

Agenda Supplement – Legislation, Justice and Constitution Committee

Meeting Venue:

For further information contact:

Video conference via Zoom

P Gareth Williams

Meeting date: 18 March 2024

Committee Clerk

Meeting time: 13.30

0300 200 6565

SeneddLJC@senedd.wales

Remote – Supplementary Pack

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

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

(13.40 – 13.45)

4.1 SL(6)456 – The Packaging Waste (Data Collection and Reporting) (Wales) (Amendment) Regulations 2024

(Pages 1 – 4)

Attached Documents:

LJC(6)-10-24 – Paper 4 Revised – Welsh Government response

6 Inter-Institutional Relations Agreement

(13.50 – 13.55)

6.4 Written Statement and correspondence by the Minister for Rural Affairs and North Wales, and Trefnydd: The Environment and Rural Affairs (Revocation and Consequential Provision) Regulations 2024

(Pages 5 – 7)

Attached Documents:

LJC(6)-10-24 – Paper 20 – Written Statement by the Minister for Rural Affairs



and North Wales, and Trefnydd, 15 March 2024

LJC(6)-10-24 – Paper 21 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 15 March 2024

7 Papers to note

(13.55 – 14.00)

7.3 Correspondence from the Llywydd: Senedd Cymru (Electoral Candidate Lists) Bill

(Pages 8 – 15)

Attached Documents:

LJC(6)-10-24 – Paper 22 – Letter from the Llywydd to the Reform Bill Committee, 15 March 2024

LJC(6)-10-24 – Paper 23 – Letter from the Llywydd, 11 March 2024

Agenda Item 4.1

Government Response: *The Packaging Waste (Data Collection and Reporting) (Wales) (Amendment) Regulations 2024*

Technical Scrutiny point 1: This point is noted. However, we do not think any amendment is necessary because the inclusion of the definition of “group of companies” in regulation 2(1) of the principal Regulations does not affect the clarity or purpose of the principal Regulations.

Technical Scrutiny point 2: This point is noted. We will ensure that the Regulations are amended prior to making as set out in the table below.

Technical Scrutiny point 3: This point is noted. We will ensure that the Regulations are amended prior to making as set out in the table below.

Technical Scrutiny point 4: This point is noted. However, we consider the legislation as drafted is sufficiently clear and do not believe that signposting this list in regulation 7A is necessary to provide certainty to the reader.

Technical Scrutiny point 5: The use of “other educational establishments” is consistent with Schedule 1 to the Controlled Waste (England and Wales) Regulations 2012, which outlines whether certain types of premises in England and Wales are subject to collection and disposal charges for the collection of household waste and includes “schools, universities, and other educational establishments”. Examples of “other educational establishments” could include vocational colleges. We consider that maintaining this description will ensure clarity for producers and we consider that it is sufficiently clear to those potential establishments. We do not consider that further clarification of “other educational establishment” is necessary.

Technical Scrutiny point 6: This point is noted. However, we consider the legislation as drafted is sufficiently clear and do not believe any amendment is necessary to provide certainty to the reader.

Technical Scrutiny point 7: This point is noted. We will ensure that the Regulations are amended prior to making as set out in the table below.

Technical Scrutiny point 8: This point is noted. We will ensure that the Regulations are amended prior to making to address this as set out in the table below.

Technical Scrutiny point 9: This point is noted. We will ensure that the Regulations are amended prior to making to address this as set out in the table below.

Technical Scrutiny point 10: (i) This point is noted. We consider that it is clear to the reader that the obligation in new regulation 17A of the principal regulations can only refer to a large producer because only large producers are subject to the obligation in regulation 17 of the principal Regulations. However, we will ensure that the Regulations are amended prior to making as set out in the table below.

