

Agenda Supplement – Legislation, Justice and Constitution Committee

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

On-site – Supplementary Pack

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

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

(15.00 – 15.05)

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

(Page 1)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-09-23 – Paper 3a – Welsh Government response

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

(15.05 – 15.10)

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

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



[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-09-23 – Paper 4a – Welsh Government response

6 Papers to note

(15.15 – 15.20)

6.10 Correspondence with the Counsel General and Minister for the Constitution: Supplementary Legislative Consent Memoranda on the Retained EU Law (Revocation and Reform) Bill

(Pages 3 – 4)

Attached Documents:

LJC(6)-09-23 – Paper 20 – Letter to the Counsel General and Minister for the
Constitution, 8 March 2023

6.11 Correspondence from Peter Fox MS: Food (Wales) Bill

(Pages 5 – 13)

Attached Documents:

LJC(6)-09-23 – Paper 21 – Letter from Peter Fox MS, 8 March 2023

LJC(6)-09-23 – Paper 22 – Letter to Peter Fox MS, 16 February 2023

6.12 Correspondence from the Counsel General and Minister for the Constitution: Response to the Legislation, Justice and Constitution Committee's Report on the Retained EU Law (Revocation and Reform) Bill

(Pages 14 – 21)

Attached Documents:

LJC(6)-09-23 – Paper 23 – Letter from the Counsel General and Minister for
the Constitution, 9 March 2023

6.13 Correspondence from the House of Lords Constitution Committee: Legislative consent

(Page 22)

Attached Documents:

LJC(6)-09-23 – Paper 24 – Letter from Baroness Drake, Chair of the House of Lords Constitution Committee, 9 March 2023

6.14 Correspondence from the Health and Social Care Committee to the Minister for Health and Social Services: Health Service Procurement (Wales) Bill

(Pages 23 – 24)

Attached Documents:

LJC(6)-09-23 – Paper 25 – Letter from the Health and Social Care Committee to the Minister for Health and Social Services, 9 March 2023

10 Supplementary Legislative Consent Memorandum (Memorandum No. 4) on the Retained EU Law (Revocation and Reform) Bill

(15.45 – 16.00)

(Pages 25 – 32)

Attached Documents:

LJC(6)-09-23 – Paper 26 – Supplementary Legislative Consent Memorandum (Memo No.4)

Agenda Item 3.1

Government Response: The Council Tax (Additional Provisions for Discount Disregards) (Amendment) (Wales) Regulations 2023

Technical Scrutiny point 1: Statutory Instrument Practice (5th Edition) provides that the enabling provisions include all of those that make clear: what may, or must, be done; by what means something is to be done; and who is empowered to do it. Section 116(1) of the Local Government Finance Act 1992 sets out the meaning of “prescribed” as being prescribed by regulations made by the Secretary of State (and the function has been transferred to the Welsh Ministers). This information could have been included in a footnote, but the approach taken does not affect the validity or effectiveness of the statutory instrument.

Agenda Item 4.1

Government Response: The Curriculum for Wales – Statements of What Matters Code

The Welsh Government notes the reporting points raised. The Code has been withdrawn with the aim of re-laying, in order to:

1. consider further the Annex to the Committee's report; and
2. ensure the 40-day laying period has elapsed before publication.

Mick Antoniw MS
Counsel General and Minister for Constitution

8 March 2023

Dear Mick

The Welsh Government's Legislative Consent Memoranda on the Retained EU Law (Revocation and Reform) Bill

At our meeting this week we noted your letter to the Llywydd dated 3 March 2023 in which you advised that you will be laying before the Senedd a further "single" supplementary legislative consent memorandum for the Retained EU Law (Revocation and Reform) Bill (the Bill) which will "[deal] with all the relevant amendments tabled for Committee Stage" in the House of Lords.

You have been clear to the Senedd that you do not consider there has been good intergovernmental working, or satisfactory sharing of important information, between the UK Government and the devolved governments as regards this Bill. You note in your recent letter, for example, that the UK Government did not share with you the full details of the tabled amendments.

We said in our recent report on the existing legislative consent memoranda for the Bill that the result of the poor intergovernmental relations causes significant problems for us and the Senedd as a whole as we try to fully understand the implications of the Bill in Wales.

We acknowledge there may be some issues with a lack of proactive communication from the UK Government. However, we understand that UK Government amendments were tabled in the House of Lords on 16 February. As Bills that are subject to legislative consent memoranda near the end of the scrutiny process in the UK Parliament we believe the Welsh Government must do more to ensure the Senedd is given critical information in a more timely manner. The Welsh Government could, for example, have written to us more than two weeks ago to draw our attention to the specific amendments in parallel with Welsh Government officials examining the details of those amendments and preparing any necessary supplementary legislative consent memorandum.

Given that your recent letter was issued on 3 March and you acknowledge that you intend to hold a debate on a relevant consent motion on 14 March, we respectfully suggest this does raise a question over your statement that the approach adopted as regards a further supplementary legislative consent memorandum "will enable effective Senedd scrutiny".

As requested, I look forward to receiving your response to our report on the current memoranda for the Bill by 9 March 2023 at the latest.

I am copying this letter to the Llywydd.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair

Peter Fox OBE MS

Aelod o'r Senedd dros
Mynwy

Member of the Senedd for
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Agenda Item 6.11

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Huw Irranca-Davies MS,

Chair of the Legislation, Justice and Constitution Committee

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Peter Fox MS 

8 March 2023

Annwyl Huw,

Food (Wales) Bill – Oral evidence to the Legislation, Justice and Constitution Committee

Thank you for your letter of 16 February setting out a number of questions on issues you were not able to raise during my evidence session with the Committee. I am grateful for the opportunity to provide information on these important points.

My response to each of the questions you have raised is set out in the attached Annex. Time permitting before the reporting deadline, I would be happy to provide additional information or clarify any points that are still unclear.

