

# Agenda – Legislation, Justice and Constitution Committee

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Meeting Venue:	For further information contact:
Committee Room 4, Tŷ Hywel	P Gareth Williams
Meeting date: 16 October 2023	Committee Clerk
Meeting time: 13.30	0300 200 6565
	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

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## 1 Introductions, apologies, substitutions and declarations of interest

(13.30)

## 2 Senedd Cymru (Members and Elections) Bill: Evidence session with the Counsel General and Minister for the Constitution

(13.30 – 14.30)

(Pages 1 – 28)

Mick Antoniw MS, Counsel General and Minister for the Constitution

Will Whiteley, Deputy Director, Senedd Reform, Welsh Government

Anna Hind, Senior Lawyer, Welsh Government

[Senedd Cymru \(Members and Elections\) Bill](#)

[Explanatory Memorandum](#)

[Statement of Policy Intent](#)

Attached Documents:

LJC(6)-28-23 – Paper 1 – Briefing paper

LJC(6)-28-23 – Paper 2 – Letter from the Reform Bill Committee to the Counsel General and Minister for the Constitution, 26 September 2023

**Break**

(14:30 – 14:35)



### **3 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

(14.35 – 14.40)

(Page 29)

Attached Documents:

LJC(6)–28–23 – Paper 3 – Draft report

**Made Negative Resolution Instruments**

#### **3.1 SL(6)389 – The National Health Service (Optical Charges and Payments) (Amendment) (Wales) Regulations 2023**

### **4 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3**

(14.40 – 14.45)

**Made Negative Resolution Instruments**

#### **4.1 SL(6)388 – The National Health Service (Ophthalmic Services) (Wales) Regulations 2023**

(Pages 30 – 36)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)–28–23 – Paper 4 – Draft report

#### **4.2 SL(6)391 – The School Teachers' Pay and Conditions (No. 2) (Wales) Order 2023**

(Pages 37 – 38)

[Order](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)–28–23 – Paper 5 – Draft report

**Affirmative Resolution Instruments**

**4.3 SL(6)390 – The Environmental Protection (Single-use Plastic Products) (Wales) Act 2023 (Commencement No. 1) Order 2023**

(Pages 39 – 41)

[Order](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-28-23 – Paper 6 – Draft report

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

(14.45 – 14.50)

**Affirmative Resolution Instruments**

**5.1 SL(6)382 – The Local Elections (Principal Areas) (Single Transferable Vote) (Wales) Rules 2023**

(Pages 42 – 52)

Attached Documents:

LJC(6)-28-23 – Paper 7 – Report

LJC(6)-28-23 – Paper 8 – Welsh Government response

**6 Inter-Institutional Relations Agreement**

(14.50 – 14.55)

**6.1 Correspondence from the Counsel General and Minister for the Constitution: Inter-Ministerial Standing Committee**

(Page 53)

Attached Documents:

LJC(6)-28-23 – Paper 9 – Letter from the Counsel General and Minister for the Constitution, 9 October 2023

**7 Papers to note**

(14.55 – 15.00)

**7.1 Correspondence from the Minister for Climate Change: Response to Recommendation 1 in the Committee's report on the Welsh Government's Legislative Consent Memoranda on the Energy Bill**

(Page 54)

Attached Documents:

LJC(6)-28-23 – Paper 10 – Letter from the Minister for Climate Change, 10 October 2023

**7.2 Correspondence from the Counsel General and Minister for the Constitution: The availability of disaggregated data on the criminal justice system in Wales**

(Pages 55 – 57)

Attached Documents:

LJC(6)-28-23 – Paper 11 – Letter from the Counsel General and Minister for the Constitution, 11 October 2023

**7.3 Correspondence from the Counsel General and Minister for the Constitution: Retained EU Law (Revocation and Reform) Act 2023**

(Pages 58 – 65)

Attached Documents:

LJC(6)-28-23 – Paper 12 – Letter from the Counsel General and Minister for the Constitution, 12 October 2023