(ii) This point is noted. We consider that it is clear that the obligation in new regulation 17A of the principal regulations can only refer to a large producer because only large producers are subject to the obligation in regulation 17 of the principal Regulations. In addition, the reference in new regulation 22A(2) is clear that it refers to large producers because “the list” referred to in paragraph (1) only contains large producers. However, we will ensure that the Regulations are amended prior to making as set out in the table below.

Technical Scrutiny point 11: This point is noted. We will ensure that the Regulations are amended prior to making to address this as set out in the table below.

Technical Scrutiny point 12: This point is noted. We will ensure that the Regulations are amended prior to making to address this as set out in the table below.

Merit Scrutiny point 1: We consider that section 2(9)(d) of the Pollution Prevention and Control Act 1999 is relevant. We consider that some of the amendments in the Regulations may change the point of obligation under the principal Regulations from one type of producer to another (such as amendments to the “household packaging” definition) and so either increase the obligations of existing individual producers or places new obligations on producers who would not have had them under the principal Regulations (such as the amendments to the definition of “seller”), where the failure to collect/report data would be an offence.

Merit Scrutiny point 2:

Through four nation stakeholder forums and working groups, we carried out targeted engagement with key stakeholders to inform the amendments to the principal Regulations contained in these Regulations. These stakeholders included the NRW, Welsh Local Government Association, as well as key members of the packaging industry, as per section 2(4) of the Pollution Prevention and Control Act 1999.

Technical drafting corrections to be made prior to the making of the Regulations

CORRECTIONS MADE TO THE WELSH TEXT PRIOR TO MAKING	CORRECTIONS MADE TO THE ENGLISH TEXT PRIOR TO MAKING
Rheoliadau Gwastraff Pecynwaith (Casglu ac Adrodd am Ddata) (Cymru) (Diwygio) 2024	The Packaging Waste (Data Reporting and Collection) (Wales) (Amendment) Regulations 2024
In regulation 5, in sub-paragraphs (c)(i) and (c)(ii), “yn is-baragraff” will be replaced with “ym mharagraff”.	In regulation 5, in sub-paragraphs (c)(i) and (c)(ii), “sub-paragraph” will be replaced with “paragraph”.
In regulation 8, in the substituted regulation 7 of the principal Regulations, in paragraph (3)(b)(i), “ym mharagraff (i)” will be replaced with “ym mharagraff (2)(b)(i)”.	In regulation 8, in the substituted regulation 7 of the principal Regulations, in paragraph (3)(b)(i), “paragraph (i)” will be replaced with “paragraph (2)(b)(i)”.
In regulation 8, in the substituted regulation 7 of the principal Regulations, in paragraph (3)(b)(ii), “ym mharagraff (ii)” will be replaced with “ym mharagraff (2)(b)(ii)”.	In regulation 8, in the substituted regulation 7 of the principal Regulations, in paragraph (3)(b)(ii), “paragraph (ii)” will be replaced with “paragraph (2)(b)(ii)”.
	In the English text only, in regulation 8, in the substituted regulation 7 of the principal Regulations, in paragraph (8)(b)(ii), before “collect”, the text “designed to” will be inserted.
In the Welsh text only, in regulation 9, in the new regulation 7A of the principal Regulations, in paragraph (2)(d), “ddefnyddiwr” will be replaced with “dreuliwr”.	
In regulation 10, sub-paragraph (b) will be replaced as set out below.	In regulation 10, sub-paragraph (b) will be replaced as set out below.

