of the positive impacts that UK Bills can have when the consent process works appropriately. We had good engagement, which enabled us to lay our LCM within two weeks of introduction, enabling the Senedd to have greater scrutiny opportunity than can be afforded in cases where that engagement hasn't taken place.

9) The Welsh Government appears to be relying on the 'correction prior to making' procedure with increasing frequency when correcting errors in subordinate legislation. Who within the Welsh Government – officials or a Minister - decides whether an error in a draft affirmative instrument is sufficiently minor to be corrected before the instrument is signed?

My correspondence with the Committee earlier this year on this matter made clear the nature of the minor errors, often small punctuation or other typographical issues, which the well-established process of corrections deal with. As I explained this process applies to Welsh Statutory Instruments, as it does to UK and Scottish Statutory Instruments and Statutory Rules of Northern Ireland.

Decisions on these matters are taken by a range of officials (within Welsh Government as well as the SI Registrar if time allows) and sometimes also by Ministers. However, I believe the recent discussions within the Senedd indicate that it is not so much as to whether the SI Registrar, a lawyer or a member of the Legislative Codes Office within Welsh Government, or a Minister decides whether moving a bracket in an SI needs to happen, but rather the Senedd knowing the correction has taken place.

I have therefore asked officials to establish a method for making available a record of the intended or final correction of errors for draft affirmative instruments in light of Committee reports. Because as the temporary Chair observed in a recent debate, it is important that the Senedd understands what it is that is being asked to approve.

I will write to the Committee on this matter once officials have identified a suitable mechanism to support this.

10) What criteria does the Welsh Government apply, beyond those set out in Statutory Instrument Practice, when considering whether an error in bilingual subordinate legislation is minor and non-substantive?

We are informed by the guidance that I have previously set out to the Committee in my earlier correspondence on this matter.

11) Do the Welsh Ministers take into account matters relating to the accessibility of Welsh law before consenting to the UK Government making subordinate legislation in devolved areas? If so, what criteria is used to make an assessment?

We start from the position that legislation in devolved areas should be made in Wales, with accessibility of the law being one of the principles underpinning that.

Any decision to agree to provision being made in a UKSI will involve an analysis of various factors, including accessibility.

Those factors would also include the potential benefits of bringing forward provision in a UKSI in situations where there is a lack of policy divergence.

These can include resourcing, clarity and coherence, where, for example, there are complicated inter-connected devolved and reserved issues; or technical provisions with cross-border implications.

12) Can you provide an update on the Welsh Government plans for a Statute Repeals Bill?

As the First Minister set out in his recent legislative statement, updates on the consolidation Bills will be given in my annual report on progress on the accessibility programme. That report will be laid in the Autumn, so I will provide a fuller update on the proposals at that time. The current intention is that the first Bill of this type will be known as the Legislation (Repeals) (Wales) Bill.

13) The First Minister noted in his legislative programme statement that the Welsh Government would be introducing a consolidation Bill on planning. Can you provide us with an update on when that Bill will be introduced to the Senedd?

An update on this Bill will also be given in my forthcoming annual report.

Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
–
Legislation, Justice and Constitution Committee

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Mick Antoniw MS
Counsel General and Minister for the Constitution

24 July 2023

Dear Mick,

Legislation, Justice and Constitution Committee, 10 July 2023

Thank you again for attending our meeting on 10 July 2023. We are grateful for the time you regularly give over to the Committee.

As noted at the end of the meeting, there are a series of questions we wished to ask you but for which time did not allow. We would also like to follow-up on a number of matters which were discussed during the meeting. As such, we would welcome a response to the questions in the Annex by 1 September 2023.

You and your officials also committed to provide us with information about prisoners (RoP, paragraphs 141 and 142) and a copy of a letter about UK Bills of concern for which consent was/is being sought (RoP, paragraphs 187 and 190-191). We look forward to receiving that information in due course.

Yours sincerely,



Huw Irranca-Davies
Chair

ANNEX

Question 1: How will the Senedd be able to scrutinise the work that Dame Vera Baird is doing as an independent expert advisor on justice devolution?

Question 2: Your comments during the meeting implied that the intergovernmental disputes resolution process cannot be used in relation to individual UK Bills making provision in devolved areas because of the timescales involved in such Bills passing through the UK Parliament. Is that correct? If so, how could disputes in relation to UK Bills be resolved? If disputes are not resolved, what impact does this have on the law made for Welsh citizens in devolved areas?

Question 3: How concerned are you that the increasing use of UK Bills to make (at times significant) provision in devolved areas is marginalising the opportunities for the public and stakeholders in Wales to engage with the making of that law given the different procedures that exist between the Senedd and the UK Parliament?

Question 4: How do you monitor what legislative proposals in other parts of the UK could potentially have an impact on Welsh law as a result of the *United Kingdom Internal Market Act 2020*? Are you aware of any proposals that could impact in the near future?

Question 5: What assessment has the Welsh Government made of how recently announced plans to introduce restrictions on the sale of high fat, sugar and salt products may be impacted by the UK Internal Market Act's market access principles?

Question 6: In your statement on 1 July in relation to UK Bills being passed without Senedd consent you said, "We have never seen this level of strain in the devolution settlement during the entire 24 years of its existence". Can you set out why you believe this is the case and what action the Welsh Government is taking in response?

Question 7: In January this year you told us that you were not aware of any circumstance where the Welsh Government has requested that the UK Government legislate on its behalf. We have since learned that the Welsh Government did request to be included in the UK Government's Non-Domestic Rating Bill. Can you explain in detail:

- the process involved in using a UK Bill in circumstances where there is broad agreement to do so: when discussions start, who initiates them, what the timeframes are, the process for agreeing amendments etc.
- the sign-off processes in the Welsh Government Cabinet for using UK Bills throughout their passage through the UK Parliament.

Question 8: In our consideration of the legislative consent memoranda on the Non-Domestic Rating Bill, we noted that the Bill is being used to change a scrutiny procedure for a delegated power which the Senedd itself only approved two years ago during the passage of the Local Government and Elections (Wales) Bill (now the 2021 Act). Can you set out your views on using UK Bills to make changes to scrutiny procedures agreed in Senedd legislation, and how appropriate you think this approach is?

Question 9: The Welsh Government appears to be relying on the 'correction prior to making' procedure with increasing frequency when correcting errors in subordinate legislation. Who within the Welsh Government – officials or a Minister - decides whether an error in a draft affirmative instrument is sufficiently minor to be corrected before the instrument is signed?

Question 10: What criteria does the Welsh Government apply, beyond those set out in Statutory Instrument Practice, when considering whether an error in bilingual subordinate legislation is minor and non-substantive?

Question 11: Do the Welsh Ministers take into account matters relating to the accessibility of Welsh law before consenting to the UK Government making subordinate legislation in devolved areas? If so, what criteria is used to make an assessment?

Question 12: Can you provide an update on the Welsh Government plans for a Statute Repeals Bill?

Question 13: The First Minister noted in his legislative programme statement that the Welsh Government would be introducing a consolidation Bill on planning. Can you provide us with an update on when that Bill will be introduced to the Senedd?

Gwir Anrh/Rt Hon Mark Drakeford AS/MS
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/FM/2168/23

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

Delyth Jewell MS
Chair of the Culture, Communications, Welsh Language, Sport, and International Relations Committee

5 September 2023

Dear Huw and Delyth

I would like to thank you both, as well as the members of the Culture, Communications, Welsh Language, Sport, and International Relations Committee (CCWLSIRC) and the Legislation, Justice and Constitution Committee (LJCC) for considering the two Legislative Consent Memoranda laid in respect of the Data Protection and Digital Information (No. 2) Bill ('the Bill').

I appreciate the Committees detailed consideration of the issues relating to what is a very broad and complex piece of UK Government legislation. I have considered the conclusions in the two reports and have responded to the recommendations below (to note I have used clause references from the Bill as amended in Public Bill Committee, dated 9 June).

Legislative consent
I am pleased that both Committees are of the view that the following provisions fall within a purpose within the legislative competence of the Senedd, under Standing Order 29, and therefore require the consent of the Senedd:

- clauses 65-81 Customer and Business Data (clauses 61 to 77 as introduced);
- clause 98 Disclosure of information to improve public service delivery to undertakings (clause 92 as introduced);
- clause 99 Implementation of law enforcement information-sharing agreements (clause 93 as introduced);
- amendment 46 change to clause 65 customer data and business data (clause 61 as introduced); and,
- amendments 8-16, along with Amendment NC5, in relation to clause 99 (clause 93 as introduced), clause 115 Regulations (clause 108 as introduced), and the meaning of "appropriate national authority".

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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 note that both Committees believe that consent is not required for clauses 56 and 60 (clauses 54 and 56 as introduced) and Amendment NC3 (now clause 58) on the basis that the provisions are not within the legislative competence of the Senedd. However, I remain of the view that these provisions are within legislative competence. The purpose of the power conferred on public authorities under clauses 56 and 60 is to facilitate the provision of Digital Verification Services (DVS) in order to improve the service offered to the user. I do not consider that the telecommunications reservation applies to material that is transmitted but rather relates to the means by which communications are transmitted. As such, I am of the view that clauses 56 and 60 relate to devolved matters of public services, economy and business and therefore fall within the legislative competence of the Senedd.

EU-UK relations & Data adequacy

In terms of the UK retaining EU data adequacy, we share the same concerns that provisions within the Bill may pose a risk to this. I also note that both Committees have highlighted compliance with the Trade and Co-operation Agreement (TCA), which places duties on matters covered by the Bill, as a further matter of concern.

In line with both Committees, we do not consider the risk around data adequacy to be an issue for trade only. Being granted adequacy by the EU means that the UK is recognised as having an equivalent level of protection for personal data as the EU, enabling personal data to flow freely between the EU and the UK, supporting both public services as well as private businesses.

We have of course considered the impact of the Bill on the TCA and our view is that the Bill's provisions on the transfer of personal data to third countries comply with the TCA's provisions, which are very brief and high-level.

Use of powers

I note that the LJC Committee would have found it helpful if the reference to the use of the pre-existing Henry VIII power contained within clause 98 of the Bill (clause 92 as introduced) had been included in the original memorandum.

I also note the LJC Committee's views on both the use of concurrent plus powers and the implementation of international healthcare agreements and how this could be reapplied to international agreements whose implementation falls within devolved competence.

Recommendations

In addition to setting out the conclusions reached by the Committees, the reports also set out a series of recommendations and my response to each of these is set out in the table below:

CCWLSIRC Recommendation In light of the potential risks outlined by the Welsh Government to the UK's EU data adequacy decision, we call on the Welsh Government to provide regular updates to the Committee on the Bill's impact on UK-EU relations, including intergovernmental discussions on the Bill as it progresses through the UK Parliament and on an ongoing basis should it be enacted. **Response:** I will continue to provide updates on the potential impact of the Bill on EU-UK relations through the LCM process, in particular regarding concerns around the EU's data adequacy decision, until such time that I am content that the Bill will not impact on EU data adequacy.
LJCC Recommendation 1. The First Minister should provide an update to this Committee and to the Senedd by 6 September 2023 or in the laying of

any next supplementary legislative consent memorandum, whichever is the earlier, on the Welsh Government's consideration of the devolved implications of a UK-wide Code of Practice about the disclosure of information and the powers provided to the Secretary of State in relation to clause 56 of the Bill (as introduced; now clause 60 in the Bill as amended in Public Bill Committee).

Response: My officials are continuing to consider the impacts and suitability of this clause for Wales and Welsh public bodies and are in ongoing discussions with UK Government counterparts. I will provide an update of the outcome of those discussions through the LCM process.

LJCC Recommendation 2. The First Minister should provide an update to this Committee and to the Senedd by 6 September 2023 or in the laying of any next supplementary legislative consent memorandum, whichever is the earlier, on the Welsh Government's consideration of the devolved implications of the regulation making powers in clauses 61 to 77 of the Bill (as introduced; now clauses 65 to 81 in the Bill as amended in Public Bill Committee).

Response: My officials are continuing to consider the suitability of regulation making powers and are in ongoing discussions with UK Government counterparts. I will provide an update of the outcome of those discussions through the LCM process.

LJCC Recommendation 3. Where the Welsh Ministers do not make regulations to implement international agreements, and powers to do so are instead exercised by the Secretary of State, the Welsh Ministers must provide full detail and an explanation to the Senedd in advance of such regulations being made by the Secretary of State.

Response: Should this occur, the Senedd will be updated through the usual process.

LJCC Recommendation 4. The First Minister should provide an update to this Committee and to the Senedd by 6 September 2023 or in the laying of any next supplementary legislative consent memorandum, whichever is the earlier, on the Welsh Government's consideration of clause 36 of the Bill (as introduced; now clause 38 in the Bill as amended in Public Bill Committee).

Response: My officials are exploring the background and rationale behind clause 36 with UK Government to inform our position, and this is a matter of ongoing discussions. I will provide an update of the outcome of those discussions through the LCM process.

LJCC Recommendation 5. We support the Welsh Government's request to the UK Government that it should share a copy of its risk assessment on the Bill and the loss of the adequacy decision as a matter of urgency.

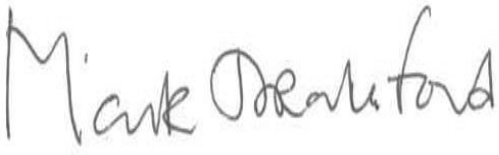
Response: We will continue to raise the issue of the potential impact of the Bill on EU data adequacy (as set out in my response to recommendation 6).