Cofion Cynnes,



Peter Fox MS for Monmouth

Member-in-Charge, Food (Wales) Bill

Annex

1. You told us that you met with the Minister for Rural Affairs and North Wales, and Trefnydd, to discuss the Bill on three occasions. What discussions have you had with other UK administrations about the Bill?

I have had discussions with officials in the Scottish Government about the Good Food Nations Bill, but have not had any contact with officials in other UK administrations. My discussions with officials in Scotland have been in general terms about their Bill, and how they managed the process, and also more specifically in relation to costs, particularly those estimated for the proposed Food Commission.

I should add at this point that I continue to completely disagree with the Minister's assertion that what I have done is taken the Scottish Bill and try to 'shoe horn' it into the Welsh legal environment. I refer again to the more detailed reasons for this that I set out in my letter to LJC Committee of 25 January.

2. The Bill gives the Welsh Ministers the power to amend the descriptions of the secondary food goals. Why did you consider this to be necessary rather than having the certainty of the descriptions fixed on the face of the Bill? What would prevent the descriptions being amended to such an extent that they were significantly different from those that exist now, or from being removed altogether so as to render the secondary food goals meaningless?

It is reasonable to expect that the descriptions of the food goals may need to be amended over time to react to changing circumstances. The intention of the regulation making powers is therefore to allow the flexibility required for Ministers to make appropriate amendments to the descriptions without the need for further primary legislation.

Regulations to amend the food goal descriptions are to be made using the affirmative Senedd procedure, so will be brought to the Senedd's attention and subject to debate and a vote. Before making regulations under this section, the Welsh Ministers must also consult with the Welsh Food Commission. I believe these are sufficient safeguards to ensure that any amendment to the Food Goal descriptions are appropriate.

3. The Bill requires the Welsh Ministers to consult with the new Welsh Food Commission before amending the descriptions of the secondary food goals. Why are the Welsh Ministers not required to consult other appropriate bodies as in sections 5(1) and 13(2)? For example, with regard to an amendment to the environment description, did you consider whether it would be appropriate for the Welsh Ministers to consult Natural Resources Wales?

The intention through the Bill is that the Welsh Food Commission will lead on driving the food goals forward, playing a central role as the body that the Welsh Ministers look to for advice and information. That's why there is a requirement that the Welsh Ministers consult the Commission before amending any of the secondary food goal descriptions. Having that requirement does not prevent Welsh Ministers also seeking the views of other bodies and stakeholders, for example, if amending the environment secondary food goal description the Welsh Ministers may seek the

views of Natural Resources Wales as well as the Food Commission.

If there is a consensus among the Committee that there is a need to specify on the face of the Bill that other appropriate persons may or must be consulted prior to the descriptions being amended, then this is something that we could look to do through amendments at stage 2.

4. Section 4(5) obliges the Welsh Ministers to make regulations setting food targets within two years of section 4 coming into force, but section 4(4) states that the targets will only be set when such regulations come into force. This could lead to a situation where the regulations are made within two years but are drafted so that they do not come into force until sometime later. Is this the intention and how will this impact on public bodies who are required to prepare local food plans, taking into account the food targets, within the same two year period?

The normal constitutional convention is that we expect Ministers (and legislatures) to do the right thing. For example, the Environment Act 2021 provides there are obligations upon Ministers to lay draft regulations before Parliament by a certain date, but there is no obligation for them to be made or come into force.

However, we accept that a situation may arise where the Welsh Government make regulations within the 2-year timeframe setting out the targets but decide to omit commencement dates for the actual provisions. As such we are of the view that it would be prudent to mitigate this risk and specify a date for the targets coming into force.

This would be done through a stage 2 amendment to section 4(5), providing that:

“The first regulations setting one or more targets for each secondary food goal must be made and come into force within 2 years of this section coming into force.”

5. Can you explain why the Bill does not provide for any guidance to be issued by the Welsh Food Commission in relation to achieving the goals and fulfilling the duties under the Bill?

Section 10 of the Bill sets out the functions of the Welsh Food Commission. These include developing, and assisting public bodies to develop, policies in relation to food matters as well as advising, informing and assisting public bodies in relation to food matters.

In the drafting of the Bill it was not felt necessary to require the Commission to produce guidance for public bodies in relation to local food plan development as it was envisaged that the Commission will proactively be providing public bodies with information in the day to day exercise of its functions. The statutory framework set out in the Bill aims to promote ongoing cooperation between the Commission and the relevant public bodies.

In addition to this, the Bill provides other avenues for the Welsh Ministers and public bodies to interact with the Commission in the preparation of the national food strategy and local food plans, respectively:

- i. when preparing the national food strategy, section 13(1)(a) of the Bill provides that the Welsh Ministers must seek the advice of the Commission; and

- ii. when preparing the local food plans, section 18(1)(a) of the Bill provides that a public body may consult with the Commission when preparing a local food plan.

For the Welsh Ministers, there is a requirement that they seek advice from the Commission. For public bodies, consultation is an option rather than a requirement. This gives public bodies the flexibility to consult the Commission if it is considered necessary, but acknowledges that in some cases a public body may consider that it already has sufficient information to prepare a plan, without further involvement from the Commission.

6. Can you explain why there is no requirement in the Bill for the national food strategy to be approved by the Senedd, rather than just laid before the Senedd?

My understanding is that it is not normal practice for Welsh Government policies / strategies to be approved by the Senedd. Given the number of policies / strategies the Welsh Government is responsible for, I'm not sure it would be workable in practice for these to be approved by the Senedd.

The Bill itself includes provisions to ensure that the Welsh Government takes appropriate advice and consults with independent persons with relevant expertise before making the national food strategy. As set out in Section 13, this includes a requirement to take advice from the Food Commission, and an option to seek the advice of the Future Generations Commissioner for Wales on relevant aspects. I believe that this provides sufficient safeguards to ensure that the strategy includes the views of the sector(s), and that formal approval of the Senedd is not required. This does not, of course, prevent scrutiny of the national food strategy by Senedd Committees if they consider that to be appropriate.