<p><u>Current sub-paragraph (b)</u></p> <p>“(b) ym mharagraff (2), yn lle “paragraff (6)”, rhodder “paragraff (5)(b)(iii), (6) neu (7)”;</p> <p><u>Will be replaced with:</u></p> <p>“(b) ym mharagraff (2)—</p> <p>(i) yn lle “paragraff (6)”, rhodder “paragraff (5)(b)(iii), (6) neu (7);</p> <p>(ii) yn lle “paragraff (4)”, rhodder “paragraffau (3) a (12A)”;</p>	<p><u>Current sub-paragraph (b)</u></p> <p>(a) “(b) in paragraph (2), for “paragraph (6)”, substitute “paragraph (5)(b)(iii), (6) or (7)”;</p> <p><u>Will be replaced with:</u></p> <p>“(b) in paragraph (2)—</p> <p>(i) for “paragraph (6)”, substitute “paragraph (5)(b)(iii), (6) or (7);</p> <p>(ii) for “paragraph (4)”, substitute “paragraphs (3) and (12A)”;</p>
<p>In regulation 17, in the new regulation 17A of the principal Regulations, in paragraph (1), after “gynhyrchydd” the word “mawr” will be inserted.</p>	<p>In regulation 17, in the new regulation 17A of the principal Regulations, in paragraph (1), before “producer (“LP”)” the word “large” will be inserted.</p>
<p>In regulation 19, in the new regulation 22A of the principal Regulations, in paragraph (2) and sub-paragraphs (a), (b), and (c), after “cynhyrchydd” the word “mawr” will be inserted.</p>	<p>In regulation 19, in the new regulation 22A of the principal Regulations, in paragraph (2) and sub-paragraphs (a), (b), and (c), before “producer” the word “large” will be inserted.</p>
<p>In regulation 20(e), “ym mharagraffau (a) a (b)” will be replaced with “yn is-baragraffau (a) a (b)”.</p>	<p>In regulation 20(e), “paragraphs (a) and (b)” will be replaced with “sub-paragraphs (a) and (b)”.</p>
<p>In regulation 20(g), the text “, is-baragraff (a)” will be removed.</p>	<p>In regulation 20(g), the text “,sub-paragraph (a)” will be removed.</p>
<p>Minor issues such as formatting, minor changes to the explanatory note and footnotes and correcting typographical errors will also be corrected prior to making.</p>	

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE	The Environment and Rural Affairs (Revocation and Consequential Provision) Regulations 2024
DATE	15 March 2024
BY	Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd

Members of the Senedd will wish to be aware that I have given consent to the Minister for Biosecurity, Animal Health and Welfare to exercise a subordinate legislation-making power in devolved areas in relation to Wales.

Agreement was sought by the Minister Rt Hon Lord Douglas-Miller to make a Statutory Instrument (SI) titled The Environment and Rural Affairs (Revocation and Consequential Provision) Regulations 2024.

The above titled Statutory Instrument (SI) was laid before the UK Parliament by the Secretary of State on 13 March in exercise of powers conferred by Section 14 of the Retained EU Law (REUL) (Revocation and Reform) Act.

The SI will revoke legislation that is redundant following the UK's exit from the EU and was not included in Schedule 1 of the REUL Act. Its removal will have no policy effect in Wales. The SI was laid before the UK Parliament on 13 March.

Impact the instrument may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence:

The Regulations do not diminish or undermine the powers of Welsh Ministers in any way, and they do not create, amend or remove any functions conferred on the Welsh Ministers.

I would like to reassure the Senedd it is normally the policy of the Welsh Government to legislate for Wales in matters of devolved competence. However, in certain circumstances there are benefits in working collaboratively with the UK Government where there is a clear rationale for doing so. On this occasion, I have given my consent to these Regulations for reasons of efficiency and cross-government coordination, and consistency.

The Regulations are available here: [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Environment, Food and Rural Affairs\) \(Revocation\) Regulations 2024 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/the-environment-and-rural-affairs-(revocation-and-consequential-provision)-regulations-2024)

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
Cardiff Bay
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15th March 2024

Dear Huw,

I refer to my letter to you of 29 February 2024. I am writing to inform the Committee I have given my consent to the Minister for Biosecurity, Animal Health and Welfare to lay the The Environment and Rural Affairs (Revocation and Consequential Provision) Regulations 2024 (“the Regulations”) in relation to Wales. I have laid a Written Statement which can be found at: [Written Statement: The Environment and Rural Affairs \(Revocation and Consequential Provision\) Regulations 2024 \(15 January 2024\) | GOV.WALES](#)

The Regulations intersect with devolved policy and will apply to Wales.. The Regulations extend to Northern Ireland, England, Scotland and Wales. The Statutory Instrument (SI) is subject to the negative procedure and was laid before Parliament on 11 March 2024.