LJCC Recommendation 6. Given the concerns regarding the potential risk of loss of adequacy, the First Minister should escalate this issue to Ministerial level discussions as opposed to discussion at official level.

Response: Welsh Ministers have already raised our concerns with UKG Ministers around the impact of the Bill on the retention of EU data. We will continue to raise the issue at both official and Ministerial level.
LJCC Recommendation 7. The First Minister should provide to this Committee by 6 September 2023 or in the laying of any next supplementary legislative consent memorandum, whichever is the earlier, the Welsh Government's view on the Bill as it relates to compliance under the Trade and Cooperation Agreement. **Response:** The digital trade provisions in the TCA are very brief and high level. Article 202 covers the protection of personal data and privacy in relation to digital trade. Our view is that the Bill's provisions on the transfer of personal data to third countries comply with the TCA. Part Three of the TCA forms the basis of cooperation between the UK and the EU on law enforcement and judicial cooperation in criminal matters. This allows the UK continued access to EU databases covering fingerprints, DNA and criminal records. This cooperation between the UK and EU on law enforcement matters is crucial for the safety and security of people in Wales. It is welcome that the maintenance of high standards of personal data protection form a basis for current and future UK-EU cooperation, as this should motivate the UK Government to maintain the standards of data protection citizens in Wales should expect to see. High standards of personal data protection should reduce the potential risk of the EU not being satisfied with UK standards of personal data protection and potentially terminating the TCA agreement on these grounds. I agree with the Committee's view that there should be high standards of data protection as this underpins international law enforcement cooperation. People in Wales have the right to be confident and secure about how their personal data is used, including for law enforcement purposes. We will continue to emphasise this in our liaison with the UK Government on the Bill.

I am copying this letter to the Minister for Economy, Minister for Finance and Local Government, Minister for Social Justice, and the Counsel General. A copy of this letter will also be sent to all Members, and the Economy, Trade and Rural Affairs Committee.

Yours sincerely



MARK DRAKEFORD

LEGISLATIVE CONSENT MEMORANDUM

ENERGY BILL

1) This legislative consent memorandum is laid under Standing Order ("SO") 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.

2) The Energy Bill ("the Bill") was introduced in the House of Lords on 6 July 2022. The Bill can be found at: Energy Bill [HL] - Parliamentary Bills - UK Parliament. The passage of the Bill was stalled for a period before resuming its passage in the latter part of 2022. The Bill is broad in its scope, complex and introduces into legislation a number of significant regulatory regimes, particularly in the fields of carbon dioxide transport and storage and hydrogen. This has resulted in the need for lengthy and in-depth analysis of the policy and constitutional position.

Policy Objective(s)

3) The UK Government sets out the purpose and main functions of the Bill in the accompanying Explanatory Notes[1]. The UK Government's stated policy objectives are to help increase the resilience and reliability of energy systems across the UK, support the delivery of the UK's climate change commitments and reform the UK's energy system while minimising costs to consumers and protecting them from unfair pricing.

Summary of the Bill

4) The Bill is sponsored by the Department for Energy Security and Net Zero.

5) The Bill is structured around three pillars: Leveraging investment in clean technologies; reforming the UK's energy system and protecting customers; and maintaining the safety, security and resilience of the energy system across the UK.

6) In respect of leveraging investment in new technologies, Parts 1, 2 and 3 of the Bill include provisions to ensure the development of a low carbon energy system, to reduce emissions from industry, transport and potentially heat, and provide low carbon power. These measures include:

[1] Energy Bill [HL] publications - Parliamentary Bills - UK Parliament

a) Establishing an economic regulation and licensing regime for CO_2 transport and storage with the Office of Gas and Electricity Markets (Ofgem) as the economic regulator.
b) Enabling the Government to implement and administer hydrogen and carbon capture business models including introducing a new hydrogen levy.
c) Enabling the establishment of a market-based mechanism for low-carbon heat.
d) Enabling the effective and safe delivery of a large village hydrogen heating trial.
e) Excluding fusion energy facilities from nuclear site licensing requirements under the Nuclear Installations Act 1965 (NIA 1965).

7) In respect of system reform and consumer protection, Parts 4 – 9 of the Bill include provisions to ensure market frameworks and governance arrangements are geared towards strengthening energy security and becoming a net zero energy system while minimising costs to consumers. These measures include:
a) Establishing an Independent System Operator and Planner, an independent body acting as a trusted voice at the heart of the energy sector.
b) Reforming the current energy code governance framework including granting Ofgem new functions to provide strategic direction and oversight on codes and creating a new class of more independent code managers to deliver an improved system for consumers and competition.
c) Enabling competitive tenders in onshore electricity networks.
d) Enabling the Competition and Markets Authority (CMA) to investigate more effectively the impacts of mergers between energy companies.
e) Introducing a definition of multi-purpose interconnectors from which a new licensing and economic regime can be developed.
f) Maintaining the existing energy price cap beyond 2023.
g) Clarifying electricity storage as a distinct subset of generation in the 1989 Electricity Act.
h) Removing obligation thresholds under the Energy Company Obligation scheme.
i) Driving the rollout of smart meters across Great Britain.
j) Regulating the heat network market.
k) Introducing heat network zoning in areas where they are the most viable solution for decarbonising heat.
l) Setting regulatory requirements for Energy Smart Appliances including enabling mandatory functionality for electric heating appliances and electric vehicle (EV) charge points and establishing a new regulatory framework for actors who control these devices.
m) Ensuring the energy performance of premises regime is fit for purpose and reflects the UK's ambitions on climate change, including to support achieving the UK's target for net-zero greenhouse gas emissions by 2050.

8) In respect of the safety, security, and resilience of the UK energy system, Parts 10, 11 and 12 of the Bill include provisions related to a secure and resilient supply of core fuels for the UK, to ensure that the UK is a responsible nuclear state and take essential action in protecting the UK Continental Shelf while transitioning to net zero. These measures include:
   a) Reducing the risk of fuel supply disruption and improve fuel supply resilience in the core fuels sector.
   b) Ensuring that the offshore oil and gas environmental regulatory regime continues to be effective, to maintain current levels of environmental standards and facilitate the offshore oil and gas industry's transition to net zero.
   c) Amending the Petroleum Act 1998 to change the fee regime and cost recovery mechanism for the regulation and offshore decommissioning activities of oil and gas producers.
   d) Granting the North Sea Transition Authority (also known as the Oil and Gas Authority or OGA) additional powers to ensure the UK's oil and gas and carbon storage infrastructure remains in the hands of companies best able to operate or decommission it.
   e) Make expressly clear that certain nuclear sites located wholly or partly in or under the territorial sea adjacent to the UK require a licence and are regulated by the Office for Nuclear Regulation (ONR).
   f) Amending the regulatory framework for the final stages of nuclear decommissioning including bringing the UK into alignment with internationally agreed recommendations for ending nuclear third-party liability and allowing former nuclear sites to be delicensed earlier than at present.
   g) Enhancing the UK's nuclear third party liability regime by enabling the UK's accession to the Convention on Supplementary Compensation for Nuclear Damage through amendments to the Nuclear Installations Act 1965.
   h) Amending the remit and powers of the Civil Nuclear Constabulary to ensure that the constabulary can support other critical infrastructure sites and assist other policy forces.

9) Welsh Government were not involved in the development of the Bill before its introduction. Some engagement occurred as a result of policy development, for instance through past consultations on several policies. Some clauses were shared in draft, however the full legal text was not available for review until hours before its introduction into the House of Lords.

10) A wide range of different pieces of legislation currently govern the UK's energy system and a number of these are amended by the Bill. These include the Energy Act 2008, The Gas Act 1986, The Electricity Act 1989, The Petroleum Act 1998 and The Climate Change Act 2008. Changes to legislation are included in the Explanatory Notes which can be found here: Energy Bill [HL] publications - Parliamentary Bills - UK Parliament

Provisions in the Bill for which consent is required

11) I consider that consent is required in relation to provisions identified below in so far as they are “relevant provision” for the purposes of SO29. Please note all clause numbers relate to the Bill as introduced.

12) A large number of levers relating to energy policy are reserved. However, given the complexity in reserved and devolved powers, legislative consent will be required in a number of areas. Welsh Ministers have written to the UK Government to raise concerns that the Bill as drafted does not respect the legislative competence of the Senedd nor the devolved responsibilities of Welsh Ministers and that the UK Government should seek Welsh Ministers’ consent to any secondary legislation which impacts devolved competence. The Welsh Government recommends withholding consent to the relevant clauses at this time.

13) The Welsh Government will continue to work with the UK Government to secure an approach to the provisions which require amendments. The Welsh Government may bring forward a supplementary memorandum and motion later in the Bill’s passage through the UK Parliament.

Provisions for which the Welsh Government recommends consent

14) The provisions which the Welsh Government recommends that the Senedd **consent** to are summarised below.

a) Part 1: Licensing of Carbon Dioxide Transport and Storage

This Part establishes the duties and functions for Ofgem to act as economic regulator of CO2 transport and storage and a framework for the economic licensing of CO2 transport and storage activities. A UK-wide approach is being taken to ensure a consistent regulatory framework across the UK, where CO2 transport and storage networks are expected to cross territorial boundaries. It also sets out broad powers for the Secretary of State to make regulations, take decisions and provide direction to Ofgem with regard to its regulation of CO2 transport and storage activities.

An LCM is required for the provisions referred to below as they concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, transport and storage, and do no not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.

<u>Chapter 1 – clauses 20 – 25</u>
These clauses establish that a licence holder, or a transport and storage network user whose interests are materially affected by a decision by the economic regulator to modify a licence condition, has a right to appeal a licence modification decision to the Competition and

Markets Authority (CMA). It sets out the procedure and the power of the CMA.

This is intended to ensure due process and that there are sufficient safeguards for investors whose rights may be interfered with by a proposed licence modification during the term of the licence.

The Welsh Government has no concerns with these clauses, agrees they are required and recommends consent is granted.

b) Part 2: Carbon dioxide capture, storage etc. and hydrogen production

An LCM is required for the provisions listed below as they concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, transport and storage, and do no not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.

Chapter 4 – Clauses 92 –95 and Schedule 5
These clauses introduce new ex-ante powers for the Oil and Gas Authority regarding the change of control of a company in relation to all Carbon Storage Licensees and makes it an offence to change control without prior consent of the Oil and Gas Authority.

There is overlap between their geographic scope and the territory over which the Senedd has competence under section 108A of the Government of Wales Act.

It is important that licences are not subject to undesirable change of control and consequently the Welsh Government recommend consent is granted.

Chapter 5 – Clause 97
Clause 97 makes provision for SoS to incur expenditure and provide financial assistance for the purpose of encouraging, supporting or facilitating the transport and storage of CO2, carbon capture facilities which operate in association with transport and storage, low carbon hydrogen production and transport and storage of hydrogen.

Financial support will be required to scale up the deployment of this technology. Therefore, the Welsh Government recommend consent is granted.

c) Part 3: New technology

An LCM is required for the provision listed below as they concern the matters of environmental protection and waste, and do no not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.

Clause 111
This clause alters the definition of "UK removals" in section 29(1)(b) of the Climate Change Act 2008 so that in relation to greenhouse gas it means "removals of that gas from the atmosphere due to processes, mechanisms or activities".

The previous definition of "UK removals" in the Climate Change Act 2008 referenced only removals of greenhouse gases from the atmosphere due to land use, land-use change or forestry activities in the United Kingdom. By altering the definition through this Bill, engineered removals will also fall within the definition.

The Welsh Government consider this appropriate and recommend consent is granted.

d) Part 7: Heat Networks

Clause 168(1)(b) and (2); and paragraphs 33(1) and (3)(a) and (d) of Schedule 15

Clause 168(1)(b)

This provision enables the Secretary of State to make provision by regulations for the purposes of conferring powers in relation to the development or maintenance of relevant heat networks.

Paragraph 101 of Schedule 7A to the Government of Wales Act 2006 provides for a reservation in respect of "Production, distribution and supply of heat and cooling". However, it also provides for an exception to that reservation, in respect of "Heat and cooling networks, but not the regulation of them". The provision (s. 168(1)(b)) falls within the exception to the reservation, relating as it does to the development and maintenance of heat and cooling networks.

Clause 168(2) and paragraphs 33(1) and paragraphs 33(1) and (3)(a) and (d) of Schedule 15

Clause 168(2) provides that Schedule 15 contains further provision about the powers to make regulations under clause 168.

Paragraphs 33(1) and (3)(a) and (d), taken together, require the Secretary of State to set out in such regulations the rights relating to land that are capable of being conferred on a person by an installation and maintenance license, which may include a right to apply to the

Secretary of State to make a compulsory acquisition of an easement or other right over land by the creation of a new right for the purpose of installing or maintaining works and apparatus relating to a heat network; and a right to undertake works of a specified description without being required to obtain planning permission.

Paragraph 184 of Schedule 7A to the Government of Wales Act 2006 provides for a reservation in relation to “Planning…”, but one which is limited to certain matters, none of which is relevant. The provision is therefore within the Senedd’s competence in respect of planning more broadly.

The Welsh Government are content that the rights and powers are appropriate and is consistent with other energy infrastructure. Therefore, we recommend consent is granted.

Provisions for which the Welsh Government recommends the Senedd withhold consent

15) The provisions to which the Welsh Government recommends the Senedd **withhold consent** are summarised below.

