

Agenda Supplement – Legislation, Justice and Constitution Committee

Meeting Venue:

Video Conference via Zoom

Meeting date: 11 July 2022

Meeting time: 13.00

For further information contact:

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Committee Clerk

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Virtual – Supplementary pack

Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

2 Historic Environment (Wales) Bill: Ministerial evidence session

(13.00 – 14.30)

(Pages 1 – 12)

Mick Antoniw MS, Counsel General and Minister for the Constitution

Dylan Hughes, First Legislative Counsel

Dr James George, Senior Legislative Counsel

[Historic Environment \(Wales\) Bill, as introduced](#)

[Explanatory Memorandum](#)

[Explanatory Memorandum: Annex A – Explanatory Notes](#)

[Explanatory Memorandum: Annex B1 – Table of Origins](#)

[Explanatory Memorandum: Annex B2 – Table of Destinations](#)

[Explanatory Memorandum: Annex C – Explanation of changes made to existing provisions \(Drafters' Notes\)](#)

[Explanatory Memorandum: Annex D – Correspondence from the Law Commission](#)

Attached Documents:

LJC(6)-21-22 – Paper 2 – Briefing

4.2 SL(6)228 – The Restricted Roads (20 mph Speed Limit) (Wales) Order 2022

(Pages 13 – 18)



Senedd Cymru
Welsh Parliament

Attached Documents:

LJC(6)–21–22 – Paper 38 – Report

LJC(6)–21–22 – Paper 39 – Welsh Government response

5.1 WS–30C(6)010 – European Parliamentary Elections (Amendment and Revocation) (United Kingdom and Gibraltar) (EU Exit) Regulations 2022

(Pages 19 – 20)

Attached Documents:

LJC(6)–21–22 – Paper 21 – Commentary

11 Monitoring Report

(15.30 – 15.40)

(Pages 21 – 32)

Attached Documents:

LJC(6)–21–22 – Paper 30 – Draft Monitoring report

12 Annual Report

(15.40 – 16.05)

(Pages 33 – 65)

Attached Documents:

LJC(6)–21–22 – Paper 31 – Draft report

14 Legislative Consent Memorandum on the Procurement Bill

(16.15 – 16.25)

(Pages 66 – 98)

[Legislative Consent Memorandum: Procurement Bill](#)

Attached Documents:

LJC(6)–21–22 – Paper 34 – Legal advice note

LJC(6)–21–22 – Paper 35 – Briefing

15 Forward Work Programme

(16.25 – 16.35)

(Pages 99 – 106)

Attached Documents:

LJC(6)–21–22 – Paper 36 – Forward work programme

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SL(6)228 – The Restricted Roads (20 mph Speed Limit) (Wales) Order 2022

Background and Purpose

The Restricted Roads (20 mph Speed Limit) (Wales) Order 2022 ("the Order") lowers the speed limit from 30 miles per hour to 20 miles per hour on restricted roads in Wales.

Section 81(1) of the Road Traffic Regulation Act 1984 ("the Act") provides that it is not lawful for a person to drive a motor vehicle on a restricted road at a speed exceeding 30 miles per hour. Under section 81(2), the national authority may by order increase or reduce the rate of speed fixed by subsection (1). The Welsh Ministers are making the Order as the national authority in relation to Wales (section 142(1)).

A restricted road is defined by section 82(1) of the Act as a road with "a system of street lighting furnished by means of lamps placed not more than 200 yards apart". This definition is subject to other provisions of the Act, including those allowing the traffic authority for a road to make changes to the speed limit on that road. The Welsh Ministers are the traffic authority in relation to trunk roads and special roads, while the relevant county or county borough council is the traffic authority in relation to other roads.

In particular:

- Under section 82(2) the traffic authority may direct that a road which is a restricted road shall cease to be a restricted road, or that a road which is not a restricted road shall become a restricted road.
- Under section 84(1)(a) the traffic authority may by order impose a speed limit on any road for which it is responsible. While such an order is in force, the relevant road is not a restricted road (section 84(3)).