Bae Caerdydd • Cardiff Bay
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Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Lesley.Griffiths@llyw.cymru
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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 have written similarly to Llyr Gruffydd MS, the Chair of the Climate Change, Environment and Infrastructure Committee and Paul Davies MS, the Chair of the Economy, Trade and Rural Affairs Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping 'L' and 'G'.

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

Davis Rees MS
Chair of the Reform Bill Committee
Senedd Cymru
Cardiff Bay
Cardiff
CF99 1SN

15 March 2024

Dear David,

Thank you for your letter of 1 March 2024.

As you noted in your letter, this timetable includes a period of nine sitting weeks for Stage 1 scrutiny, which is a departure from the usual twelve sitting weeks. Attached is a letter dated 7 March 2024 from the Minister for Rural Affairs and North Wales and Trefnydd in response to a request from the Business Committee for further information about the reasons for proposing an expedited timetable.

At its meeting on 12 March 2024 the Business Committee considered the letters and, by majority decision, agreed the Welsh Government's proposed timetable for Senedd consideration of the Senedd Cymru (Electoral Candidate Lists) Bill. Two Members, including myself, did not agree to the expedited timetable.

I am writing to place on record my reservations, as Llywydd, about the expedited scrutiny timetable for this Bill. I have stated that, in my view, the provisions of this Bill are not within the legislative competence of the Senedd; the Member in charge of the Bill has stated that, in her view, the provisions are within competence. This is the first time that a Bill has been introduced where there are differing views as to its competence.

Scrutiny of the general principles of a Bill at Stage 1 enables committees to interrogate a range of issues, including legislative competence. It is regrettable that your Committee will have less time than is typically the case to consider this novel and complex issue.

In agreeing the timetable the Business Committee noted that should the responsible Committee, in the course of their scrutiny, deem that additional time is essential to their considerations of the general principles of the Bill, then additional time may be sought.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee and the Chair of the Finance Committee, given their committees will also undertake Stage 1 scrutiny of Bill.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Elin Jones'.

The Rt. Hon. Elin Jones MS/AS

Llywydd

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



Elin Jones MS
Chair of the Business Committee

seneddbusiness@senedd.wales

7th March 2024

Dear Elin,

Further to the discussion at the Business Committee meeting on 5 March, I am writing to share additional information regarding the proposed scrutiny timetable for the Senedd Cymru (Electoral Candidate Lists) Bill.

The introduction of the Bill delivers on the recommendations of the Senedd's Special Purpose Committee on Senedd Reform that the Welsh Government brings forward legislation in this area and that Senedd reform is implemented in time for the election in 2026. The Special Purpose Committee's recommendations were endorsed by a majority of Senedd Members.

The timetable proposed by the Welsh Government is fundamental to maintaining a pathway to implementing the measures in time for the 2026 Senedd election. We are working to ensure the measures are in place ahead of that election as this is part of the package of Senedd reform along with the Senedd Cymru (Members and Elections) Bill. A delay of even a month to the passage of the Bill would have implications for that implementation work.

Electoral administrators and political parties will require time to prepare for the implementation of changes, following the making of relevant legislation. The Gould Convention provides that all relevant legislation to an election, including secondary legislation, should be made at least six months prior to the notice of that election, to ensure there is sufficient time for changes to electoral law to be implemented appropriately. In delivering the electoral reforms proposed for the 2026 Senedd election, the Welsh Government is committed to abiding by the Gould Convention.