7. Section 22 of the Bill defines the term "public bodies" and allows the Welsh Ministers to amend this definition by regulations, as long as they do not remove themselves. Why is it necessary to give the Welsh Government this power and who do you anticipate being added to or removed from the list?

The majority of respondents to the consultation who were asked whether they considered the list of public bodies in section 22 was appropriate, responded positively. 66% believed that the list as drafted to include the Welsh Ministers, a local authority and a Local Health Board, was sufficient. However, some respondents did question whether a longer list of public bodies as drafted in section 6 of the Well Being of Future Generations (Wales) Act 2015 ("the 2015 Act") would be more appropriate. Whilst others such as the Campaign for the Protection of Rural Wales suggested that the list could be widened to include "any body that received public funds".

On balance, we do not consider that additional bodies such as a National Park authority or a Welsh fire and rescue authority should be included as a "public body" for the purposes of this Bill, as seen in the 2015 Act. The list of public bodies as drafted is balanced and appropriate however the power for the Welsh Ministers to amend the definition by regulations, subject to consultation, allows them the flexibility to add others to the list in future if needed.

8. Section 22 also states that when making regulations to add bodies to the list of public bodies, the Welsh Government must consult the body to be added. Why is there no requirement to consult a body that is to be removed, or to have its name or description amended?

The drafting used in section 22 of the Bill is consistent with other Welsh legislation including section 52(4) of the Well-being of Future Generations (Wales) Act 2015. Adding a body to the list of public bodies will always require consultation, to inform that body of any additional responsibilities it will be subject to. Whereas removing a body from the list, does not impose any additional responsibilities on that body, only removing those duties, therefore they will not always need to be consulted. However, section 22(5)(c) provides when making such Regulations the Welsh Ministers must consult with any persons they consider appropriate in which will in all likelihood ensure that a body is consulted in any case if they are being removed.

9. There are numerous requirements in the Bill for the Welsh Ministers and other public bodies to publish reviews, strategies, plans etc. Where will such documents be published? Will the lack of precision in relation to the publication of these documents impair accessibility?

I don't believe it would be appropriate for precise details of where documents are to be published to be included on the face of the Bill. It should be for the public bodies to decide the most appropriate place for publication. This would, we assume, be the website of the relevant public body, but could also include publication by the Food Commission. If the Bill was to specify precise details in this respect, this could actually restrict public bodies, and impair accessibility even further by limiting options for publication.

10. Why does the Bill not provide for any consequences for failures to achieve the food goals, the food targets, or to produce the national food strategy or local food plans within the required timeframes?

Again, this is consistent with other Welsh legislation including the Well-being of Future Generations (Wales) Act 2015. Section 8 of that Act requires Welsh Ministers to publish objectives within a specified period without consequences for failure to do so.

What the Food Bill allows for through its framework is for the progress made towards achieving the various goals and targets to be reported to, and scrutinised by, the Senedd. Where appropriate those reviews need to set out the reasons for failing to meet the relevant requirements. Any such failures would be highlighted through this process and can be discussed on the floor of the Senedd.

11. If the general principles of the Bill are not agreed, or the Bill otherwise falls, do you think that some or all of its provisions could be incorporated by amendments to any existing Bills or future legislation?

The Agriculture Bill, which is currently at Stage 2, has a wide scope which includes provisions for sustainable farming. However, the aim of the Food (Wales) Bill as I have set out, is to enable the delivery of a holistic cross-portfolio approach to food – with the establishment of the Food Commission being central to that. It is therefore difficult to see how the provisions of the Food Bill would fall within the scope of the Agriculture Bill.

The Social Partnership and Public Procurement (Wales) Bill has now completed its journey through the amending stages. While there may have been limited scope to include amendments on local procurement I did not feel it appropriate to be tabling amendments on matters that I was taking forward in my own Bill, during Stage 1 of its legislative journey.

I do not believe there are any other Bills in the Government's current legislative programme that would enable the Food Bill's provisions to be incorporated by amendment. The detail of the Government's legislative programme for subsequent years is not yet known so it is not possible to predict where possible amendments could be proposed to incorporate the Bill's provisions.

12. You explained during the session that you were considering tabling amendments to the Bill, should it proceed to Stage 2. Could you set out what would you envisage to be the purpose of these proposed amendments?

There are some amendments I would consider tabling at Stage 2, some of which I have been able to explain to Committees in the evidence sessions to date. One amendment discussed in my evidence session with this Committee is the need to change the timescales for the Local Food Plans, from 2 to 3 years. This would allow public bodies responsible for making and publishing a local food plan further time, should the Welsh Ministers take a long time to publish the National Food Strategy, which must be compiled within 2 years.

As answered in Question 4 above, a minor amendment would be made to section 4(5) at Stage 2 to ensure clarity and avoid any ambiguity regarding the regulations relating to targets needing to be made and come into force.

Following further evidence received from Audit Wales in response to the Economy, Trade and Rural Affairs consultation, we would also make minor technical amendments to paragraphs 18 and 19 of the Schedule to the Bill. I am grateful to the Auditor General for Wales for his evidence. Incorporating these changes will ensure consistency with the audit provisions in the Public Services Ombudsman Act 2019.

In addition, as I have outlined during Committee scrutiny sessions on the Bill, I would be very happy to work with Members and with the Minister to identify areas where amendments could be made to the Bill, and to take these forward at Stage 2.

Peter Fox OBE MS

Member of the Senedd for Monmouth

16 February 2023

Dear Peter

Food (Wales) Bill – Oral evidence to the Legislation, Justice and Constitution Committee

Thank you for appearing before us on 30 January as Member in charge of the Food (Wales) Bill, and for your letter of 25 January which helped inform our consideration.

As I mentioned at the end of the session, there are a number of issues which we were not able to raise with you during the evidence session.

I would therefore be grateful to receive your response to the questions listed in the Annex by 10 March 2023.