The Order decreases the default speed limit on restricted roads in Wales, but it does not alter the power of a traffic authority to change the speed limit on a particular road in accordance with sections 82(2) and 84(1)(a) of the Act.

Procedure

Draft Affirmative

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

Technical Scrutiny

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



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

The Order is made in exercise of the power in section 81(2) of the Act which provides that:

The national authority may by order increase or reduce the rate of speed fixed by subsection (1) above, either as originally enacted or as varied under this subsection.

Article 2(2) of the Order provides that the reference in section 81(1) of the Act to “30 miles per hour” is to be interpreted as a reference to “20 miles per hour”. When the Order comes into force it will be necessary for a person to locate both the Act and the Order, in order to understand the default speed limit on restricted roads in Wales. There will be nothing on the face of the Act to indicate that such an Order has been made.

The Welsh Government is asked whether it considered using the power in section 81(2) to instead make a textual amendment to the speed limit in section 81(1), which would assist in making Welsh law in this area as accessible as possible to road users.

Merits Scrutiny

The following 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.

It is noted that the Order will not come into force until 17 September 2023. The Explanatory Memorandum provides the following explanation:

This is because a lengthy period of preparation is required to enable traffic authorities to review their road networks with a view to ascertaining whether they need to make orders under sections 82(2) and/or 84(1)(a) of the Road Traffic Regulation Act 1984 in relation to restricted roads where they consider that the default speed limit of 20 miles per hour would not be appropriate. The process of making such orders generally takes several months and the process can be longer where objections are made. In addition, amendments will be required to the Traffic Signs Regulations and General Directions 2016 to coincide with the coming into force of the proposed Order, to ensure that the new speed limits can be legally enforced.

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.

Section 3.3 of the Regulatory Impact Assessment notes that amendments will be required to the Highway Code in light of the new default speed limit.

Section 38(2) of the Road Traffic Act 1988 provides that the Secretary of State may revise the Highway Code by revoking, varying, amending or adding to the provisions of the Code. This



function of the Secretary of State has not been transferred to the Welsh Ministers, and so any changes to the Code will need to be made by the UK Government.

The Welsh Government is asked to explain how it will ensure that any changes to the Highway Code are put into place by the UK Government before the Order comes into force, so that road users' obligations in Wales remain clear and accessible to the public.

3. 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.

It is noted that no formal Justice Impact Assessment has been undertaken.

The justification for this is set out in section 5.0 of the Regulatory Impact Assessment which concludes that there will be only a "slight" impact on the criminal justice system, by way of an increase in the number of applications to the courts related to speeding tickets. This conclusion is based on the following factors:

- The threshold for recommending prosecution is a recorded speed of 35 miles per hour on a road with a limit of 20 miles per hour.
- Where the recorded speed is less than 32 miles per hour on a road with a 20 miles per hour speed limit, then the driver may be offered a speed awareness course as an alternative to a fine and penalty points.
- During the enforcement pilot in Llanelli North, 2% of speeding offences recorded were at or exceeded 35 miles per hour, while 92% were in the speed range appropriate for speed awareness courses.
- The police are expected to adopt an approach of education rather than prosecution in the early stages of implementation.
- National and local awareness campaigns will accompany the reduction in the speed limit.

We note that there are differences between a lowered speed limit put in place in a defined pilot area, and a national default speed limit (for example differing signage requirements), which might have an impact on the number and type of speeding offences committed. We would also note that there are further eligibility requirements for speed awareness courses other than recorded speed. In particular, there is a limit of one speed awareness course per driver per three year period.

The Welsh Government is asked to confirm whether or not it took the two points above into account when reaching its conclusion that the impact on the justice system would be slight.



Welsh Government response

A Welsh Government response is required in relation to the technical point and in relation to the second and third merits points.

Committee Consideration

The Committee considered the instrument at its meeting on 4 July 2022 and reports to the Senedd in line with the reporting points above.



Government Response: The Restricted Roads (20 mph Speed Limit) (Wales) Order 2022

Technical Scrutiny point 1:

The Welsh Government accepts the need to make Welsh law as accessible as possible to road users. However, the drafting approach used in article 2(2) of the Order was driven by vires issues rather than the need for accessibility.