LJC(6)-28-23 – Paper 13 – Letter to the Counsel General and Minister for the Constitution, 22 September 2023

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

(15.00)

**9 Senedd Cymru (Members and Elections) Bill: Consideration of evidence**

(15.00 – 15.30)

**10 Supplementary Legislative Consent Memorandum (Memorandum  
No. 5) on the Levelling-up and Regeneration Bill: Draft report**

(15.30 – 15.45)

(Pages 66 – 71)

Attached Documents:

LJC(6)-28-23 – Paper 14 – Draft report

Document is Restricted

Mick Antoniw MS  
Counsel General  
Welsh Government

26 September 2023

Dear Mick

**Senedd Cymru (Members and Elections) Bill: interdependency with the anticipated gender quotas Bill**

In his statement on the Welsh Government's legislative programme on 27 June 2023, the First Minister announced that in addition to a Bill to reform the Senedd's size, electoral system and boundary arrangements, the Welsh Government intended to bring forward a Bill to introduce candidate-level gender quotas for Senedd elections (the "gender quotas Bill"). The Explanatory Memorandum for the Senedd Cymru (Members and Elections) Bill (the "SC(ME) Bill") indicates that the Welsh Government also intends to include provision in future legislation for the publication of diversity information in respect of Senedd candidates.

While the gender quotas Bill will be a separate piece of legislation, subject in due course to scrutiny in its own right, it is inevitable that there will be a degree of interdependency between any such Bill and the SC(ME) Bill. This is because any candidate-level quotas that are introduced will need to operate within the context of the electoral system, boundaries and disqualification provisions the SC(ME) Bill seeks to establish.

We would be grateful if you could:

- 1) Confirm whether a draft of the gender quotas Bill will be published in advance of its formal introduction. If the Welsh Government does not propose to publish a draft Bill, please confirm the reasons for this, and indicate whether an advanced copy of the Bill could be shared with us, in confidence, prior to its formal introduction.

- 2) Provide us with further information about the objectives and proposed legislative approach the Welsh Government anticipates pursuing in the gender quotas Bill. This should include information about the following, in addition to any other information you consider relevant:
- a. The purpose of introducing candidate-level gender quotas for Senedd elections, including a consideration of the aim(s) the Welsh Government is seeking to achieve through their introduction.
  - b. The proposed policy to be given effect in the gender quotas Bill, including the anticipated design and operation of candidate-level gender quotas, and how compliance will be enforced.
  - c. An assessment of the implications the proposed policy may reasonably be expected to have for the operation and implementation of the electoral system proposed in the SC(ME) Bill, including, but not limited to, the submission of candidate lists to constituency returning officers (section 7(1)), the length of candidate lists (section 7(3)), and candidate eligibility for filling vacant seats (section 9)).
  - d. Information about how such implications have been taken into account in the assessment of the financial and other impacts in the Explanatory Memorandum to the SC(ME) Bill. This should include details of which of the financial or other impact assessments would have been substantively different had provision regarding gender quotas been included in the SC(ME) Bill, and, if so, how.

It would be helpful to receive your response **by 3 November 2023**.

This letter is being copied to the Finance Committee and the Legislation, Justice and Constitution Committee, and the Deputy Minister for Social Partnership, as we understand that she will be the Member in charge for the gender quotas Bill.

Yours sincerely



David Rees MS  
Chair, Reform Bill Committee

cc Peredur Owen Griffiths MS, Chair, Finance Committee  
Huw Irranca Davies MS, Chair, Legislation, Justice and Constitution Committee  
Hannah Blythyn MS, Deputy Minister for Social Partnership

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



## Statutory Instruments with Clear Reports 16 October 2023

### **SL(6)389 – [The National Health Service \(Optical Charges and Payments\) \(Amendment\) \(Wales\) Regulations 2023](#)**

**Procedure: Made Negative**

These Regulations amend the National Health Service (Optical Charges and Payments) Regulations 1997 (“the Optical Regulations”) which provide for payments to be made by means of a voucher system in respect of costs incurred by certain categories of persons in connection with sight tests and the supply, replacement and repair of optical appliances.