Yours sincerely,



Huw Irranca-Davies

Chair

Annex

1. You told us that you met with the Minister for Rural Affairs and North Wales, and Trefnydd, to discuss the Bill on three occasions. What discussions have you had with other UK administrations about the Bill?
2. The Bill gives the Welsh Ministers the power to amend the descriptions of the secondary food goals. Why did you consider this to be necessary rather than having the certainty of the descriptions fixed on the face of the Bill? What would prevent the descriptions being amended to such an extent that they were significantly different from those that exist now, or from being removed altogether so as to render the secondary food goals meaningless?
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4. Section 4(5) obliges the Welsh Ministers to make regulations setting food targets within two years of section 4 coming into force, but section 4(4) states that the targets will only be set when such regulations come into force. This could lead to a situation where the regulations are made within two years but are drafted so that they do not come into force until sometime later. Is this the intention and how will this impact on public bodies who are required to prepare local food plans, taking into account the food targets, within the same two year period?
5. Can you explain why the Bill does not provide for any guidance to be issued by the Welsh Food Commission in relation to achieving the goals and fulfilling the duties under the Bill?
6. Can you explain why there is no requirement in the Bill for the national food strategy to be approved by the Senedd, rather than just laid before the Senedd?
7. Section 22 of the Bill defines the term “public bodies” and allows the Welsh Ministers to amend this definition by regulations, as long as they do not remove themselves. Why is it necessary to give the Welsh Government this power and who do you anticipate being added to or removed from the list?
8. Section 22 also states that when making regulations to add bodies to the list of public bodies, the Welsh Government must consult the body to be added. Why is there no requirement to consult a body that is to be removed, or to have its name or description amended?
9. There are numerous requirements in the Bill for the Welsh Ministers and other public bodies to publish reviews, strategies, plans etc. Where will such documents be published? Will the lack of precision in relation to the publication of these documents impair accessibility?

- 10.** Why does the Bill not provide for any consequences for failures to achieve the food goals, the food targets, or to produce the national food strategy or local food plans within the required timeframes?
- 11.** If the general principles of the Bill are not agreed, or the Bill otherwise falls, do you think that some or all of its provisions could be incorporated by amendments to any existing Bills or future legislation?
- 12.** You explained during the session that you were considering tabling amendments to the Bill, should it proceed to Stage 2. Could you set out what would you envisage to be the purpose of these proposed amendments?

Agenda Item 6.12

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: CG/PO/77/2023

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

09 March 2023

Dear Huw,

Thank you for your letter of 22 February providing your Committee's Report on the Welsh Government's Legislative Consent Memoranda on the Retained EU Law (Revocation and Reform) Bill.

The responses to your conclusions and recommendations are set out in an Annex to this letter.

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.

Annex

Conclusions and Recommendations

Conclusion 1. As the Senedd Committee with overall responsibility for the scrutiny of secondary legislation, and as the Committee which takes a broad role in seeking to assess and improve Welsh law, we cannot overestimate our concerns as to the effect this Bill could have on the certainty and quality of law as it applies in Wales.

The Welsh Government shares the Committee's concerns about the potentially very significant, negative, impact of the Bill on law in Wales. As I set out in my letter to the Committee of 19 January, the precise impact of the Bill depends fundamentally upon decisions yet to be taken by UK Ministers within the framework of the Bill once it becomes law, as well as any changes that are made to the Bill during its Parliamentary passage.

Conclusion 2. As a Senedd Committee, we are very concerned that the Bill's provisions do not sufficiently engage or acknowledge the role of a legislature in a parliamentary democracy.

The Welsh Government agrees with the Committee. As stated in my letter of 19 January, the Bill is not of our making or choosing. In any reasonable situation, we would not be expecting to make any significant changes to important pieces of law without proper debate and scrutiny in the Senedd.

Conclusion 3. The Bill enables an unacceptable power imbalance between executive and legislature. We support the calls by the DPRR Committee and others to remove from the Bill the unlimited and unnecessary Ministerial powers.

The Welsh Government shares much of this concern about a Bill that is not of its own making. As at Conclusion 2, there is a balance between the possible need for urgent reform or replacement of laws otherwise being ended by the Bill, and appropriate scrutiny of the legislation.

Conclusion 4. Given what we know the Bill will do, the views expressed by the Welsh Government, and based on the little information we have been given by the Welsh Government as regards any strategic plan, we must conclude that the timetable for the Bill, caused by the sunset date of 31 December 2023, means we and the Senedd could likely be confronted with an unprecedented workload in the autumn of 2023.

As I set out in my letter of 19 January, whilst we continue to develop our internal thinking and plans in line with our overall approach, we await the necessary information from the UK Government to allow us to set out a more detailed definitive timeline and programme of work. In the meantime, as the Committee is aware, we

have pressed for an extension to the sunseting deadline and for Welsh Ministers to have powers to extend that deadline, both directly to the UK Government and with interested members of the House of Lords.

Conclusion 5. It is vital that the Welsh Government makes urgent progress with its plan on how it will approach the requirements of the Bill, if and when it is enacted.

Agreed, and our work continues urgently in the context of the response to Conclusion 4.

Conclusion 6. The Welsh Government needs to engage urgently with the Senedd and closely coordinate with it on the implications of the Bill, if and when it is enacted, on the Welsh Government's programme for government and the impact on Senedd business.

We will continue to share information about the Bill as it becomes available, and we are open to having preliminary discussions in confidence about potential implications for business in the Senedd.

Conclusion 7. We agree with the Welsh Government's assessment that the Senedd's consent should be sought for all clauses of and Schedules to the Bill, with the exception of clause 18.

This is appreciated and is noted.

Conclusion 8. A majority of the Committee agrees with the Counsel General that the Senedd should withhold its consent to the Bill; not all members of the Committee are of the view that consent should be refused.

The Welsh Government welcomes the majority view of the Committee.

Conclusion 9. We believe that decisions taken under the Bill's regime (if and when enacted) should be made on a case-by-case basis with full stakeholder consultation and parliamentary oversight.

We would wish to ensure proper stakeholder consultation and engagement by the Senedd in relation to any significant changes in legislation that would be brought about as a result of the Bill, though the timeline created by the Bill and limited information available from the UK Government on its plans may make that difficult to deliver as we would have wished.