Section 81(2) of the Road Traffic Regulation Act 1984 expressly authorises the national authority by order “to increase or reduce the rate of speed fixed by subsection (1) above, either as originally enacted or as varied under this subsection”. The wording of the power is not explicit as to whether textual modification of the rate of speed is authorised. There is no express ancillary power in section 81, or elsewhere in the 1984 Act, to make consequential changes to the section to deal with territorial differentiation in the rate of speed. In order to make a textual amendment, it would be necessary to argue that the power to make ancillary adjustments to section 81 is necessarily implied by the conferral of the section 81(2) power on the Welsh Ministers in relation to Wales.

As s.81 forms part of the law of England & Wales and Scotland any ancillary power implied into section 81(2) to restate the law and make consequential amendments would also need to be capable of making changes to the law as it applies in Scotland.

If Parliament had intended for there to be such ancillary powers it could have included them at any of the points amendments were made to s.81 (via the Scotland Act 2016 or Wales Act 2017) rather than assume they would be implicit.

A person who reads the whole of section 81 will be aware that modification of subsection (1) is possible by order made separately in relation to England, Scotland or Wales; and as a result should be on notice that their enquires on the state of the law cannot stop with reading section 81. In addition, it is already the case that the speed limit in section 81(1) does not apply to everyone, despite there being no indication of the existence of exceptions in section 81 itself (see The Road Traffic Exemptions (Special Forces)(Variation and Amendment) Regulations 2011).

To make the textual modification approach viable at a practical level, the UK and both devolved administrations would need to agree on the approach and keep each other informed of any changes when they occur, which would be difficult to achieve in practice, for instance section 81(5) provides no statutory basis for the Welsh Ministers to consult the Scottish Ministers and vice versa.

On balance therefore, and in view of the uncertainties expressed above, the Welsh Government considers that a non-textual amendment is the safest course to take in respect of assuaging concerns over vires. In doing so, it acknowledges that the drafting approach taken is not ideal but one to which it has been driven by the way in which the powers in the Act are framed.

Merits Scrutiny points 2:

Officials have been in regular contact with the Department of Transport and DVSA for the past 12 months regarding the required revisions to the Highway Code. They have been fully briefed about the Welsh Government plans and proposed legislation to reduce the default restricted roads to 20mph in Wales. Plans are in place for driving test requirements to be amended to comply with the proposed new speed limit, and the printed Highway Code will also be updated accordingly.

Merits Scrutiny points 3:

Officials have considered the points raised before concluding that the impact on the justice system would be slight. In this regard, officials have been working with the Police Forces and there will be mitigations in place for the thresholds noted in the RIA. However, it would be counter-productive to the objectives to disclose these mitigations in public documents.

In addition, officials are providing guidance to local authorities that they can deploy temporary traffic signs to notify road users of reductions in speed limits at key locations where they believe there could be issues with compliance. The local authorities will be able to maintain those temporary signs for 12 months post 17th September 2023.

UK MINISTERS ACTING IN DEVOLVED AREAS	
010 - European Parliamentary Elections (Amendment and Revocation) (United Kingdom and Gibraltar) (EU Exit) Regulations 2022 <i>Laid in the UK Parliament: 5 July 2022</i>	
Sifting	
Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	20 July 2022
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	Not known
Procedure	Not known
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Background These Regulations are proposed to be made by the UK Government under sections 8(1) and 24(3) of the European Union (Withdrawal) Act 2018.	
Summary These Regulations correct deficiencies in domestic law by omitting redundant references to European Parliamentary elections, European political parties and European political foundations, in various pieces of domestic legislation. Since the United Kingdom is no longer an EU Member State, there is no need for domestic legislation to refer to EU-based elections, political parties and political foundations.	
Statement by Welsh Government Legal Advisers agree with the statement laid by the Welsh Government dated 5 July 2022 regarding the effect of these Regulations. However, it is unclear why the changes being made by these Regulations were not made during 2018/2019, when the huge bulk of exit-related deficiencies were corrected.	

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect. Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

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Agenda Item 14

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

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