The provisions of the Senedd Cymru (Electoral Candidate Lists) Bill would need to be implemented through secondary legislation. The National Assembly for Wales (Representation of the People) Order 2007, more commonly referred to as “the Conduct Order”, sets out the detailed rules for conducting elections to the Senedd.

Subject to the Senedd approving both Bills, the Government intends to consolidate and restate the law as part of a new Conduct Order. This will be the first time the Conduct Order is revised in full since 2007. Further, the Conduct Order will be made in English and in Welsh for the first time. This is a major undertaking and requires a significant amount of work. In addition, the Government intends to undertake a public consultation on the Conduct Order.

The proposed timetable provides the best opportunity for making the primary and secondary legislation necessary to allow the successful implementation of the Bill’s provisions in time for the 2026 Senedd election in accordance with the recommendations of the Special Purpose Committee.

In his letter, the Chair of the Reform Bill Committee highlighted the anticipated nomination and appointment of a new First Minister shortly after the Bill’s introduction, which may give rise to uncertainty over the Member in charge of the Bill. While that may be the case, I note the Minister for Social Justice and Chief Whip will be appearing before the Reform Bill Committee on Wednesday, 13 March, as part of its Stage 1 scrutiny, which will enable the Committee to make an immediate start to its scrutiny of the Bill.

I would be grateful if the Business Committee would agree the proposed timetable.

Your sincerely,

A handwritten signature in cursive script that reads "Lesley Griffiths". The signature is written in black ink and is positioned above the typed name and title.

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



Y Gwir Anrhydeddus Elin Jones AS

Llywydd, Senedd Cymru

Right Honourable Elin Jones MS

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David Rees MS

Chair of the Reform Bill Committee

Huw Irranca-Davies MS

Chair of the Legislation, Justice and Constitution Committee

11 March 2024

Dear David and Huw,

Senedd Cymru (Electoral Candidates Lists) Bill: Statement on legislative competence

In accordance with section 110(3) of the Government of Wales Act 2006 (the 2006 Act) and Standing Order 26.4, I have laid a statement setting out my view on whether or not the provisions of the Senedd Cymru (Electoral Candidate Lists) Bill would be within the Senedd's legislative competence.

It is my view that the provisions of the Bill would not be within the legislative competence of the Senedd. My statement sets out my reasons for reaching that view.

As Members will be aware, while I am required to make a statement setting out my views, the content of my statement does not affect whether or not a Bill may be introduced or complete its passage through the Senedd.

To help inform your Stage 1 scrutiny of the Bill, I enclose a summary of the issues I considered in reaching my view. If you would like further information and advice, the officials supporting the Committee will be pleased to assist.

I am copying this letter to the First Minister, the Minister for Social Justice in her capacity as Member in charge of the Bill, and all Members of the Senedd.

Yours sincerely,

The Rt. Hon. Elin Jones MS

Llywydd

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

Senedd Cymru (Electoral Candidate Lists) Bill: summary of legislative competence considerations

In coming to the view that the Senedd Cymru (Electoral Candidate Lists) Bill¹ would not be within the legislative competence of the Senedd, I have considered the tests of legislative competence set out in section 108A of the Government of Wales Act 2006. The merits of the policy behind the Bill did not form part of my decision-making process.

My view is based on the legal tests and the legal advice I have received on those tests. Ultimately, of course, the question of whether any Senedd Bill is within the legislative competence of the Senedd can only be definitively answered by the Supreme Court.

The reserved matter of equal opportunities

As regards my view that the Bill relates to the reserved matter of equal opportunities, I have applied the “relates to” test as set out in section 108A(2)(c) of the 2006 Act and as applied by the Supreme Court in a number of devolution cases.

I considered the purpose and effect of the Bill. While I accept the Bill has the devolved purpose of making the Senedd a more effective legislature, in my view the Bill also has the reserved purpose of equal opportunities.

“Equal opportunities” is a reserved matter in Schedule 7A to the 2006 Act and includes the prevention, elimination or regulation of discrimination between persons on grounds of sex.