Conclusion 10. We consider the current approach by the UK and Welsh governments means that the risk of the Senedd being bypassed is very high.

The risk of the Senedd being bypassed is due to the whole approach being taken by the UK Government on this Bill, and it would be incorrect to attribute this to the Welsh Government.

Recommendation 1. The 31 December 2023 sunset date should be removed from the Bill.

As explained in my 19 January letter, “the Welsh Government fundamentally opposes the whole intent of the Bill”, including the very concept of a sunset date. In the context of our mutual concerns on the Bill, we have, in co-operation with the Scottish Government, extended a number of potential amendments to also cover Wales, which were shared with members of the House of Lords ahead of committee stage commencing. This includes amendments, that would remove the sunset date from the Bill entirely; remove devolved areas from the sunset; change the sunset to a later date; or give the Welsh Ministers the power to extend it.

Recommendation 2. If the 31 December 2023 sunset date remains in the Bill, the Bill should be amended so that the power in clause 2 to extend the sunset date is also granted to the Welsh Ministers in relation to devolved matters.

Agreed. As above, we have promoted amendments in the House of Lords to this effect.

Recommendation 3. If the 23 June 2026 sunset date remains in the Bill, the Welsh Government should, as a matter of urgency, raise with the UK Government the unique issue of the 2026 Senedd election and its conflict with the 23 June 2026 sunset date.

We agree with the Committee’s comments on this and will raise with the UK Government the issue of the proximity of the 2026 Senedd election to the 23 June 2026 deadline.

Recommendation 4. If the 23 June 2026 sunset date remains in the Bill, the Welsh Government should ensure that the Senedd dissolution period ahead of the election for the Seventh Senedd is factored into long-term planning for all regulations that may need to be made before that sunset date.

We will reflect on this and discuss further with the Senedd as necessary, in the light of any comments from the UK Government as a follow-up to our action under Recommendation 3 above.

Recommendation 5. If the 23 June 2026 sunset date remains in the Bill, the Business Committee, in its preparation for the Seventh Senedd, should ensure that its successor is aware that there will be a priority need for an appropriate committee to be urgently established so that regulations to be made before that sunset date may be considered and, further, that Plenary sittings may be needed for Members of the new Seventh Senedd to consider and vote on any regulations subject to the draft affirmative procedure.

This is a matter for the Senedd.

Recommendation 6. We support the Welsh Government's call for the UK Government's dashboard to identify how each piece of retained EU law falls across reserved and devolved competencies.

We agree with the Committee's recommendation. We are keen to ensure the UK Government's dashboard reflects the full extent of both devolved and reserved REUL once each piece has been authoritatively identified.

Recommendation 7. The Welsh Government should share its own list of Welsh-made retained EU law with our Committee and with the UK Government as soon as possible.

We intend to do so.

Recommendation 8. The Welsh Government should request that Welsh-made retained EU law should be added to the dashboard.

Agreed, as per Recommendation 6 above.

Recommendation 9. The Bill should be amended so as to require Ministers to lay before the legislatures of the UK by 30 September 2023 the details of the retained EU law which is not to be saved or reformed – i.e. that which will be deliberately revoked and not replaced, and that which will be subject to the 31 December 2023 sunset provision (if this sunset date remains in the Bill).

We are supportive of this, which would add to clarity in law making and minimise the risk of errors, misunderstandings and inadvertent sunseting. We will pursue this point further with the UK Government.

Recommendation 10. We call on the Welsh Government to ensure that Wales remains compliant with international obligations, as required by the devolution settlement and by the Welsh Government's Ministerial Code.

The Welsh Government is keen to ensure that anything arising from the REUL Bill does not jeopardise its compliance with any international obligations. Given the complex nature of compliance, and the UK Government's responsibility for international relations, we will need to engage further with the UK Government to understand better their approach to this issue. We will revert to the Committee in due course in light of their response.

Recommendation 11. The Welsh Government should clarify with the UK Government how it will take into consideration the views of the Senedd in respect of changes to reserved retained EU law particularly in areas not covered by common frameworks.

Agreed. The Welsh Government has its own concerns about the potential impact, on matters of devolved competence, of potential changes to reserved legislation, and has raised this with the UK Government and will continue to do so, along the recommendation regarding the views of the Senedd.

Recommendation 12. We call on the Welsh Government to urgently provide an assessment of the combined impact of the Bill, common frameworks and the UK Internal Market Act 2020.

We agree that there is a fundamental relationship between all three elements. However, it is premature to be able to provide an assessment of the combined impact until, at least, the precise intentions of UK Government are clearer, as at Conclusions 4 and 5 above. Even when that information becomes available, this will still be a complex set of issues with some unknowns.

Recommendation 13. The Welsh and UK Governments should provide an assurance that all changes being made to retained EU law within an area covered by a common framework is taken through the relevant common framework process before it is saved, sunsetted, revoked, or reformed.

Our expectation is that the UK Government should work through the mechanisms in the relevant common frameworks before changes are made to retained EU law. Whether it does so will be a key test of the UK Government's ability to live up to commitments it has entered into.

Recommendation 14. The Business Committee should urgently consider whether the autumn term should be extended to 22 December 2023, in order to accommodate additional meetings of this Committee and additional Plenary sittings which may be required for the consideration of regulations arising from the Bill.

This is essentially a matter for the Business Committee. In the coming months, the Welsh Government will provide the earliest possible assessment as to whether this might be necessary.

Recommendation 15. The Welsh Government should assess the Bill's impact on Wales as a matter of urgency to assist the Senedd and stakeholders to better understand the Bill's implications for Wales.

As per Conclusions 4 and 5, we will provide our best assessment as soon as we have received and analysed the necessary further information from UK Government. However, the potential impacts of decisions by UK Ministers within the framework of the Bill are significant and complex which makes this a more challenging undertaking. To re-emphasise, however, the Welsh Government has been clear that the potential impact of the Bill on Wales, in terms of the devolution settlement and the regulatory standards and protections that citizens in Wales currently benefit from, is deeply damaging.