**Parent Act:** National Health Service (Wales) Act 2006

**Date Made:** 27 September 2023

**Date Laid:** 29 September 2023

**Coming into force date:** 20 October 2023



# Agenda Item 4.1

## **SL(6)388 – The National Health Service (Ophthalmic Services) (Wales) Regulations 2023**

### **Background and Purpose**

The National Health Service (Ophthalmic Services) (Wales) Regulations 2023 make provision for primary ophthalmic services under the National Health Service (“NHS”) in Wales. These Regulations supersede, consolidate and revoke previous Regulations in this area.

These Regulations replicate, in large part, the provisions of the revoked Regulations in respect of the arrangements to be made by Local Health Boards for general ophthalmic services (sight tests).

These Regulations also require Local Health Boards to make arrangements for the provision of eye examination services under the NHS in Wales. References in these Regulations to “primary ophthalmic services” refer to general ophthalmic services and to eye examination services.

### **Procedure**

Negative

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

### **Technical Scrutiny**

The following 22 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

In regulation 2, many of the definitions are defined by the meaning given to them in the interpretation provisions of other Acts or statutory instruments, or that are found later within these Regulations. However, many of these definitions fail to identify precisely where within a section or paragraph the definition can be found. This makes it more difficult for the reader to easily find the definitions. It also causes problems with defining the meaning of some of the terms where the imprecise references failed to distinguish between similar terms or concepts found in the cited provisions. This problem regularly occurs throughout the rest of these Regulations:

- a. both the definitions of “dispensing optician” and “optometrist” refer to a person registered in **“the register”** maintained under **section 7** of the Opticians Act 1989”



which suggests that there's a single register. However, it should state "section 7(b)" and "section 7(a)" respectively as there are separate registers for both professions to precisely identify and distinguish between them. For the same reason, the words in parentheses are incorrect as they should use the plural noun "registers of opticians" as found above section 7 of that Act because there are 2 registers.

- b. both the definitions of "eye examination" and "eye examination services" are given the meaning in "regulation 3". But, it should state "regulation 3(3)(a)" and "regulation 3(3)(b)" respectively to identify their location precisely and to distinguish between them;
- c. both the definitions of "general ophthalmic services" and "primary ophthalmic services" are given the meaning in regulation 4. But, it should state that they're found in "regulation 4(a)" and "regulation 4(b)" respectively to identify their location precisely and to distinguish between them;
- d. the definition of "Health Education and Improvement Wales" states that it means "the body established by the Health Education and Improvement Wales (Establishment and Constitution) Order 2017". It would be more precise to identify the specific provision in that Order - "established **under article 2** of the...Order 2017", as was done in the definition of "First-tier Tribunal";
- e. the definitions of "mobile practice", "originating events" and "the register" are all given the meaning found in Schedule 3 to these Regulations. Schedule 3 is a lengthy Schedule and it could be made clearer that they're all found in "**paragraph 18 of** Schedule 3".
- f. both the definitions of "ophthalmic list" and "supplementary list" are given the meaning found in regulation 10. This could more precisely state "in regulation 10(2)(a)" and "in regulation 10(2)(b)" respectively to identify their location and to distinguish between the different lists.

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

In regulation 2, at the end of the definition of "employment", there is a list of other related terms that are to be interpreted according to the meaning of "employment". However, this would appear to be unnecessary as section 9 of the Legislation (Wales) 2019 provides that this is the case without any such provision. In addition, the term "employer" is already defined separately as a term in regulation 2. There is also another definition of "employee" found in paragraph 18(5)(c) of Schedule 4.

The same issue occurs in paragraph 18(5) of Schedule 4 where "employ" must be interpreted according to the meaning given to "employee".



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

In regulation 4(a), the reference to “paragraph 23” fails to identify the precise location where it can be found as there’s no Schedule noted in the reference. It appears to be referring to paragraph 23 “**of Schedule 4**” to these Regulations.