Clauses – Brief description	Why an LCM is required	Consent recommended / not recommended and why
Part 1: Licensing of carbon dioxide transport and storage This Part establishes the duties and functions for Ofgem to act as economic regulator of CO2 transport and storage and a framework for the economic licensing of CO2 transport and storage activities. A UK-wide approach is being taken to ensure a consistent regulatory framework across the UK, where CO2 transport and storage networks are expected to cross territorial boundaries.		
Chapter 1 – Licensing of activities Chapter 1 relates to the licensing of activities including the operation of carbon dioxide storage and transportation of CO2. It establishes Ofgem as the economic regulator for CO2 transport and storage, prohibits transportation of CO2 by pipeline or operating a site for the geological storage of CO2 without a licence and enables the Secretary of State (SoS) to regulate other means of CO2 transport in the future.	**LCM required for clauses 1-19, 26-35 and Schedule 1.** An LCM is required for these provisions as they legislate in the devolved area of carbon dioxide storage. The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture transport and storage, and do no not relate to any reservation in Schedule 7A of the Government of Wales Act 2006. **Clause 1 sets the principal objectives and general duties**	The Welsh Government recommends withholding consent for clauses 1-19, 26- 35 and Schedule 1 as amendments or clarifications are recommended. The Welsh Government are requesting amendments as follows: Clause 1 – An amendment to include contributing to UK and Devolved Governments' climate targets as a principal objective of the economic regulator.. Clauses 2 and 3 – As clause 2(3)(b) gives the Secretary of State powers to make regulations specifying other means of transportation of gas which are to be a "licensable means of transportation", request that the requirement in clause 3 for the Secretary of State to give notice to the Welsh Ministers if the regulations contain provision that would be within devolved competence be strengthened to a requirement to obtain the consent of Welsh Ministers. Furthermore, clause 2(7) provides for the SoS to also modify and/or repeal provision of this Act or other enactments, and thereby modify licence model clauses. This broad power could result in the SoS creating economic licence conditions that conflict with

	of the Secretary of State and economic regulator. **Clauses 2 - 6 relate to licensable activities:** Clause 2 introduces an offence for unlicensed activities. Clause 3 relates to the requirements for the SoS to consult on proposals for additional activities to become licensable Clause 4 sets out the territorial scope of prohibition Clause 5 provides for the Secretary of State to regulate to grant exemption from the prohibition. Clause 6 provides for the Secretary of State to revoke regulations by which an exemption from the prohibition was granted. **Clauses 7 – 16 relate to the granting of licences and licence conditions**: Clause 7 allows for the economic regulator to grant licenses for the transport and storage of CO2	Welsh Government licensing and environmental executive functions. The Welsh Government request amendments to clarify the extent of these powers. Clause 5 – Request that when the Secretary of State is granting exemptions from the prohibition on carrying out activity in clause 2(1) without a licence, the requirement to notify Welsh Ministers be changed to a requirement for consent of Welsh Ministers. Clause 6 – Request that when the Secretary of State is revoking or withdrawing an exemption, the requirement to notify Welsh Ministers be changed to a requirement for consent of Welsh Ministers. Clause 7 – request that an amendment be introduced to require the economic regulator have due regard to the climate change targets of the Welsh Government and the associated statutory plans. Clause 8 – Request that when the Secretary of State is making regulations providing for different types of licence in respect of the different activities set out in clause 2(1), consent from Welsh Ministers should be requirement if the regulations contain provision that would be within devolved competence. Clause 9 – Request that when the Secretary of State (or the economic regulator with the approval of the SoS) make regulations about how licences are applied for and the fee, the requirement to consult Welsh Ministers be changed to a requirement for consent of Welsh Ministers. Clause 10 – Request that when the Secretary of State is making regulations for determinations on competitive basis for awarding licences, the requirement to consult Welsh

	Clause 8 allows for the Secretary of State to regulate to provide for difference types of licence in respect of different activities. Clause 9 gives the Secretary of State powers to regulate for the procedure for licence applications. There is provision to extend some of these powers to the economic regulator with the approval of the Secretary of State. Clause 10 provides for the Secretary of State to make regulations to introduce competition into the tenders for licences. Clause 11-15 contains provisions for the Secretary of State to determine conditions of licences, including general and standard conditions and the modification of conditions. Clause 16 and Schedule 1 make provisions about the powers of the Secretary of State to grant licenses during an interim period. **Clauses 17 –** sets out the responsibilities of the economic	Ministers be changed to a requirement for consent of Welsh Ministers. Clause 11 – The revenue calculations will consider decommissioning costs. Certain emissions in the Welsh Territorial Waters are the responsibility of the Welsh Ministers. Therefore, consideration of decommissioning costs must consider fully the Welsh Ministers' views on what would comprise an adequate decommission. Clauses 12-15 – An amendment so that the requirement to consult Welsh Ministers is changed to a requirement for consent of Welsh Ministers. It is important that the consent of Welsh Ministers is given to **all** licence clauses where such licences are within the Welsh Land or Territorial Waters. This is especially important as the revenue generated will be linked to decommissioning, which is arguably an environmental concern. Clause 16 – there should be a limit or timescale within which the SoS must transfer its powers to grant licences to the economic regulator. The SoS should notify the Welsh Ministers of this transfer in any scenario. Schedule 1 – there is provision to notify the Welsh Ministers of the issuing of a licence during the interim period. We request this be changed to a requirement for consent of Welsh Ministers. Clause 17 – An amendment to give Welsh Ministers input into licence termination decisions where they impact areas of devolved powers (as the current requirement is for notification only).

	regulator with regard to the **termination of licences**. **Clauses 18 and 19** establish that licences can be **transferred** and the consent required prior to transfer. **Clause 26-29** make provision for **information sharing**. Clause 26 allows the economic regulator to request and provide information from or to relevant persons, including Welsh Ministers and Natural Resources Wales. Clause 27 gives power to the Secretary of State to request information directly from a licence holder as required for the purpose of the Secretary of State's functions. Clause 28 places an obligation on the economic regulator to monitor the state of the market, and to share the information it gathers with the Secretary of State or the CMA as requested. Clause 29 provides for the economic regulator to request	Clauses 18 & 19 – An amendment to ensure Welsh Ministers are notified where any transfer involves a licence on Welsh land or in Welsh territorial waters. Clause 32 – Request that when the Secretary of State is making regulations for the enforcement of licence conditions, consent from Welsh Ministers should be requirement if the regulations contain provision that would be within devolved competence. The Welsh Government also request clarifications as follows: General clarification - The Economic Licence, and therefore the Economic Regulator and SoS would have executive functions on Welsh Land and Welsh Territorial Waters where the Welsh Ministers are the CCS Licensing Authority under the Energy Act 2008 (i.e. Welsh Ministers license the geological storage of CO2, but SoS and Economic Regulator licence economic issues). This could cause conflicting executive functions should the Welsh Ministers look to amend the current Energy Act 2008 Model Clauses. Further clarity is needed on how the new economic licensing regime will sit alongside and interact with the licensing regime of the Energy Act 2008 under which the Welsh Ministers are the licensing authority. Clause 4 – clarity is required on the territorial extent of these provisions in this Bill as compared to the territorial scope of licensing powers in the Energy Act 2008.

	relevant information from licence holders in order to allow it to monitor the market. It also establishes an offence where the licence holder does not comply with a request for relevant information. **Clause 30** places a duty on the economic regulator to carry out an **impact assessment** where it is minded to pursue a proposal which could have a significant impact. **Clause 31** requires the Secretary of State or the economic regulator to **give reasons for their decisions and determinations** in relation to the revocation or modification of a licence, the giving of any directions or consent in pursuance of a condition included in a licence, the determination of a question referred in pursuance of a condition included in a licence and the making of a final order, the making or confirmation of a provisional 5 order or the	Clause 5 & 6 - Further clarification required on the parameters within which exceptions will be granted. Clause 26 – The information sharing requirement is broad. Further details on when and why this would apply are needed. Clause 30 – the Welsh Government are requesting information on how the impact assessment would be conducted, with specific regards to devolved environmental issues and the role of Welsh Ministers.

	revocation of a final order or of a provisional order which has been confirmed. **Clauses 32 – 35 relate to enforcement:** Clause 32 provide for the Secretary of State to regulate for the enforcement of licence conditions and other requirements imposed on licence holders. Clause 33 makes it an offense to give false statements in relation to any provision in this Part. Clause 34 sets out the liability of officers or entities. Clause 35 sets out the criminal proceedings in relation to the offences.	
Chapter 3 – Reporting requirements	**LCM required for clauses 39 - 41.**	The Welsh Government recommends withholding consent as amendments are requested.

Requires the economic regulator to provide an annual report which the SoS must lay before the Houses of Parliament and the Welsh Ministers must also lay before the Senedd.	The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide transport and storage, and do no not relate to any reservation in Schedule 7A of the Government of Wales Act 2006. Clause 41 imposes functions on the Welsh Ministers. The Welsh Ministers must lay a copy of the SoS' annual report in the Senedd.	The Welsh Government are requesting amendments as follows: Clause 39 – amendment for Welsh Ministers to be consulted on draft programmes. Clause 40 – amendment for the work programme of the economic regulator to have due regard to the policies of the devolved Governments. Clause 41 – The annual report should include a requirement to report on progress in Wales (if not already included).
Chapter 4 – Special administration regime Provides for the application of a Special Administration Regime (SAR) in the event of a CO2 transport and storage company insolvency	**LCM required for clause 46.** Whilst chapter 4 relates mainly to insolvency, clause 46 provides that the Secretary of State may amend licences. Welsh Ministers are the licensing authority for some licenses within the potential scope of this clause. The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide transport and storage, and do no	The Welsh Government recommends withholding consent for clause 46 in case further amendments or clarifications are identified following further review. Clause 46 itself recognises that the powers used could be within the legislative competence of the Senedd. Subsections (3) and (6) provide that if provision making the modification would be within the legislative competence of the Senedd if it were contained in an Act of the Senedd then there is a requirement for consultation.

	not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.	
Chapter 5 – Transfer Schemes This Chapter provides for the transfer of property, rights or liabilities when a licence is terminated. This may be required to allow the network to continue operating, or to ensure the safety and security of a network if it ceases operation.	**Clauses 50-52 and Schedule 3** These clauses provide for the Secretary of State to make a statutory transfer scheme under which certain property, rights or liabilities of a licence holder can be transferred either to an appropriate body or to the Secretary of State. It includes provisions regarding consultation and conduct. The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide transport and storage, and do no not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.	The Welsh Government recommends withholding consent for clauses 50-52 and Schedule 3 and we request amendments are made to ensure Welsh Ministers consent to the transfer for licences.
Chapter 6 – Miscellaneous and general	LCM required for clauses 53 – 54 and Schedule 4	The Welsh Government recommends withholding consent for clauses 53-54 and Schedule 4.

	The provision concerns the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, transport and storage, and do no not relate to any reservation in Schedule 7A of the Government of Wales Act 2006. Clause 53 Modifies the Energy Act 2008 to provide for cooperation and information-sharing between the economic regulator and the relevant CO2 storage licensing authority, which would be Welsh Ministers in some instances. Clause 54 and Schedule 4 set out the consequential amendments to existing legislation related to this Part. Co-operation and information sharing requirements apply to Welsh Ministers.	Welsh Government seek an amendment requiring the economic regulator to share relevant information with a licensing authority i.e. a reciprocal arrangement to that currently provided for.

Part 2: Carbon dioxide capture storage etc. and hydrogen production This Part establishes a mechanism for providing revenue support and other financial assistance to CO2 transport and storage companies, low carbon hydrogen producers and carbon capture entities. It also includes powers to establish and administer a levy on electricity suppliers, gas suppliers, and/or gas shippers for the purpose of providing support for low carbon hydrogen production. A UK-wide approach is being taken to support the contribution of these low carbon technologies to decarbonisation across the UK and to mitigate the specific risks faced by infrastructure developers during technology commercialisation and roll-out and secure investor confidence.		
Chapter 1 - Revenue Support Contracts The provisions contained in Chapter 1 provide delegated powers to establish the detailed framework for business models, including the designation and duties of a counterparty to enter into and manage business model contracts with carbon entities, CO2 transport and storage companies, and low carbon hydrogen producers and an allocation body for future competitive allocation processes.	**LCM required for clauses 56-60, 63-64and 68-81** in so far as they relate to carbon dioxide capture, transport and storage. The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, transport and storage and do not relate to any reservation in Schedule 7A of the Government of Wales Act 2006. Clauses 56 – provides the meanings and definitions of various terms used in Chapter 1	The Welsh Government recommends withholding consent for clauses 56-60, 63-64 and 68-81 as amendments are requested. The Welsh Government is requesting amendments as follows: Clause 57 – According to subsection (7), revenue support regulations may confer any function on any person. Amend language to narrow the scope of this. Clauses 57, 71, 72, 73, 74 and 78 – As these clauses give power to the Secretary of State to make regulations about revenue support contracts, request that the requirement to consult Welsh Ministers be amended to require the consent of Welsh Ministers. Clause 68 – Request that when the Secretary of State is making regulations under this section (e.g. to appoint a person to carry out functions in connection with the allocation of hydrogen production revenue support contracts, and a person to carry out functions in connection with the allocation of carbon capture revenue support contracts), consent from

	Clause 57 gives power to the Secretary of State to regulate for revenue support contracts. Clause 58 sets out the duties of the revenue support counterparty. Clause 59 provides for the Secretary of State to designate a counterparty for CO2 transport and storage revenue support contracts. Clause 60 provides for the Secretary of State to direct a transport and storage counterparty to offer to contract with an eligible person (a licence holder). Clause 63 provides for the Secretary of State to designate a counterparty for Carbon Capture. Clause 64 provides for the Secretary of State to direct a Carbon Capture counterparty to offer to contract with an eligible person. **Clauses 68 – 74 relate to the allocation of contracts:** Clause 68 provides for the Secretary of State, through	Welsh Ministers should be required if the regulations contain provision that would be within devolved competence. Clause 69 – Request that consent from Welsh Ministers should be a requirement.

	regulation, to appoint a person to allocate contracts. Clause 69 provides for the Secretary of State to issue standard terms and conditions of contracts. Clause 70 relates to allocation notifications. Clause 71 allows for regulations to set out how the allocation of contracts will be determined. Clause 72 sets a duty to offer a contact following allocation and allows for terms and conditions on offers. Section 73 allows for the modification of standard terms and clause 74 contains supplementary provisions. **Clauses 75 - 76 contain provisions about counterparties.** Clause 75 allows for the Secretary of State to revoke a counterparty designation notice. Clause 76 relates to provisions for the apportioning of sums to revenue support counterparties	

	where liabilities under the contract are not fully met. Clauses 77 sets out that revenue support regulations may make provisions about information and advice. Clause 78 requires the Secretary of State to undertake consultation, including with Welsh Ministers, before making revenue support regulations. Clause 79 gives power to the Secretary of State to make schemes for the transfer of designated property, rights or liabilities including in relation to revenue support counterparties and allocation parties. Clause 80 provides for the modification of transfer schemes. Clause 81 contains general provisions in relation to chapter 1.	
Chapter 2 – Decommissioning of carbon storage installations	**LCM required for clauses 82-84** Chapter 2 relates to decommissioning of carbon	The Welsh Government recommends withholding consent for clauses 82-84 for which amendments are recommended.