From reading the Bill and the Explanatory Memorandum, I concluded that the Bill:

- (a) seeks to address disadvantages and barriers that women face during the candidate selection process;
- (b) will require political parties to treat a man (who would otherwise be more likely to be selected for a place on the list that must be allocated to a woman) less favourably than a woman, because of the man’s sex.

Having considered the purpose and effect of the Bill, I concluded that the Bill has more than a “loose or consequential”² connection with the prevention, elimination or regulation of discrimination between persons on the grounds of sex. In other words, in my view, the Bill relates to the reserved matter of equal opportunities and would not be within the legislative competence of the Senedd.

¹ Section 1 of the Bill is the core of the Bill. Therefore, the focus of my competence analysis was section 1. However, because all other sections of the Bill rely directly on section 1, once I came to the view that section 1 was not within legislative competence, it inevitably followed that the whole Bill was not within legislative competence.

² The “loose or consequential” test as applied by the Supreme Court in numerous devolution cases, including: [Martin v. Most](#) [2010] UKSC 10; [Imperial Tobacco Limited \(Appellant\) v. The Lord Advocate \(Respondent\) \(Scotland\)](#) [2012] UKSC 61; [AGRICULTURAL SECTOR \(WALES\) BILL - Reference by the Attorney General for England and Wales](#) [2014] UKSC 43.

I have considered the exceptions to the equal opportunities reservation in Schedule 7A to the 2006 Act, and concluded that none of them is relevant in this case.

Modifying the law on reserved matters, namely the Equality Act 2010

As regards my view that the Bill modifies the law on reserved matters, I have considered the test set out in section 108A(2)(d) of the 2006 Act and the relevant case law of the Supreme Court.

Schedule 7B to the 2006 Act places a number of restrictions on the legislative competence of the Senedd. This includes paragraph 1 of Schedule 7B, which places a restriction on modifying the law on reserved matters.

In my view, the Bill modifies section 104 of the Equality Act 2010, which forms part of the law on reserved matters.

Section 104 of the 2010 Act makes special provision for political parties by permitting them (voluntarily) to adopt discriminatory selection arrangements in order to address under-representation in their candidate selection processes. Therefore, section 104 **permits** political parties to address under-representation, but does not **require** them to do so.

The Bill, however, requires political parties to address under-representation: it requires at least half of candidates on lists submitted by political parties to be women, and it requires that the first or only candidate on at least half of those lists be a woman. In the context of Senedd elections, in my view, the Bill effectively turns the voluntary power to address under-representation in section 104 into a duty to address under-representation.

I have concluded that such a change amounts to a modification of section 104. Even though the Bill does not amend the text of section 104, the Bill is in conflict with section 104, which is a modification of the law on reserved matters.

In reaching this conclusion, I have considered the Supreme Court's explanation of the meaning of "modify".³ I have also considered the "ancillary" carve-out in paragraph 2 of Schedule 7B, which I do not consider to be relevant in this case.

In my view, the Bill modifies the law on reserved matters and would not be within the legislative competence of the Senedd.

If passed by the Senedd, then, as in the case for all Bills, the Bill will enter into a four week period of intimation. During this period, the Counsel General and the Attorney General may refer the question of whether the Bill, or any provision of the Bill, would be within the Senedd's legislative competence to the Supreme Court for decision, in accordance with section 112 of the 2006 Act. Similarly, the Secretary of State for Wales may intervene by making an order prohibiting the Clerk of the Senedd from submitting

³ **THE UK WITHDRAWAL FROM THE EUROPEAN UNION (LEGAL CONTINUITY) (SCOTLAND) BILL - A Reference by the Attorney General and the Advocate General for Scotland (Scotland) [2018] UKSC 64, paragraph 51.**

the Bill for Royal Assent if he or she has reasonable grounds to believe that certain conditions apply (set out in section 114 of the 2006 Act).