Recommendation 16. The Counsel General should:

- *confirm whether there would be circumstances under which the Welsh Government would recommend the Senedd's consent is given to the Bill and explain what these are;*
- *provide to us a comprehensive list of the amendments to the Bill the Welsh Government has sought and/or supported.*

As I have explained, this is a wholly unwelcome Bill that the Welsh Government does not support. Given the outcome of our engagement with the UK Government so far it is difficult to foresee a version of the Bill that could emerge from Parliament that would bring about a recommendation to the Senedd for consent.

I wrote in February 2023 to a number of members of the House of Lords with a set of amendments that we asked them to support and sent a copy to the Committee. My letter notes that the proposed amendments “would at least go some way to addressing our concerns with the Bill”, rather than fully resolving them all.

Recommendation 17. The Welsh Government must clarify and set out a frank and candid assessment about the resource and capacity implications for the Welsh Government of implementing the Retained EU Law (Revocation and Reform) Bill (should it be enacted), and clearly set out what, if any, other legislative activity will need to be displaced in order to ensure that it can deliver on the tasks it will need to complete by the end of 2023.

As per Conclusion 6, we will do so when it is possible to make a detailed assessment of the implications of the Bill.

Agenda Item 6.13



HOUSE OF LORDS

Select Committee on the Constitution

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

9 March 2023

By email

Dear Huw,

Legislative consent

It was a pleasure to appear alongside you before the Scottish Parliament Constitution, Europe, External Affairs and Culture Committee last week.

During that session I mentioned that the House of Lords Procedure and Privileges Committee had been considering Constitution Committee recommendations on improving the visibility of legislative consent issues in the *House of Lords Business* document (see in particular paragraphs 138 and 139 of our report [Respect and Co-operation: Building a Stronger Union for the 21st century](#)).

The Procedure and Privileges Committee has now reported and its conclusions have been implemented. *House of Lords Business* now gives fuller and more prominent information about when consent is pending or contested and when it has been granted or withheld.

The full Procedure and Privileges Committee report can be found at:
<https://committees.parliament.uk/publications/34249/documents/188512/default/>

Yours sincerely,

Baroness Drake CBE
Chair of the Constitution Committee

Eluned Morgan
Minister for Health and Social Services
Welsh Government

9 March 2023

Dear Eluned

Health Service Procurement (Wales) Bill

Thank you for agreeing to attend our meeting on Thursday 30 March 2023 to discuss the Health Service Procurement (Wales) Bill.

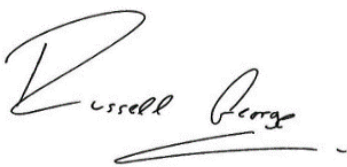
As the scrutiny timetable agreed by the Business Committee for this Bill allows limited time for Stage 1 scrutiny, we have followed with interest the evidence that you have given this week to the Legislation, Justice and Constitution Committee and the Finance Committee. To help us prepare for our evidence session on 30 March, we would be grateful if you could provide written evidence addressing the following points (and any other issues that you think it would be helpful to set out in writing to supplement the information already available in the Explanatory Memorandum and Statement of Policy Intent):

1. Please provide a timeline setting out key milestones and your current best estimates of the timescales associated with the HSP Bill, regulations and other associated events, including:
 - a. Your understanding of when the UK Government's Procurement Bill is likely to get Royal Assent and come into force; when the UK Government is expected to publish the outcomes of its consultation on a Provider Selection Regime (PSR); and when the UK Government is expected to lay draft regulations to give effect to the PSR before Parliament.
 - b. When you anticipate the 12 week consultation to which you have committed will take place.

- c. When you anticipate laying draft regulations and publishing statutory guidance under the Bill, and when you anticipate them coming into force.
2. A broad summary of the approach you anticipate taking in your 12 week consultation. For example, will the consultation focus on the suitability of the UK Government's PSR for application in Wales, on the principles that might underpin new arrangements in Wales, or on specific draft regulations or draft statutory guidance.
3. In your session with the Legislation, Justice and Constitution Committee on 6 March, the committee Chair, Huw Irranca-Davies MS, questioned the interaction between the United Kingdom Internal Market Act 2020 and goods connected to health services that are procured following regulations made under the Bill's 'creation' power. In response, one of your officials explained that the Welsh Government's position is that "when the Senedd legislates in a non-reserved area, it does so free from the requirements of the Act." As this includes where primary legislation provides regulation-making powers, "provisions relating to the procurement of goods connected to healthcare services contained in both the Bill and any future regulations made using the powers in this Bill will not engage the UK Internal Market Act."
Are you able to provide further analysis that demonstrates how and why the Welsh Government has reached this view?

To ensure we can take your evidence into account as we prepare for the session, we would be grateful for a response **by 17 March 2023**. I am copying this letter to the LJC and Finance Committees, as I am sure they will also find this information of assistance in their scrutiny of the Bill.

Yours sincerely



Russell George MS
Chair, Health and Social Care Committee

cc Huw Irranca-Davies MS, Chair, Legislation, Justice and Constitution Committee
Peredur Owen Griffiths MS, Chair, Finance Committee

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

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

(MEMORANDUM NO.4)

Retained EU Law (Revocation and Reform) Bill

1. This Supplementary Legislative Consent Memorandum (“LCM”) is laid under Standing Order 29.2. Standing Order 29 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 Retained EU Law (Revocation and Reform) Bill (“the Bill”) was introduced in the House of Commons on 22 September 2022, and an LCM was laid based on the Bill as introduced.
3. Fifteen UK Government amendments¹ were tabled to the Bill on 16 November, for consideration at House of Commons committee stage, which were considered in the [supplementary LCM\(2\)](#) laid on 21 December.
4. On 11 January 2023 the UK Government tabled 19 further amendments² to the Bill, ahead of report stage, which took place on 18 January. These were considered in the [supplementary LCM\(3\)](#) laid on 6 February.
5. On 16 February the UK Government tabled further amendments³ which are considered in this supplementary LCM(4).
6. The Bill, as brought forward from the Commons, can be found at [Retained EU Law \(Revocation and Reform\) Bill \(parliament.uk\)](#).
7. I wrote to the Llywydd on 03 March to outline that, because the UK Government did not share the content of tabled Government amendments prior to their tabling, there had not been sufficient time to clarify the implications of these changes in the Bill for devolution, and more widely, and that it would not be possible to lay a supplementary LCM within the normal two-week period.