Gives the SoS powers to make and modify regulations to implement a funded offshore CCUS decommissioning regime.	storage installations, including the power to make regulations about financial support for the costs of decommissioning. The clauses are therefore legislating in a devolved area. The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, transport and storage, and do no not relate to any reservation in Schedule 7A of the Government of Wales Act 2006. Clause 82 and 83 gives the Secretary of State power to make regulations about the financing of decommissioning and legacy costs incurred in relation to carbon storage installations. Clause 84 applies Part 4 of the Petroleum Act 1998 in relation to the abandonment of carbon storage installations.	The Welsh Government is requesting amendments as follows: Clause 82 – There should be a requirement to require consent from Welsh Ministers on any secondary regulations arising from this Bill and in any instances in this Part where consultation of Welsh Ministers is the current proposal. Clauses 82 and 83 – Request that when the Secretary of State is making regulations under this section, consent from Welsh Ministers should be requirement if the regulations contain provision that would be within devolved competence. The Welsh Government recommends withholding consent for all of the above clauses for which amendments are sought.

Chapter 3 – Strategy and Policy Statement Enables the SoS to designate a strategy and policy statement for CCUS that would need to be considered by the SoS and economic regulator when carrying out Part 1 (Licensing of carbon dioxide transport and storage) functions, and set out the process and timeframes for preparing and reviewing this statement.	**LCM required for clauses 88-91** This statement on policy is for the whole of the UK. Chapter 3 relates to the requirement of the SoS to publish a CCUS strategy and policy statement. This statement on policy is for the whole of the UK, i.e. including Wales. There is a requirement to consult the Welsh Ministers, but Welsh Government recommend that this should be the need for consent of the Welsh Ministers insofar as the policy relates to Wales The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture transport and storage, and do no not relate to any reservation in Schedule 7A of the Government of Wales Act 2006.	The Welsh Government recommends withholding consent for clauses 88-91 for which amendments or clarifications are recommended. The Welsh Government is requesting amendments as follows: Clause 90 & 91 – Request that the requirement to consult Welsh Ministers is changed to a requirement to obtain the consent of Welsh Ministers. Clause 91 – Request that there is a requirement to consult publicly on a draft policy statement. The Welsh Government also recommends withholding consent for clause 88 in case further amendments or clarifications are identified following further review.

Chapter 5 – General Chapter 5 gives the SoS power to make regulation about the acquisition of rights to use storage facilities and pipes.	**LCM required for: clause 96** Chapter 5 gives the SoS power to make regulation about the acquisition of rights to use storage facilities and pipes. This is likely to impact on the devolved area of carbon dioxide storage. There is the duty to consult the Welsh Ministers, but this should be the need for consent. The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, transport and storage, and do no not relate to any reservation in Schedule 7A of the Government of Wales Act 2006. Clause 96 enables the SoS to make regulations regarding access to CO2 transport and storage infrastructure.	The Welsh Government recommends withholding consent for clause 96 as an amendment is requested. The Welsh Government are requesting amendments as follows: Clause 96 – Request that when the Secretary of State is making regulations under this section (e.g. about the acquisition of rights for infrastructure), consent from Welsh Ministers should be requirement if the regulations contain provision that would be within devolved competence.

Part 3 – New Technology		
Chapter 1 – Low Carbon Heat Schemes Clauses 98-107 The clauses enable an obligation on, for example, gas and oil heating appliance manufacturers to increase sales of low-carbon appliances such as heat pumps.	**LCM is required for clauses 98-107** Paragraph 101 of Schedule 7A to the Government of Wales Act 2006 provides for a reservation in respect of "Production, distribution and supply of heat and cooling". It also provides for an exception to that reservation, "Schemes providing incentives to generate or produce, or to facilitate the generation of production of, heat or cooling from sources of energy other than fossil fuel or nuclear fuel". These clauses are squarely within that exception, and as such within the legislative competence of the Senedd.	The Welsh Government recommends withholding consent to clauses 98-107 as amendments have been requested. The Welsh Government request changes to the clauses to reflect the following: A requirement for Welsh Ministers to consent to any regulations relating to matters within the devolved legislative competence of the Senedd. That the Welsh Ministers are provided powers to alter and/or revoke aspects, or proposed aspects, of the functioning of the scheme in Wales on a case by case basis, where this is within devolved competence. A requirement that the Secretary of State must appoint the Welsh Ministers as scheme administrators following receipt of a request from the Welsh Ministers, within the timeframe requested by the Welsh Ministers. Until a request is made, the Secretary of State would retain the power to appoint the administrator on a UK-wide basis.

	Clause 98 establishes that the Secretary of State may by regulations make provision for the establishment and operation of one or more low-carbon heat schemes. Clause 99 establishes the scope of the regulations. Clause 100 provides for a low-carbon heat target to be set. Clause 101 contains further provisions about scheme regulation including monitoring and compliance. Clause 102 provides for the regulations to appoint an administrator. Clause 103 relates to enforcement, penalties and offences. Clause 104 provides for regulations to make provisions in relation to payments. Clause 105 relates to appeals. Clause 106 relates to scheme regulations including procedures. Clause 107 contains definitions related to this chapter.	

Part 4 – Independent System Operator and Planner (ISOP)		
This Part provides for the establishment of a new body – the Independent System Operator and Planner (ISOP). The ISOP is to be a public sector body with responsibilities for planning the development of the electricity and gas transmission systems and operation of the electricity transmission system. Many of the functions that the ISOP will undertake are currently carried out by licensed operators owned by National Grid plc and provision is made for the transfer of the whole or parts of these operators out of their current ownership, as part of the establishment of the ISOP	**LCM required for clause 125 and paragraph 9 of Schedule 6** The provisions referred to below concern a devolved tax, which is within the exception to the reservation in paragraph 15 of Schedule 7A to the Government of Wales Act 2006, and do not relate to any reservation in that Schedule. <u>Clause 125 and paragraph 9 of Schedule 6</u> Clause 125 introduced Schedule 6, which provides the Secretary of State with the power to make one or more schemes for the transfer of property, rights or liabilities from one person to another person in preparation for or in connection with the designation of a person or for the purpose of enabling the Independent System Operator and Planner to carry out any of its functions.	The Welsh Government recommend withholding consent as the Bill seeks to give a power to HM Treasury to vary the way that land transaction tax operates. It is not appropriate for the power to make changes to rest with UK Ministers and the UK Parliament. The Welsh Ministers and Senedd should determine such matters. The Welsh Government request the removal of land transaction tax from the list of taxes.

	Paragraph 9 of that Schedule confers a power on HM Treasury to make regulations varying the effect of a relevant tax has effect in relation to a transfer scheme. The Treasury may exercise that power to make provision for a tax provision to apply, or to apply with modifications, in relation to anything being transferred; or for anything being transferred to be treated in a specified way for the purposes of a tax provision. A ”relevant tax” includes land transaction tax, which is a devolved tax within the meaning of the Government of Wales Act 2006.	
Part 11 – Oil and Gas		
Environmental Protection This is placing into domestic law powers that were previously derived through EU Law and the 1972 Act	**LCM required for clauses 225 – 226** **Clause 225** enables the Secretary of State to make regulations requiring a person	The Welsh Government recommend withholding consent while it seeks clarification regarding interaction with existing systems for notifying and reacting to marine pollution incidents.

which were used to enable the making of the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention Regulations 1998 (OPRC)). The powers are wider and allow coverage of carbon dioxide storage and gas unloading and storage as well as hydrogen production and storage. To enable primary powers which would ensure that the offshore oil and gas environmental regulatory regime remains fit for purpose by allowing the future introduction of changes through secondary legislation.	responsible for certain specified infrastructure to have emergency plan arrangements for responding to marine oil pollution. **Clause 226** enables the Secretary of State to make provision, by regulations, requiring the Secretary of State to take into account the implications for relevant sites when deciding whether, or how, to carry out a function which relates to offshore oil and gas activities or offshore production or storage of gas. These provisions are concerned with environmental protection, pollution control etc., over which the Senedd has competence. They do no not relate to any reservation in Schedule 7A to the Government of Wales Act 2006.	We will confirm our final advice when discussions with the UK Government have concluded.

Offshore oil and gas decommissioning: charging schemes Creates powers to establish a charging scheme for the recovery of costs related to regulatory functions associated with the decommissioning of offshore oil and gas and carbon storage infrastructure.	**LCM required for clause 227** Clause 227 amends the Petroleum Act 1998 and makes consequential amendments elsewhere to enable the Secretary of State to make a scheme providing for payment to the Secretary of State in connection with the exercise of the Secretary of State's functions under Part 4 of that Act. Part 4 of that Act is concerned with the abandonment and decommissioning of offshore installations and submarine pipelines. Offshore installations and submarine pipelines (defined in section 44 of that Act) are, broadly are broadly installations and pipelines concerned with the conveyance, etc. of gas (including carbon dioxide) and oil within certain seaward geographic parameters.	The Welsh Government recommend withholding consent while it seeks clarification regarding the extent to which the provision would apply in Welsh territorial waters. We will confirm our final advice when these discussions have concluded.

	The Welsh Government consider an LCM is required so far as it is concerned with carbon. The Senedd has competence in relation to environmental protection and waste, which include decarbonisation measures such as carbon dioxide transport and storage	
Part 13 - General		
Clause 238 gives the Secretary of State powers to make regulations in connection with the Act or in connection with any provisions made under the Act. The power includes the power to amend, repeal or revoke Acts or Measures of Senedd Cymru.	**LCM required for clause 238** Clause 238 gives broad powers for the Secretary of State to make regulations and, to the extent that provisions of the Bill relate to devolved matters, this power also relates to devolved matters.	The Welsh Government recommends withholding consent. The Welsh Government are requesting a requirement be introduced for the Secretary of State to require the consent of Welsh Ministers to regulations relating to devolved matters.

UK Government view on the need for consent

19) The UK Government agrees that consent is required. Specifically, the UK Government have concluded that:

a) For Part 1 on Licensing of Carbon Dioxide Transport and Storage, provisions across the Part engage the LCM process. However, there are some provisions related to reserved matters, notably those dealing with functions under competition law and insolvency processes.

b) For Part 2 on Carbon Dioxide Capture, Storage etc and Hydrogen Production, provisions across the Part engage the LCM process in so far as carbon capture and the transport and storage of CO_2 are matters that are generally within devolved competence. However, they have concluded that provisions in respect of hydrogen are reserved by virtue of the D2 Oil and Gas reservation in the Government of Wales Act 2006 and are therefore outside devolved competence. Where clauses relate to the hydrogen levy and its administration, the UK Government deem such provision is a reserved matter as relating to a tax for the purposes of the A1 reservation and the LCM process is not engaged. Likewise, provision as to the designation of a carbon capture usage and storage strategy and policy statement by the Secretary of State is outside devolved competence since it concerns only policy for the United Kingdom.

c) For Part 3 on New Technology, the LCM process is engaged in Wales as schemes ““providing incentives to generate or produce, or to facilitate the generation or production of, heat or cooling from sources of energy other than fossil fuel or nuclear fuel” are an exception to the reservation for heat policy.

d) For Part 7 on Heat Networks, the UK Government have deemed that the LCM is engaged as certain rights and powers granted through the proposed licensing regime fall within the scope of devolved competence so far as they relate to planning and on the basis that they do not fall within the planning reservation in the Government of Wales Act 2006.

e) For Part 11 on Oil and Gas, the LCM process will be engaged for the following reasons. For arrangements for responding to marine oil pollution (clause 225) and reducing effects of offshore oil or gas activities (clause 226), the LCM process will be engaged given that, in relation to the territorial seas adjacent to Wales, there is a mixed picture on legislative competence depending on the activity in question. For Offshore oil and gas and carbon dioxide storage decommissioning - cost recovery (clause 227) the LCM process is engaged within the territorial seas as there is a mixed picture on legislative competence depending on the activity on question, with oil and gas being reserved and CO2 storage being devolved.

Welsh Government position on the Energy Bill

20) In my view it is appropriate to deal with these provisions in this UK Bill as an efficient way to introduce legislation extending to Wales, in particular where policy is generally aligned. A number of schemes or regimes are more appropriate introduced at a pan-UK level, given the cross-border territorial nature of the activities being regulated.

21) Energy policy is a complex mix of reserved and devolved matters, and the Energy Bill provides a vehicle for a coherent approach to delivery.

22) However, there are a significant number of matters of concern which will need to be resolved urgently before consent can be recommended. My key concern is a failure to adequately reflect the devolution settlement, in particular the role of Welsh Ministers as decision makers within areas of devolved competence. It is essential to ensure Welsh Ministers can influence pan-UK schemes or policies that impact significant cross-border projects. There are a number of other amendments suggested, as outlined in the table in paragraph 15.

Financial implications

23) There may be some financial implications for the Welsh Government which may need to be considered. Were the Bill to introduce any new powers that were to be administered by Welsh Ministers, assurances would need to be sought from the UK Government of corresponding resource being made available.

Conclusion

24) Whilst delivery of these provisions in a UK Bill could be an appropriate way to legislate, unless and until the matters of concern have been resolved, I do not recommend the Senedd consents to this Bill.

Julie James MS
Minister for Climate Change
29 June 2023

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM
(MEMORANDUM NO 2)

ENERGY BILL

1. This legislative consent memorandum (LCM) is laid under Standing Order (SO) 29.2. SO29 prescribes that an LCM must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.

2. The Energy Bill (the Bill) was introduced in the UK Parliament, the House of Lords, on 6 July 2022. The passage of the Bill was stalled for a period before resuming its passage in the latter part of 2022. I laid an LCM on 29 June 2023 on the Bill as introduced, which includes a summary of the Bill.

3. This supplementary LCM (sLCM) concerns amendments to the Bill, tabled in the House of Lords on 9 January 2023 and during the House of Commons Committee Stage on 7 June 2023, known as the Offshore Wind Environmental Improvement Package clauses ("OWEIP" and "OWEIP clauses").

4. The Bill as amended following the House of Commons Committee Stage can be found at Energy Bill [HL] (parliament.uk). The OWEIP clauses can be found at Part 13, Chapter 1, clauses 286 – 291. This new Part 13 replaces 'Part 13 – General' referred to in the LCM for the Energy Bill, which is now Part 15 of the latest published version.

Policy Objective

5. The UK Government's stated policy aim of the OWEIP[1] is to accelerate delivery of offshore wind developments.

6. An offshore wind development within scope of the OWEIP clauses will require a number of permissions to proceed:
    a. The planning of a generating station 350MW or below in the Welsh inshore region requires planning consent from the Welsh Ministers.
    b. A generating station over 350MW requires a Development Consent Order (DCO) under the Planning Act 2008 granted by the Secretary of State (in both the Welsh inshore and Welsh offshore regions).
    c. A generating station below 350MW requires a consent under s. 36 of the Electricity Act 1989., Consent is granted by the Welsh Ministers in both the Welsh inshore and Welsh offshore regions.

[1] Policy Statement Offshore Wind Environmental Improvement Package Measures (publishing.service.gov.uk)

d. The construction and operation of a generating station and associated infrastructure in either the Welsh inshore or the Welsh offshore region will require a marine licence under the MCAA 2009 from NRW[2].
e. If the generating station is wholly in the Welsh offshore region a marine licence can be 'deemed' by the Secretary of State through the DCO process for a generating station above 350MW only.

7. The Welsh Ministers, Secretaries of State and NRW have various roles as decision makers in marine licensing and consenting in Welsh waters, and responsibilities depend on the scale and location of developments. When making decisions and before issuing any permissions, the relevant decision maker must first assess developments for their potential impacts.

8. Technical assessments are required under the Marine and Coastal Access Act (MCAA) 2009 for Marine Conservation Zones (MCZs), and the Conservation of Habitat and Species Regulations 2017 (England and Wales), and the Conservation of Offshore Habitats and Species Regulations 2017 (England and Wales) for Special Areas of Conservation (SACs) and Special Protection Areas (SPAs). MCZs, SACs and SPAs are together known as Marine Protected Areas (MPAs) and their purpose is to restore, preserve and maintain biodiversity by protecting key habitats and species.

9. Where necessary the relevant decision maker is required to undertake an appropriate assessment (Habitats Regulatory Assessment) before issuing any permission. A permission can only be granted if the project will not adversely impact an MPA.

10. Offshore wind developers are required to consider the impacts of their projects on the environment, including the MPA network, and provide robust evidence to inform decision making. Where impacts cannot be avoided, reduced or mitigated, the decision maker can consider whether the plan or project should be considered for a derogation. Under the Habitats Regulations, a derogation may be used if the decision maker is satisfied that it is necessary due to Imperative Reasons of Overriding Public Interest. A developer must demonstrate that there is no other means of proceeding that would lower the risk of achieving the conservation objectives of an MPA that is impacted, and that the public benefit outweighs the risk of environmental damage.

11. If a derogation is used, there are duties on the decision maker to ensure that the overall coherence of the MPA network is protected and that compensation has been secured. They may attach conditions to their consent referred to as 'compensatory measures' where necessary. The purpose of compensatory measures is therefore to offset unavoidable adverse environmental effects that hinder the site conservation objectives of MPAs and maintain the coherence of the MPA network.

[2] Welsh Ministers delegated their licensing authority function to NRW through the Marine Licensing (Delegation of Functions) (Wales) Orders of 2013 and 2017

12. The Bill provides primary powers to implement the OWEIP. The Explanatory Notes relating to the Energy Bill [HL] as brought from the House of Lords on 25th April 2023 state that 'this package will address the impacts of offshore wind infrastructure in the marine environment and speed up the consenting process. These powers will enable improved assessment of the environmental effects of offshore wind developments' marine infrastructure on protected sites. Where compensatory measures are required for damage to the national site network or a protected marine area, these clauses will allow compensation to be delivered by developers working together if that is more appropriate through "strategic compensation." The powers will enable future delivery of a Marine Recovery Fund(s), which will be an optional mechanism that developers can choose to use to deliver their compensatory measures'[3].

13. The UKG's aim for the OWEIP clauses within the Energy Bill is therefore to:

- enable the use of strategic compensation measures to unblock barriers to consenting for offshore wind plans or projects that will adversely affect protected European sites,
- allow the setting up of a Marine Recovery Fund or funds ("MRF") to facilitate those measures, and
- allow amendments to the environmental assessment regime under the Habitats Regulations Assessment ("HRA") and the marine conservation zone assessment ("MCZ") regime relevant to the consenting and licensing of offshore wind plans and projects to facilitate those changes.

Summary of the OWEIP Clauses

14. The OWEIP clauses comprise the following:

- Clause 286 (*Meaning of "relevant offshore wind activity"*) defines the offshore wind activities that are subject to the OWEIP clauses, including (a) the planning, construction, operation or decommissioning of offshore wind electricity infrastructure, or (b) the identification of an area for activity within (a) whether or not any particular offshore wind electricity infrastructure is in contemplation. The definition is intended to capture plan-level activity and assessments as well as infrastructure, including transmission infrastructure.
- Clause 287 (*Strategic compensation for adverse environmental effects*) provides that where a public authority, including the Welsh Ministers, is under obligations concerning the provision of environmental compensation in relation to relevant offshore wind activities, the public authority may determine that measures taken or secured by the authority are to count towards discharging those obligations.
- Clause 288 (*Marine recovery fund*) provides the Secretary of State with the power, by regulation, to establish one or more MRF, out of which payments may be made towards environmental compensation measures required as a result of relevant offshore wind activities. The Secretary of State may also, by regulations, delegate functions for the operation of an MRF, including to

[3] Energy (parliament.uk)

Welsh public authorities in relation to Welsh waters (inshore and offshore). Such delegated functions can be cancelled by the Secretary of State and the delegation of a function does not prevent the Secretary of State from carrying out a delegated function.

- Clause 289 (*Assessment of environmental effects etc*) provides the Secretary of State, the Welsh Ministers, the Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs (DAERA) in Northern Ireland with powers to make regulations concerning the assessment of environmental effects of relevant offshore wind activities and in relation to environmental compensation. For Welsh Ministers, this is restricted to the power to make regulations in relation to the Welsh inshore region (i.e. within 0-12 nautical miles (nm)) for relevant offshore wind infrastructure 350MW or below, while the Secretary of State is granted this power in relation to the Welsh offshore region (i.e.12 - 200 nm) for all offshore wind infrastructure (i.e. above and below 350MW) and in relation to the Welsh inshore region above 350MW.
- Clause 290 (*Regulations under section 289: consultation and procedure*) provides consultation and other procedural requirements relating to the making of regulations under Clause 289 above. This includes requirements on the Secretary of State, Scottish Ministers and DAERA to consult the Welsh Ministers on the development of new regulations in certain circumstances, and a requirement on Welsh Ministers to consult with identified bodies, which includes the Secretary of State, in making regulations under Clause 289 that relate to the Welsh inshore region 350MW or below.
- Clause 291 (*Interpretation of Chapter 1*) contains further definitions and expressions which are used in the clauses listed above.

Requirement for a supplementary LCM for Chapter 1 of Part 13: Offshore Wind Electricity Generation

15. Within the Welsh inshore region (0-12nm), environmental protection, marine licensing, and planning for generating stations 350MW or below are within the Senedd's legislative competence.

16. An LCM is required for the OWEIP clauses because they make provision for a purpose within the legislative competence of the Senedd and impact upon the devolved areas of environmental protection, marine licensing, and planning for relevant offshore wind activities 350MW or below, in so far as they apply to the Welsh inshore region.

UK Government view on the need for consent

17. The UK Government's position is that the OWEIP clauses relate to the reserved matter of electricity generation, however it is also of the view that the OWEIP measures trigger the LCM process in the Senedd[4]. The UK Government agree that an LCM is required for the OWEIP clauses on the basis that they alter Welsh Ministers' executive competence or have the potential to be exercised to alter the existing executive of Welsh Ministers.

[4] As confirmed by the letter from Lord Callanan, Minister for Business, Energy and Corporate Responsibility on the tabling of the OWEIP clauses on 9 January 2023.

Welsh Government position on the OWEIP clauses

18. Marine consenting and licensing in Welsh waters is complicated, as set out in paragraphs 6 and 7 above. The Welsh Ministers, Secretaries of State and NRW have various roles as decision makers dependant on the scale and location of developments.

19. While the Welsh Government agrees that the intention behind the OWEIP clauses is sensible, my key concern is a failure to adequately reflect the devolution settlement, in particular the role of Welsh Ministers as decision makers within areas of devolved competence.

20. The provisions where Welsh Government has specific concerns are summarised in the table below, which follows the format of the Energy Bill LCM. I have written to the Secretary of State twice regarding the changes I would like to see to the clauses. Currently these issues are unresolved.

Clauses – Brief description	Why an LCM is required	Consent not recommended and why
Part 13: OFFSHORE WIND ELECTRICITY GENERATION, OIL AND GAS		
Chapter 1 – OFFSHORE WIND ELECTRICITY GENERATION Clause 288 (*marine recovery fund*) grants the Secretary of State power to make regulations to establish a marine recovery fund, which will apply in UK waters. There is currently no requirement on the Secretary of State to consult with the Welsh Ministers before making regulations. Regulations under this section includes the power for the Secretary of State to: i. determine whether a payment into the marine recovery fund discharges any compensation condition on a person, i.e. if there was a condition in a marine licence for a developer to carry out certain compensation. ii. delegate management/operational	**LCM required for clauses 286 - 291** An LCM is required for these clauses because they make provision for a purpose within the legislative competence of the Senedd and impact upon the devolved areas of environmental protection, marine licensing, and planning for relevant offshore wind activities 350MW or below, in so far as they apply to the Welsh inshore region.	The Welsh Government recommends withholding consent for clause 288 as amendments or clarifications are recommended. The Welsh Government requests amendments as follows: Clause 288 - provide a regulation making power for the Welsh Ministers to establish and operate a Marine Recovery Fund where they are currently the appropriate authority with a duty to secure compensatory measures for protected European marine sites. Regulations to establish a marine recovery fund which would apply in the Welsh inshore region for activities 350MW and below should only be made with the consent of WMs. Clarity over how the determination of a payment into the fund discharges a compensation condition, and who

functions of a marine recovery fund, i.e. it would allow the Secretary of State to delegate the management / operation of a marine recovery fund to the Welsh Ministers for relevant offshore wind activities in Welsh waters where they are the appropriate authority.		determines this, clearly linked to the role and responsibility of WMs. Clarification that the operation of such a fund in Wales, and the delegation of its operation to a Welsh public authority, can only be with the consent of WMs.
Clause 289 (*assessment of environmental effects etc.*) grants the Welsh Ministers the power to make regulations amending the Habitats Regulations and the marine conservation zone ("MCZ") assessment process for relevant offshore wind activities 350MW or below in the Welsh inshore region. Otherwise, the Secretary of State has this power in the Welsh offshore region for all relevant offshore wind activities (i.e. it includes 350MW or below) and relevant offshore wind activities over 350MW in the Welsh inshore region. Regulations may make	An LCM is required for these clauses because they make provision for a purpose within the legislative competence of the Senedd and impact upon the devolved areas of environmental protection, marine licensing, and planning for relevant offshore wind activities 350MW or below, in so far as they apply to the Welsh inshore region.	The Welsh Government recommends withholding consent for clause 289 as amendments or clarifications are recommended. The Welsh Government requests amendments as follows: The removal of the reference to the 'qualifying Secretary of State functions' in subclause 2(b). An amendment to respect the WMs current role in marine licensing for all developments in inshore waters, above

(a) provision for and in connection with the assessment of the environmental effects of relevant offshore wind activities in relation to protected sites; (b) provision about the taking or securing of measures by a public authority in compensation for any adverse environmental effects of relevant offshore wind activities in relation to protected sites ("compensatory measures").		and below 350MW, where a licence cannot be deemed by the Secretary of State.