Policy Objective(s)

8. The UK Government’s stated policy objective for retained EU law (“REUL”) was described in its Benefits of Brexit document of January 2022, outlining that ‘Our intent is to amend, replace, or repeal all the retained EU law that is not right for the UK’⁴.

¹ Committee Stage: Wednesday 16 November 2022 – Tabled amendments: [retained_rm_pbc_1116.pdf \(parliament.uk\)](#)

² Report Stage; Wednesday 11 January 2023 – amendments paper: [retained_rep_rm_0111.pdf \(parliament.uk\)](#)

³ Marshalled list of amendments: [HL Bill 89—I \(parliament.uk\)](#)

⁴ [The Benefits of Brexit: How the UK is taking advantage of leaving the EU \(publishing.service.gov.uk\)](#)

Summary of the Bill

9. The Bill is in the name of the Department for Business, Energy and Industrial Strategy, with the lead for the Bill now transferred to the new Department for Business and Trade.

10. The key provisions of the Bill, cover:

- Repealing (sunsetting) or assimilating REUL by the end of 2023.
- Repealing the principle of supremacy of EU law from UK law by the end of 2023.
- Facilitating domestic courts to depart from retained case law.
- Providing a mechanism for the Law Officers of the UK and Devolved Governments to intervene in cases regarding REUL, or to refer them to an appeal court, where relevant.
- Repealing directly effective EU law rights and obligations in UK law by the end of 2023.
- Abolishing general principles of EU law in UK law by the end of 2023.
- Establishing a new priority rule requiring retained direct EU legislation (RDEUL) to be interpreted and applied consistently with domestic legislation.
- Downgrading the status of RDEUL for the purpose of amending it more easily.
- Creating a suite of powers that allow REUL to be revoked or replaced, restated or updated and removed or amended to reduce burdens.

11. The Bill makes changes to the European Union (Withdrawal) Act 2018 (“EUWA”), which is a protected enactment under the Government of Wales Act 2006. Various clauses within the Bill (as outlined below) modify the current provisions within EUWA, and as such modify the legislative competence of the Senedd.

Changes to the Bill since the publication of the first Legislative Consent Memorandum, the supplementary LCM(2) and supplementary LCM(3), which now require Senedd consent

12. The table at annex 1 describes the UK Government amendments and considers their effect. However, broadly the UK Government amendments can be grouped as:

- a. *amendments relating to exceptions from sunset;*
- b. *amendments to clarify that extension or preservation SIs are still within power, where they happen to include provisions which are outside the scope of the sunset;*
- c. *amendments relating to “assimilated law”;* and
- d. *amendments relating to data protection.*

13. The amendments to clauses 1, 2, 6, 22, and Schedule 4 of the Bill modify clauses which were all considered ‘relevant provision’ and within the scope of Standing Order 29 for the purpose of the LCM laid on 3 November and supplementary LCM laid on 6 February. We consider that a supplementary

LCM is required in relation to the amendments to those clauses on the basis that they also make relevant provision.

14. The insertion of new clause (*Exceptions to sunset under section 1*) in place of existing clauses 1(2), 1(6) and 22(5) of the Bill, is also considered 'relevant provision' and within the scope of SO 29. This is for the same reasons as set out in the competence analysis for original clause 1, contained within paragraphs 13 and 14 of the LCM laid on 3 November, i.e. insofar as it is for a purpose within the legislative competence of the Senedd to the extent that this applies to devolved areas. To the extent that the regulation making power created under this clause is conferred upon the Welsh Ministers, it also modifies the executive competence of the Welsh Ministers.
15. The new paragraphs that are inserted into Schedule 1 ("*Assimilated law*": *consequential amendments*) are also considered 'relevant provision' and within the scope of SO 29. This is for the same reasons as set out in the competence analysis for the original clause 6 (contained within paragraph 55 of the LCM laid on 3 November), and for Schedule 1 (contained within paragraph 13 of the LCM laid on 6 February), i.e. insofar as it is for a purpose within the legislative competence of the Senedd to the extent that this applies to devolved areas. It also modifies the legislative competence of the Senedd by virtue of modifying EUWA, a protected enactment.
16. UK Government amendments 65 and 66 remove a cross reference to s183A of the Data Protection Act 2018 (due to be inserted by clause 43 of the Data Protection and Digital Information Bill) (DPDI Bill) and other consequential wording from section 5(A3) of EUWA (inserted by original clause 4 of the Bill), because it is not expected that the DPDI Bill will receive Royal Assent prior to the Bill. We do not consider that a supplementary LCM should be laid for these amendments, on the basis that they are technical and non-substantive, and relate specifically to the protection of personal data, which is a reserved matter by virtue of Schedule 7A to the Government of Wales Act 2006.

Welsh Government position on the Bill as amended

17. The Welsh Government's position set out in the LCM laid on 3 November⁵ is unchanged as the Bill continues to present the same legal, constitutional, policy and practical concerns. These concerns have been conveyed to the UK Government but have not been addressed in these subsequent amendments to the Bill.
18. On the basis that the UK Government has not addressed any of the concerns (outlined in our LCM) we will not be able to recommend to the Senedd that it gives consent to the Bill as currently drafted.

Financial implications

⁵ Retained EU Law (revocation and reform) Bill [LEGISLATIVE CONSENT MEMORANDUM](#) (senedd.wales)

19. It remains unclear on the face of the Bill whether there will be direct financial implications for the Welsh Government or the Senedd arising from the powers under the Bill.