Financial implications

21. There may be significant costs arising from the OWEIP clauses, particularly if Welsh Ministers were delegated functions to operate an MRF without being required to consent to the delegation of functions and without control over its remit. To date, the UK Government has not provided clarity on the potential scale of these costs, as the detail of how an MRF would operate in practice is intended to be provided by regulation by the Secretary of State following entry into force of the OWEIP clauses. Were the Bill to introduce any new powers that were to be administered by Welsh Ministers, assurances would need to be sought from the UK Government of corresponding resource being made available.

Conclusion

22. In my view the OWEIP clauses currently fail to adequately reflect the devolution settlement, in particular the role of Welsh Ministers as decision makers within areas of devolved competence. Given these concerns, I recommend the Senedd withholds consent to the OWEIP clauses in the Bill at this time.

Julie James MS
Minister for Climate Change
24 July 2023

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 3)

ENERGY BILL

1. This legislative consent memorandum (LCM) is laid under Standing Order (SO) 29.2. SO29 prescribes that an LCM must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies, the legislative competence of the Senedd.

2. The Energy Bill (the Bill) was introduced in the UK Parliament, the House of Lords, on 6 July 2022. The passage of the Bill was stalled for a period before resuming its passage in the latter part of 2022. I laid an LCM on 29 June 2023 on the Bill as introduced, which includes a summary of the Bill.

3. I laid a supplementary LCM (sLCM) on 25 July 2023 concerning amendments to the Bill, tabled in the House of Lords on 9 January 2023 and during the House of Commons Committee Stage on 7 June 2023, known as the Offshore Wind Environmental Improvement Package clauses ("OWEIP" and "OWEIP clauses") that form Chapter 1 of Part 13 of the Bill (OWEIP sLCM).

4. This LCM covers the other amendments to the Bill since introduction and covers the Bill as it left the House of Commons Committee Stage as published on 11 July 2023. Annex 1 shows the clause numbers in the Bill as introduced, and the clause numbers now in the Bill as at 11 July 2023.

5. I am laying this sLCM during recess as the House of Commons has scheduled Report Stage of the Bill on 5 September 2023.

6. The Bill as amended following the House of Commons Committee Stage can be found at https://publications.parliament.uk/pa/bills/cbill/58-03/0340/220340.pdf.

Policy Objective

7. The UK Government sets out the purpose and main functions of the Bill in the accompanying Explanatory Notes[1] (the latest version of which are dated 25 April 2023). The UK Government's stated policy objectives are to help increase the resilience and reliability of energy systems across the UK, support the delivery of the UK's climate change commitments and reform the UK's energy system while minimising costs to consumers and protecting them from unfair pricing.

[1] https://publications.parliament.uk/pa/bills/cbill/58-03/0295/en/220295en.pdfEnergy (parliament.uk)

Update on position since I laid the LCM and OWEIP sLCM before the Senedd

8. I laid an LCM on 29 June 2023, based on the Bill as introduced into the UK Parliament (House of Lords) on 6 July 2022. That LCM stated it was the view of the Welsh Government that it is appropriate to deal with the provisions in the UK Bill as an efficient way to introduce legislation extending to Wales, in particular where policy is generally aligned. A number of schemes or regimes are more appropriately introduced at a pan-UK level, given the cross-border territorial nature of the activities being regulated.

9. There were a significant number of matters of concern with the Bill as introduced. My key concern was a failure of the Bill to adequately reflect the devolution settlement, in particular the role of Welsh Ministers as decision makers within areas of devolved competence. It is essential to ensure Welsh Ministers can influence pan-UK schemes or policies that impact significant cross-border projects. As a consequence, I recommended the Senedd withheld consent to the Bill.

10. I laid the OWEIP sLCM on 25 July 2023. In my view the OWEIP clauses as introduced failed to adequately reflect the devolution settlement, in particular the role of Welsh Ministers as decision makers within areas of devolved competence. Given those concerns, I recommended the Senedd withheld consent to the OWEIP clauses in the Bill.

11. There has been continued discussions with the UK Government on the Bill where I have repeated my position that where regulations are to be introduced that impact on devolved matters the consent of Welsh Ministers needs to be sought. The UK Government has maintained their position that a process of consultation is sufficient.

12. I remain of the view that there is no reason why we cannot work together to deliver cross-border regulation in a way that avoids regulatory divergence through a process that requires the consent of Welsh Ministers in areas of devolved competence. A process of consultation is not a satisfactory safeguard from a constitutional perspective.

Summary of the changes to the Bill since introduction

Part 1 Licensing of Carbon Dioxide Transport and Storage: Chapter 1 Licensing of Activities

13. The LCM set out the Welsh Ministers' view that clauses within Chapter 1 of Part 1 of the Bill were within the Senedd's legislative competence because they made provision in the devolved area of carbon dioxide storage. The provisions concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon

dioxide capture transport and storage and do no not relate to any reservation in Schedule 7A to the Government of Wales Act 2006 (GOWA). The clauses outlined below have been amended in the version of the Bill at 11 July 2023, and still make provision within the legislative competence of the Senedd. Therefore, an sLCM is required for the amendments to these clauses, which are summarised below.

14. Clause 9 (Procedure for licence applications) includes a new subclause (10) which applies the definition of "appropriate devolved authorities" in section 10(6) to subclause (3) whereby the Secretary of state must consult before making regulations under subclauses (2) or (6). This new subclause is welcome clarification, however, I retain the position that the consent of Welsh Ministers should be sought before the Secretary of State makes regulations under clause 9. As a result, I recommend the Senedd withhold consent to clause 9.

15. Clause 19 (Consenting to transfer) includes new subclauses (4) and (5) that have been redrafted to make it clear on the approach the economic regulator must take in instances where the Secretary of State does not give direction to consent to a transfer of a licence under Clause 18 (transfer of licences). These new subclauses are welcome clarification and I recommend the Senedd consent to clause 19.

16. Clause 29 (Power to require information for the purpose of monitoring) includes new subclauses (5) and (6) which deals with the disclose of information to the economic regulator ensuring disclosure does not contravene the data protection legislation. The Welsh Government support this amendment ensuring any information disclosed does not contravene the data protection legislation and recommends the Senedd gives consent to clause 29.

17. Clause 32 (Enforcement of obligations of licence holders) includes a new Schedule 3 to the Bill which makes provision for the enforcement of conditions of licences and of other requirements imposed on license holders by or under Part 1 of the Bill. Schedule 3 replaces the regulation making power for the Secretary of State as set out in clause 32 in the Bill as introduced. We consider it important that a consistent approach to enforcement is in place and welcome the introduction of these regulations in the Bill and recommend the Senedd consent to clause 32.

Part 1 Licensing of Carbon Dioxide Transport and Storage: Chapter 4 Special Administration Regime

18. Clause 46 (Modification of conditions of licences) has been amended to better reflect that the intent of consultation would be as carbon storage licensing authority in relation to insolvency. In the LCM, the Welsh Government recommended withholding consent subject to further consideration.

19. Following further discussion with the UK Government and subsequent amendment to this clause, our position is that this clause relates to the reserved matter of “Insolvency” and is not within the legislative competence of the Senedd. Senedd consent is therefore not required for clause 46.

Part 2 Carbon Dioxide Capture, Storage etc and Hydrogen Production: Chapter 1 Revenue Support Contracts

20. Clause 67 (Designation of carbon capture counterparty) subclause (7) the definition of “carbon capture entity” has been amended to a person carrying on activities in the United Kingdom with a view to capturing carbon dioxide that is in the atmosphere and dissolved in sea water, in addition to carbon dioxide that has been produced by commercial or industrial activities as drafted in the Bill as introduced. This clause has also been amended to provide a definition of activities taking place in the “United Kingdom” to include territorial waters adjacent to the United Kingdom (subclause (8)(a)), and waters in a Gas Importation and Storage Zone (subclause (8)(b)).

21. These amendments concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, and do no not relate to any reservation in Schedule 7A to GOWA. Therefore, an sLCM is required so far as this amended clause applies in the territorial sea adjacent to Wales. I welcome this and recommend the Senedd consents.

22. Clause 73 (Power to appoint allocation bodies) a new subclause (2) has been added so that the power to appoint under subclause (1) may be exercised so that more than one appointment has effect under that paragraph at the same time. This amendment makes provision that concerns the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, and do no not relate to any reservation in Schedule 7A to GOWA. Therefore, an sLCM is required in so far as it relates to carbon dioxide capture, but not hydrogen production. We recommend the Senedd withhold consent. Consent from Welsh Ministers should be sought if the regulations contain provisions that would be within devolved competence.

Part 2 Carbon Dioxide Capture, Storage etc and Hydrogen Production: Chapter 2 Decommissioning of Carbon Storage installations

23. Clause 92 (Financing of costs of decommissioning etc) subclause (1) has been amended to specify that the Secretary of State may by regulations make provision for requiring relevant persons to provide security relating to the future abandonment or decommissioning of “carbon dioxide-related sites, pipelines or installations”. This amends the Bill as drafted which referred to a “carbon storage installation”. Subclause (2) defines “carbon dioxide-related” and subclause (3) defines the location of sites to include

those in, under or over the territorial sea adjacent to the UK or waters in the Gas Importation and Storage Zone.

24. The amendments to this clause make relevant provision as they concern the matters of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, and do no not relate to any reservation in Schedule 7A to GOWA. Therefore, an sLCM is required in so far as this amended clause applies in the territorial sea adjacent to Wales.

25. These amendments provide greater clarity to the scope of the regulations and we recommend the Senedd consents to clause 92.

Part 2 Carbon Dioxide Capture, Storage etc and Hydrogen Production: Chapter 5 Carbon Storage information and samples

26. A new Chapter 5 (Carbon storage information and samples), consisting of clauses 106 to 126, has been inserted into Part 2. Broadly, this Chapter makes provision relating to carbon storage information and samples of substances acquired by or on behalf of a licensee in the course of carrying out activity under the licensee's carbon storage license. The carbon storage license means a license granted or having effects as if granted by the Oil and Gas Authority (OGA) under section 18(1) of the Energy Act 2008 (clause 106(2)).

27. This Chapter makes provision in respect of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, and do no not relate to any reservation in Schedule 7A to GOWA. Therefore, an sLCM is required for the clauses in this Chapter, which are briefly summarised below:

    27.1. Clause 106 (Key definitions) and clause 126 (Interpretation of Chapter 5) contain definitions used throughout this Chapter.

    27.2. Clause 107 (Retention of information and samples) regulates for the requirement that information on carbon storage information and samples may be required by specified licensees.

    27.3. Clause 108 (Preparation and agreement of information and samples plans) requires that a responsible person must prepare an information and samples plan.

    27.4. Clause 109 (Information and samples plans: supplementary) requires any changes to information and samples plans must be agreed by the OGA.

    27.5. Clause 110 (Information and samples: coordinators) requires the appointment of an information and samples coordinator within a licensee or exploration operator.

27.6. Clause 111 (Powers of OGA to require information and samples) gives power to the Oil and Gas Authority to require information and samples.

27.7. Clause 112 (Prohibition on disclosure of information or samples by OGA) prohibits the disclose of information or samples by the OGA.

27.8. Clause 113 (Power of Secretary of State to require information and samples), and new Schedule 7, gives power to the Secretary of State to require information and samples held by the OGA for the purpose of functions conferred by or under any Act, monitoring the OGA's performance or any Parliamentary proceedings.

27.9. Clause 114 (Power of OGA to give sanction notices) gives power to the OGA to give sanction notices, which mean the notices referred to in clauses 115 to 118.

27.10. Clause 115 (Enforcement notices) defines an enforcement notice.

27.11. Clause 116 (Financial penalty notices) defines a financial penalty notice.

27.12. Clause 117 (Revocation notices) defines a revocation notice.

27.13. Clause 118 (Operator removal notices) sets out the process for an operator removal licence.

27.14. Clause 119 (Duty of OGA to give sanction warning notices) is a duty of the OGA to give sanction warning notices.

27.15. Clause 120 (Publication of details of sanctions) gives the OGA powers to publish details of any sanctions notice given with exceptions set out in the clause.

27.16. Clause 121 (Subsequent sanction notices) gives powers to the OGA for subsequent sanction notices.

27.17. Clause 122 (Withdrawal of sanction notices) gives power to the OGA to withdraw a sanction notice.

27.18. Clause 123 (Sanctions: Information powers) gives power to the OGA to require documents or other information to be provided in relation to an investigation which concerns a sanctionable requirement or for the purpose of enabling the OGA to decide whether to make a sanction.

27.19. Clause 124 (Appeals) introduces a new Schedule 8 which defines the appeals against decisions made by the OGA relating to certain information and samples in Chapter 5.

27.20. Clause 125 (Procedure for enforcement decisions) outlines the procedure for enforcement decisions.

28. There is overlap between the geographical scope of the OGA and the territory over which the Senedd has competence under section 108A of the GOWA insofar as the provisions will apply to storage activities in the Welsh territorial sea. The Secretary of State's regulation making power is limited to carbon storage licences granted by the OGA. As such, these regulations will not extend to activities of the Energy Act 2008 in Wales (landmass and Welsh internal waters) where the Welsh Ministers are the sole licensing authority.

29. It is important that licensed activity have common requirements on information and samples for an efficient system across Great Britain. As such I have sought amendment to this Chapter to include licenses issued by Welsh Ministers with a process of consent sought should the regulations impact on areas of devolved competence. We recommend the Senedd withholds consent to clauses 106-126.

Part 2 Carbon Dioxide Capture, Storage etc and Hydrogen Production Chapter 6 General

30. As noted in the LCM, clause 127 (Access to infrastructure) (previously clause 96) gives power to the Secretary of State to make regulations about the acquisition of rights to use a site of geographical storage of carbon dioxide or a pipeline which is used or intended to be used to convey carbon dioxide. This clause has been amended to include a list of the kind of provision which the Secretary of State may by regulation make under this clause, which includes conferring discretions on any person and creating criminal offences. This clause makes provision in respect of environmental protection and waste, which include decarbonisation measures such as carbon dioxide capture, and do no not relate to any reservation in Schedule 7A to GOWA. Therefore, an sLCM is required.

31. Before making regulations under this part the Secretary of State must consult with Welsh Ministers if the regulations contain provisions that would be within the legislative competence of the Senedd. The requirement to consult should be amended to a requirement to seek the consent of Welsh Ministers so I recommend the Senedd withholds consent to clause 127.

Part 11 Energy Savings Opportunity Schemes

32. A new Part has been introduced to the Bill in relation to the Energy Savings Opportunity Scheme (ESOS). These measures are intended to improve the quality of ESOS audits and provide powers to expand the scheme to include net zero elements in audits and more businesses. These amendments will apply UK-wide. The clauses listed below make

provision within the legislative competence of the Senedd to the extent that provision is about the encouragement of energy efficiency (otherwise than by prohibition or regulation).

32.1. Clause 250 (Energy savings opportunity schemes) gives power to the Secretary of state to regulate to establish one or more ESOS.

32.2. Clause 251 (Application of energy savings opportunity schemes) relates to the processes for applying for ESOS.

32.3. Clause 252 (Requirement for assessment of energy consumption) sets out a requirement for carrying out assessments of energy consumption.

32.4. Clause 253 (Assessors) provides for ESOS regulations to confer functions on an assessor in relation to assessing, monitoring and reporting on compliance with requirements imposed by the regulations.

32.5. Clause 254 (ESOS action plans) provides for ESOS regulations to make provision for participants to produce ESOS action plans.

32.6. Clause 255 (Action to achieve energy savings or emissions reductions) sets out the actions the ESOS regulations may provide for.

32.7. Clause 256 (Scheme administration) provides for ESOS regulations to set out the scheme administration.

32.8. Clause 259 (ESOS regulations: procedure etc) sets out the procedure for ESOS regulations to come into force including a requirement for the Secretary of State to consult with Welsh Ministers to the extent that regulations contain provisions within devolved competence.

32.9. Clause 260 (Directions to scheme administrators) gives powers to the Secretary of State to give directions to a schemes administrator.

32.10. Clause 261 (Financial assistance to scheme administrators and participants) gives powers to the Secretary of State to give or arrange to give financial assistance to scheme administrators and participants.

32.11. Clause 262 sets out the interpretation of Part 11.

33. The Welsh Government supports a UK wide ESOS. However, where ESOS regulations contain provisions within the devolved competence of the Senedd the Secretary of State must seek the consent of Welsh Ministers before making regulations. Specifically, I recommend the Senedd withholds consent to clause 259, it is my view that the Secretary of State must seek the consent of Welsh Ministers before making

regulations if the regulations contain provisions that would be within the legislative competence of the Senedd.

UK Government view on the need for consent

34. The UK Government agrees that Senedd consent is required. Specifically, the UK Government have concluded that:

34.1. For Part 1 on Licensing of Carbon Dioxide Transport and Storage, provisions across the Part engage the LCM process. However, there are some provisions related to reserved matters, notably those dealing with functions under competition law and insolvency processes.

34.2. For Part 2 on Carbon Dioxide Capture, Storage etc and Hydrogen Production, provisions across the Part engage the LCM process in so far as carbon capture and the transport and storage of CO_2 are matters that are generally within devolved competence. However, they have concluded that provisions in respect of hydrogen are reserved by virtue of the D2 Oil and Gas reservation in the GOWA and are therefore outside devolved competence. Where clauses relate to the hydrogen levy and its administration, the UK Government deem such provision is a reserved matter as relating to a tax for the purposes of the A1 reservation and the LCM process is not engaged.

34.3. For Part 11 on ESOS the UK Government have deemed that the LCM process is engaged in for this Part but does not provide any specific details as to individual clauses.

Welsh Government position on the changes to the Energy Bill up to 11 July 2023

35. I laid an LCM on 29 June 2023 on the Bill as introduced. The amendments made to the Bill since introduction do not change my position contained within that LCM.

36. The Welsh Government welcomes a number of the amendments to the Bill as they provide useful clarifications and additional detail on how the measures first introduced in the Bill will operate. It remains the position of the Welsh Government that the contains essential provisions to help support the transition of the UK towards net zero.

37. As with the Bill as introduced, in a number of areas, the amendments made to the Bill do not sufficiently respect the competence of the Senedd. Specifically, the Welsh Government recommends the Senedd withhold consent on clauses 9, 73, 106 to 126, 127 and 259 and we are seeking a requirement for the Secretary of State to seek the consent of Welsh Ministers before new regulations with respect to Chapters 5 and 6 of Part

2, and Part 11 can come into effect. The following table summarises my position.

Table 1: Summary Welsh Government position on consent

Clauses as amended – Energy Bill 11 July 2023	
Recommend the Senedd consent	**Recommend the Senedd withholds consent.**
Part 1: 19, 29, 32.	Part 1: 9
Part 2: 67, 92.	Part 2: 73, 106-126, 127.
Part 11: 250-256, 260-262	Part 11: 259
Schedule 3	Schedules 7 and 8

Financial implications

38. There may be financial implications for the Welsh Government which may need to be considered. Were the Bill to introduce any new powers that were to be administered by Welsh Ministers, assurances would need to be sought from the UK Government of corresponding resource being made available.

Conclusion

39. Whilst delivery of these provisions in a UK Bill could be an appropriate way to legislate, unless and until the matters of concern have been resolved, I do not recommend the Senedd consents to this Bill.

Julie James MS
Minister for Climate Change
01 September 2023

Annex 1:

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
Part 1 – Licensing of Carbon Dioxide Transport and Storage		
1	Principal objectives and general duties of Secretary of State and economic regulator	1
2	Prohibition on unlicensed activities	2
3	Consultation on proposals for additional activities to become licensable	3
4	Territorial scope of prohibition	4
5	Exemption from prohibition	5
6	Revocation or withdrawal of exemption	6
7	Power to grant licences	7
8	Power to create licence types	8
9	Procedure for licence applications	9
10	Competitive tenders for licences	10
11	Conditions of licences: general	11
12	Standard conditions of licences	12
13	Modification of conditions of licences	13
14	Modification of conditions under section 13: supplementary	14
15	Modification by order under other enactments	15
16	Interim power of Secretary of State to grant licences	16
17	Termination of licence	17
18	Transfer of licences	18
19	Consenting to transfer	19
20	Appeal to the CMA	20
21	Procedure on appeal to CMA	21

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
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23	CMA's powers on allowing appeal	23
24	Time limits for CMA to determine an appeal	24
25	Determination of appeal by CMA: supplementary	25
26	Provision of information to or by the economic regulator	26
27	Power of Secretary of State to require information	27
28	Monitoring, information gathering etc	28
29	Power to require information for purposes of monitoring	29
30	Duty to carry out impact assessment	30
31	Reasons for decisions	31
32	Enforcement of obligations of licence holders	32
33	Making of false statements etc	33
34	Liability of officers of entities	34
35	Criminal proceedings	35
36	Functions under the Enterprise Act 2002	36
37	Functions under the Competition Act 1998	37
38	Sections 36 and 37: supplementary	38
39	Forward work programmes	39
40	Information in relation to CCUS strategy and policy statement	40
41	Annual report on transport and storage licensing functions	41

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
42	Transport and storage administration orders	42
43	Objective of a transport and storage administration	43
44	Application of certain provisions of the Energy Act 2004	44
45	Conduct of administration, transfer schemes etc	45
46	Modification of conditions of licences	46
47	Modification under the Enterprise Act 2002	47
48	Power to make further modifications of insolvency legislation	48
49	Interpretation of Chapter 4	49
50	Transfer schemes	50
51	Consultation in relation to transfers	51
52	Conduct of transfer schemes	52
53	Cooperation of storage licensing authority with economic regulator	53
54	Amendments related to Part 1	54
55	Interpretation of Part 1	55
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57	Revenue support contracts	57
58	Duties of revenue support counterparty	58
59	Designation of transport and storage counterparty	59
60	Direction to offer to contract	60
	Designation of hydrogen transport counterparty	61
	Direction to offer to contract with eligible	62

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
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	Designation of hydrogen storage counterparty	63
	Direction to offer to contract with eligible hydrogen storage provider	64
61	Designation of hydrogen production counterparty	65
62	Direction to offer to contract with eligible hydrogen transport provider	66
63	Designation of carbon capture counterparty	67
64	Direction to offer to contract with eligible hydrogen storage provider	68
65	Appointment of hydrogen levy administrator	69
66	Obligations of relevant market participants	70
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67	Functions of hydrogen levy administrator	72
68	Power to appoint allocation bodies	73
69	Standard terms of revenue support contracts	74
70	Allocation notifications	75
71	Allocation of contracts	76
72	Duty to offer to contract following allocation	77
73	Modification of standard terms	78
74	Sections 75 to 78: supplementary	79
	Licence conditions regarding functions of certain allocation bodies	80

Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
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76	Application of sums held by a revenue support counterparty	82
77	Information and advice	83
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78	Consultation	85
79	Transfer schemes	86
80	Modification of transfer schemes	87
81	Shadow directors, etc	88
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82	Financing of costs of decommissioning etc	92
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Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
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	Powers of OGA to require information and samples	111
	Prohibition on disclosure of information or samples by OGA	112
	Power of Secretary of State to require information and samples	113
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Clause Number on Introduction into House of Lords 6 July 2022	Clause description	As amended at Committee report stage 11 July 2023
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Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/2328/23

Elin Jones MS
Llywydd

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

Llyr Gruffydd MS
Chair, Climate Change, Environment and Infrastructure Committee.

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1 September 2023

Dear Elin, Huw and Llyr,

I am writing in relation to the Energy Bill (the Bill) which was introduced to the UK Parliament, the House of Lords, on 6 July 2022. As you know I laid the Legislative Consent Memorandum on the Bill as introduced on 29 June 2023.

On 25 July I laid a supplementary Legislative Consent Memorandum (sLCM) on the Offshore Wind Environmental Improvement Package (OWEIP) clauses in the Bill. Those clauses were tabled as amendments to the Bill in the House of Lords on 9 January 2023, with further amendments tabled against the Bill by the UK Government on 7 June 2023.

Further supplementary legislative consent memoranda

I am now writing as I lay a second sLCM to cover the other amendments to the Bill since introduction and covers the Bill as it left the House of Commons Committee Stage as published on 11 July 2023. The amendments which relate to matters within the competence of Welsh Ministers and the Senedd relate to Parts 1, 2, and 11.

The Welsh Government welcomes a number of the amendments to the Bill as they provide useful clarifications and additional detail on how the measures first introduced in the Bill will operate. However, as with the Bill as introduced, in a number of areas, the amendments

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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.

made to the Bill do not sufficiently respect the competence of the Senedd. Specifically, the Welsh Government recommends the Senedd withhold consent on clauses 9, 73, 106-126, 127 and 259. Here we are seeking a requirement for the Secretary of State to seek the consent of Welsh Ministers before new regulations can come into effect rather than a process of consultation as is in the current draft of the Bill.

The Welsh Government remains in discussion with the UK Government on the Bill, but to date I have not had an acceptable offer of amendments to address the points raised in the LCM or sLCM laid to date. I maintain the Welsh Government's position that we are supportive of the policy intent set out in the Bill and I also agree with the need for many of the regulations proposed to operate effectively on a pan UK basis. I remain of the view that there is no reason why the UK Government cannot work with us to deliver cross-border regulation in a way that avoids regulatory divergence through a process that requires the consent of Welsh Ministers in areas of devolved competence.

As with the other LCMs I appreciate that we are outside the normal two-week Standing Order 29 deadline for the laying of this supplementary LCM. This has been in part due to handling of the Bill by the UK Government but also due to the complexity of the issues under consideration.

Legislative consent motion debate

Presently Commons Report Stage and Third Reading for the Bill is scheduled for 5 September. House of Lords consideration of amendments is expected to commence on 12 September.