Conclusion

20. As set out above, the amendments to clauses 1, 2, 6, 22 and Schedule 4, insertion of new clause (*Exceptions to sunset under section 1*), and insertion of new paragraphs within Schedule 1 of the Bill, make provision within the devolved competence of the Senedd and therefore the Senedd's consent is required. However, given our continuing concerns with the Bill, which are not addressed by the amendments, we are not in a position to recommend that consent be given to the inclusions in the Bill, or to the other provisions of the Bill, as set out in the original LCM.

Mick Antoniw MS
Counsel General and Minister for the Constitution

10 March 2023

Annex 1 - UK Government amendments tabled on the 16 February 2023, and subsequently agreed to during Lords Committee Stage.

Amendment no ⁶	Clause being amended	Comments
Amendments relating to exceptions from sunset.		
31	Clause 1(1) (Sunset of EU-derived subordinate legislation and retained direct EU legislation).	<p>Technical amendment.</p> <p>This amendment removes the original clause 1(2) to the Bill and replaces it with a new clause (<i>Exceptions to sunset under section 1</i>), as further detailed below.</p>
41	Clause 1(6) (Sunset of EU-derived subordinate legislation and retained direct EU legislation).	<p>Technical amendment.</p> <p>This amendment removes the original clause 1(6) to the Bill and replaces it with a new clause (<i>Exceptions to sunset under section 1</i>), as further detailed below.</p>
45	New clause: (<i>Exceptions to sunset under section 1</i>).	<p>This amendment is new provision in place of the original clauses 1(2), 1(6), and 22(5) of the Bill, and sets what is automatically excepted from, or can be “specified” within regulations to be excepted from, the scope of the sunset within clause 1(1) of the Bill.</p> <p>Subclause (1)(a) contains an exception to the clause 1 sunset for “relevant financial services law”, similar to original clause 22(5) of the Bill.</p> <p>Subclause (1)(b) contains an exception to the clause 1 sunset for any “specified” instrument or provision of an instrument. Subclause (2) confirms that “specified” means in regulations made by a relevant national authority (which in the case of legislation within the Senedd’s competence can be made by Ministers of the Crown or Welsh Ministers, as per original clause 1(2) of the REUL Bill). However, this exception is extended so that anything having effect under an instrument or provision that has been “specified” is automatically saved.</p> <p>Subclause (1)(c) contains a new exception to the clause 1 sunset, to enable descriptions of</p>

⁶ The amendments are arranged by the categories as outlined in on page 2, paragraph 12.

		<p>“minor instruments” = to be “specified” and preserved within regulations.</p> <p>Subclause (1)(d) contains a new exception to the clause 1 sunset for “transitional, transitory or saving provision”.</p> <p>Subclause (2) contains definitions of terminology used in subclause (1). While the definitions of “relevant financial services law” and “specified” mirror original clauses 1(2) and 22(5), “minor instrument” and “transitional, transitory or saving provision” are new provisions, as outlined above.</p> <p>Subclause (3) clarifies that any reference in subclause (1) or in any regulations made under this clause to a thing is, unless otherwise stated, to the thing as it subsists immediately before the time when the revocation under clause 1(1) would otherwise apply in relation to it (similar to original clause 1(6)).</p> <p>Finally, subclause (1) contains wording to clarify that any preservation regulations only apply to those instruments or provisions of instruments so far as they are subject to the sunset. Similar provision is made for extension regulations (please see comments at amendment 52 to clause 2 below).</p>
144	Clause 22: Commencement, transitional and savings	<p>Technical amendment.</p> <p>This amendment removes original clause 22(5) which is contained in new clause (<i>Exceptions to sunset under section 1</i>).</p>
138	Schedule 4: Regulations: procedure	<p>Technical amendment.</p> <p>This consequential amendment removes the current reference within schedule 4 to original clause 1, and replaces it with reference to new clause (<i>Exceptions to sunset under section 1</i>).</p> <p>This also means that any regulations made under new clause (<i>Exceptions to sunset under section 1</i>) are subject to the negative Senedd procedure.</p>
<p>Amendments to clarify that extension or preservation SIs are still within power, where they happen to include provisions which are outside the scope of the sunset.</p>		

45	New clause: <i>(Exceptions to sunset under section 1).</i>	Technical amendment. Please see comments already provided at New clause: <i>(Exceptions to sunset under section 1)</i> above.
52	Clause 2: Extension of sunset under section 1.	Technical amendment. Similar to new clause <i>(Exceptions to sunset under section 1)</i> outlined above, this provision inserts wording into clause 2 to clarify that any regulations made under 2(1) to extend the sunset date only apply <i>so far as</i> the instrument or description of legislation is subject to the sunset.
Amendments relating to “assimilated law”.		
73 and 77	Clause 6: Assimilated Law.	Technical amendments. These amendments (i) insert new provision into clause 6(1) of the Bill, to rename bodies of law relating to direct payments to farmers as regards times after the end of 2023; and (ii) insert new definitions into clause 6(7), consequential on the amendment to clause 6(1).
78, 79 and 80	Schedule 1: Assimilated Law: Consequential Amendments.	Schedule 1 currently contains amendments consequential on the renaming of bodies or types of law by subclause 6(1), including amendments to EUWA and the Bill itself. Amendments 78 and 80 to Schedule 1 include consequential amendments to other high priority pieces of primary legislation, including the Interpretation Acts (being the Interpretation Act (Northern Ireland) 1954, the Interpretation Act 1978, the Interpretation and Legislative Reform (Scotland) Act 2010, and the Legislation (Wales) Act 2019); the Legislative and Regulatory Reform Act 2006; the Direct Payments to Farmers (Legislative Continuity) Act; the Scotland Act 1998; the Northern Ireland Act 1998; and the Government of Wales Act 2006. Amendment 79 makes further amendments to EUWA, to update references from “Retained direct EU CAP legislation” to “Assimilated direct CAP legislation”, consequential on clause 6 of the Bill (as amended by amendments 73 and 77, outlined above).