I am incredibly concerned that the current scheduling of this Bill will leave insufficient time to resolve concerns at an intergovernmental level, and the Senedd with no meaningful opportunity to consider their position on consent. I have asked that UK Ministers take immediate steps to postpone the scheduling of final Commons' Stages to enable further time for discussions, and to enable the Senedd to consider this Bill at a meaningful stage.

Based on the current timetable I am left in the regrettable position of seeking the Senedd debates the Legislative Consent Motion for the Bill at its earliest opportunity, 12 September 2023. I appreciate that this will mean that relevant Senedd Committees would be afforded no scrutiny opportunity for the sLCMs laid during recess, and will likely not have reported on the LCM laid on 29 June 2023. However, holding the debate on this date will enable the Senedd's position to be made clear to UK Government and Parliament as soon as possible.

Of even greater concern is the possibility that this Bill will be pushed through Parliament regardless of the potential lack of Senedd consent. Constitutional convention is that Parliament will not normally legislate with regard to devolved matters without the consent of the Senedd. There is absolutely no reasonable rationale that can be presented that this legislation is 'not normal'. I have therefore sought unequivocal assurance that, should the Senedd not consent to this Bill, the UK Government will commit to their stated respect for the Sewel Convention, and not legislate in relation to Wales.

Standing Order 29 and reporting implications

I am aware that Business Committee has previously set a reporting deadline of 15 September for the original LCM. Should either the Legislation, Justice and Constitution Committee or the Climate Change, Environment and Infrastructure Committee be in a position to issue a report prior to the debate on 12 September, I will respond accordingly in the Senedd debate and in writing as required.

I recognise, however, the significant difficulty this is likely to cause and the reality that this may prove unworkable. I will therefore also take steps to table a motion to suspend Standing Order 29.8 to enable the debate to take place on 12 September, along with relevant suspensions for Standing Orders 11.16 and 12.20(i).

I greatly respect and appreciate the role of the Senedd's Committees within the legislative consent process, and deeply regret this situation. However, as previously stated, I believe the current trajectory of this Bill makes it essential that the Senedd's position can be articulated with urgency.

I am copying this letter to the Counsel General and Minister for the Constitution, Mick Antoniw MS and the Minister for Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths MS.

Yours sincerely,



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

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

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25 July 2023

Dear Elin

I wrote to you on 29 June 2023 regarding the Energy Bill (the Bill) which was introduced to the UK Parliament, the House of Lords, on 6 July 2022. The passage of the Bill was stalled for a period before resuming in the latter part of 2022 and is still expected to have a number of government amendments introduced at the final stages of the Bill's passage through Parliament.

Following on from that letter and the Legislative Consent Motion, I am now writing regarding a supplementary Legislative Consent Motion (sLCM) on the Offshore Wind Environmental Improvement Package (OWEIP) clauses in the Bill. There are six OWEIP clauses in Chapter 1 for Part 13 of the Bill constituting Clauses 286-291. The clauses were tabled as amendments to the Bill in the House of Lords on 9 January 2023, with further amendments tabled against the Bill by the UK Government on 7 June 2023.

The UKG's aim for the OWEIP clauses is to accelerate delivery of offshore wind developments through:

- enabling the use of strategic compensation measures to unblock barriers to consenting for offshore wind plans or projects that will adversely affect protected European sites;
- allowing the setting up of a Marine Recovery Fund or funds (MRF) to facilitate those measures, and
- allowing amendments to the environmental assessment regime under the Habitats Regulations Assessment (HRA) and the marine conservation zone assessment (MCZ) regime relevant to the consenting and licensing of offshore wind plans and projects to facilitate those changes.

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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.

Further detail regarding the relevant legislation in Wales has been provided in the sLCM for context.

The UK Government believe the OWEIP amendments relate to a reserved matter and are outside the Senedd's legislative competence. They argue the OWEIP amendments' primary purpose is to accelerate the development of offshore wind projects to increase the UK's generation of offshore wind, which relates to the reservation, "Generation, transmission, distribution and supply of electricity".

The Welsh Government's view is that the OWEIP amendments make provision in relation to Wales for a purpose within the Senedd's legislative competence in relation to environmental protection, marine licensing, and planning for generating stations below 350MW, so far as the OWEIP amendments apply in the Welsh inshore region.

I have written to the UK Government on a number of occasions to raise concerns that the OWEIP clauses as drafted do not respect the legislative competence of the Senedd nor the devolved responsibilities of Welsh Ministers. The Welsh Government recommends withholding consent to the OWEIP clauses at this time and I laid the supplementary Legislative Consent Memorandum on 25 July 2023.

As with the LCM I appreciate that we are well outside the normal two-week Standing Order 29 deadline for the laying of this supplementary LCM. This has been in part due to handling of the Bill by the UK Government but also due to the complexity of the issues under consideration. We expect further changes to the Bill and these clauses from the UK Government as the Bill continues its consideration in the House of Commons. Given the importance of the OWEIP measures for our ability to manage the marine environment and given we do not feel the UK Government is respecting our devolution settlement, I am keen to focus this LCM on those clauses introduced as UK Government amendments. A further supplementary LCM will be required to cover the remaining amendments to the Bill which will be laid as soon as possible. The Bill is expected to move through the final stages of the UK Parliament in September.

I am copying this letter to the Counsel General and Minister for the Constitution, Mick Antoniw MS, the Minister for Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths MS and the Chair of the Legislation, Justice and Constitution Committee, Huw Irranca-Davies MS.

Yours sincerely



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

Department for Energy Security & Net Zero

Andrew Bowie MP
Minister for Nuclear and Networks

Department for Energy Security & Net Zero

www.gov.uk

Our ref: MCB2023/16220

Huw Irranca-Davies MS
Chair
Legislation, Justice, and Constitution Committee
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24 July 2023

Dear Huw,

Thank you for your letter of 12 July 2023 regarding the legislative consent process in the Senedd for the Energy Bill and the engagement that has so far taken place between the UK Government and the Welsh Government.

I take devolution very seriously and do not recognise the remarks made by Minister James during your Committee's recent meeting. I am committed to the Sewel Convention and, as the Minister leading the Bill, I have a fundamental interest in ensuring that it works to the benefit of every part of the UK.

The Energy Bill is a very large piece of legislation. As introduced, the Bill contained 243 clauses and 19 Schedules and has been amended during its passage to now contain 330 clauses and 22 Schedules. The policy scope of the Bill is wide, covering everything from carbon capture and hydrogen production to energy code governance reform, heat networks regulation and offshore wind electricity generation.

I recognise that the devolution landscape for energy is complicated, particularly in Wales and I am mindful that some provisions in the Bill engage the LCM process in the Senedd. The Bill respects the devolution settlement while ensuring that we limit regulatory divergence as far as possible in the interests of supporting cross-border nascent industries like CCUS and hydrogen.

I do not believe it is the case that the Welsh Government had no knowledge of the Bill's contents prior to its introduction. My officials shared draft clauses where possible and held a series of 'deep dive' sessions with Welsh Government officials on each measure well in advance of the Bill's introduction. Notwithstanding the short delay to the Bill when the urgent Energy Prices Act 2022 was prioritised, and the additional complexities associated with large pieces of legislation, the Welsh Government has now had the best part of a year to consider it.

When the Bill was first introduced in the UK Parliament, my predecessor wrote to Minister James to set out the UK Government's devolution analysis and seek her support for an LCM for the devolved provisions. At subsequent amending stages in the UK Parliament, my predecessors and I wrote to Minister James in similar terms.

My officials have sought to engage their counterparts extensively about the Bill, including seeking weekly meetings since the Bill was introduced. In addition, there have been many conversations, meetings, and emails between Welsh Government officials and UK Government officials who lead on the Bill's individual measures.

The Welsh Government's delay in laying the Legislative Consent Memorandum has not helped our discussions. Indeed, the Memorandum presents the first instance I have seen which sets out the Welsh Government's concerns with the Bill in full. As the Memorandum only covers the Bill as introduced, I still do not know the Welsh Government's position on large parts of the Bill which have been amended. Close engagement between UK and Welsh Government officials has mitigated these shortcomings to an extent and has allowed for a package of amendments to be shared at official level. I intend to write to Minister James shortly to set out these amendments formally.

In the committee session, Minister James raised concerns around ensuring sufficient time for consultation on draft proposals. My department will always seek to engage the Welsh Government at the earliest opportunity. This is why, within the context of the Energy Bill, I proposed to Minister James that the Bill is amended to introduce new statutory protections which ensure that consultation on draft proposals for secondary legislation would take place over a statutory period of time.

Minister James also raised discussions between the UK and Welsh governments relating to offshore wind. I have responded to several of Minister James's letters on the offshore wind environmental improvement measures in the Bill and I discussed the Energy Bill issues with Minister James when we met on 22 May 2023. The offshore wind measures were also discussed in a meeting between Minister Stuart and Minister James on the 26 April 2023. My door is always open to further discussions on this and any other matter.

Yours aye,



Andrew Bowie MP
Minister for Nuclear and Networks

Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Legislation, Justice and Constitution Committee

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Andrew Bowie MP
Parliamentary Under-Secretary of State for Energy Security and Net Zero

12 July 2023

Dear Andrew

Energy Bill

You will be aware that the Welsh Government has now begun the legislative consent process in the Senedd in relation to relevant provisions in the Energy Bill (the Bill). On 29 June 2023, the Minister for Climate Change, Julie James MS, laid before the Senedd a Legislative Consent Memorandum (the Memorandum) on the Bill. You will likely be aware that the Welsh Government is currently recommending to the Senedd that it should withhold consent to the relevant provisions in the Bill at this time.

In the Memorandum laid before the Senedd, the Minister for Climate Change states that the Welsh Government was not involved in the development of the Bill before its introduction, and "the full legal text [of the Bill] was not available for review until hours before its introduction to the House of Lords". The Minister for Climate Change also states that the Welsh Ministers have written to the UK Government to raise concerns that the Bill as drafted does not respect the legislative competence of the Senedd nor the devolved responsibilities of the Welsh Ministers.

The Minister for Climate Change was invited to attend my Committee's meeting on 10 July, when we were able to discuss with her the Welsh Government's actions to date as regards the Bill. In particular, we discussed the circumstances which had contributed to the fact that the Memorandum has been laid before the Senedd almost one year after the Bill was introduced to the UK Parliament. We would normally expect a legislative consent memorandum to be laid before the Senedd within two weeks of a Bill with relevant provisions being introduced to the UK Parliament. Further to the statements made in the Memorandum, the Minister made it clear that the delay was partly due to the lack of dialogue and cooperation between both Governments. She told us:

- "We would have very much wanted for the Welsh Government to have been involved in the development of the Bill months before the Bill was published. We would have had detailed discussions with UK Government Ministers on matters within our competence and so on. Not a single scrap of that happened at all. Nothing, absolutely not." [Record of Proceedings, paragraph 6]

- "I'm quite annoyed by the situation the UK Government has put in where we're struggling to keep up with the changes in a Bill that are rapid and don't involve us at the right level at all." [RoP, paragraph 7]

- "...there's just nothing good to say about the way the UK Government has treated the devolution settlement. The Bill has been drafted without any nod to devolution whatsoever. (...) from a political point of view, I would say that it's news to the energy team [in the UK Government] that there is such a thing as a devolution settlement. It's been a hard-fought battle to get them to even understand what we're trying to say." [RoP, paragraph 14]

- "I have, a number of times, not just in this instance, been summoned to speak to a Minister of the UK Government at 17:30 with no idea of what they want to talk to me about, only to be told that tomorrow morning, they're going to publish X, so that they can say they've consulted us. Well, I'm sorry, I don't think that's sufficient consultation at all." [RoP, paragraph 19]

- "I've made a number of representations to the Secretary of State for BEIS, as it was then, and the Secretary of State and Ministers within the new Department for Energy Security and Net Zero. In March this year, following the UK Government amendments, with the offshore wind environment improvement package, I set out my concerns to the new Secretary of State on the clauses and on the initial considerations of the Bill. I've requested a meeting to discuss the concerns, but no offer to meet has been forthcoming. The first and only meeting on this Bill I have had with a UK Government Minister was with Minister Bowie in May 2023, and I have to say, in that meeting, Minister Bowie showed no appreciation that any kind of devolution settlement existed. There's no getting away from that. It was a very short meeting, and their view was that it just doesn't engage the devolution—. Well, they just didn't have any appreciation of it at all." [RoP, paragraph 29. See also paragraph 20]

- "We do normally have much better engagement. (...) but I think that what we're looking at here is somebody who just did not realise that there was any devolution issue in it until the last minute." [RoP, paragraph 21]

The statements and comments made by the Minister for Climate Change are concerning. We would welcome and value your response to what we have heard from the Minister for Climate Change, in particular details of the engagement – at Ministerial and official level – between your respective departments, and how you have sought to address the concerns of the Welsh Government.

I would welcome a response by 1 September 2023, so that my Committee can fully consider the evidence before reporting to the Senedd ahead of the debate which will take place on a consent motion for the Bill.

I am copying this letter to the Rt Hon Grant Shapps MP, Secretary of State for Energy Security and Net Zero; the Rt Hon Michael Gove MP, Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations; and the Rt Hon David TC Davies MP, Secretary of State for Wales.

I am also copying the letter to the Senedd's Climate Change, Environment, and Infrastructure Committee.

Yours sincerely,



Huw Irranca-Davies
Chair

Agenda Item 9

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Agenda Item 10

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