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

In regulation 7(4), there is a reference to “paragraph **(2)(n)** of that Schedule” but it fails to identify the specific paragraph in Schedule 1 to these Regulations. Presumably it is referring to “paragraph **1(2)(n)** of that Schedule” in which case the paragraph number “1” should appear in that reference.

### **5. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In regulation 12, in the Welsh text, in the headings of Chapter 3, regulation 12 and of regulation 14, and in the body of regulation 12(3) and (4), and of regulation 28(1)(b) and (7), whenever the phrase “inclusion” is used the translation has added the words “the practitioner” to complete the grammatical sense and meaning of the sentences.

The same approach has also been adopted for the translation of “removal” in places such as the headings of Chapter 4, regulations 17 and 19, in the body of regulation 17(6) and (10) and the headings of Part 5 and of paragraph 12, 13 and 14 in Schedule 3, with the same consequence that “practitioner” rather than “qualified practitioner” is used in the Welsh text.

However, the defined term is “the qualified practitioner” and for that reason should have been used in the Welsh text.

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

In regulation 13(5), the provision states that the Local Health Board must consider “**the factors**” set out in paragraph 10 of Schedule 3. However, paragraph 10 of that Schedule refers to “**the facts**” that must be considered although “factors” are referred to in paragraphs 14 to 17 of Schedule 3. Therefore, the drafting is not consistent with that found in paragraph 10 of Schedule 3, unless the reference itself is incorrect.

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

Regulation 17(3)(c) refers to the removal of a qualified practitioner from an ophthalmic or supplementary list where they have been convicted in the United Kingdom of a criminal offence (other than murder), committed on or after 30 July 2002 in the case of an ophthalmic list, or on or after 1 February 2006 in the case of a supplementary list. Please could



clarification be provided as to why the inclusion of the specific dates of 30 July 2002 and 1 February 2006 have been considered necessary?

**8. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.**

In regulation 27(1)(a), the English text refers to “regulation 13” but the Welsh text refers to “regulation 15”.

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

Regulation 27(2)(i) requires a local health board to notify the NHS Counter Fraud Authority where it makes a decision relating to “a fraud case within the meaning of section 107(3) of the [National Health Service (Wales)] Act [2006]”.

Welsh Government is asked whether this requirement should also apply in relation to a fraud case within the meaning of regulation 17(3)(d).

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

In regulation 42, there appears to be a change in terminology throughout the regulation where the term “person” is used, rather than the defined term “qualified practitioner” in relation to inclusion on a Local Health Board’s ophthalmic list or supplementary list. Both lists are defined in regulation 10(2) as only including “qualified practitioners”. The term “qualified practitioner” is defined by regulation 2 and other regulations throughout these Regulations use that term in relation to those lists, rather than “person”. Clarification is requested as to why the term “person” is used in regulation 42, rather than the defined term “qualified practitioner”.

**11. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In regulation 42(11)(a), the English version of the Regulations reads, “...received an application for inclusion in its previous ophthalmic list or previous supplementary list...”. However, the Welsh language version of regulation 42(11)(a) has added the word “*practitioner*” to complete the meaning of the same sentence, meaning that there is a difference in meaning between the English and Welsh text. In other words, the Welsh text appears to be restricted to the inclusion of “*practitioners*”, whereas the English text does not include this restriction. It is also noted that the rest of regulation 42 in the Welsh text uses “*person*”, rather than “*practitioner*”. An explanation is requested in relation to these apparent inconsistencies.

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



In Schedule 1, in paragraph 1(2)(c), in the English text, the title of the SI, “the National Health Service (**Travel Expenses** and Remission of Charges) (Wales) Regulations 2007” is incorrect. It should be state “**Travelling Expenses**” rather than “**Travel Expenses**” in the title of the SI. The correct SI reference is provided in paragraph 1(9) of Schedule 1.

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

In Schedule 1, in paragraph 1(7)(b), “family” is given a meaning “in paragraph (g)”. However, “family” doesn’t appear to be used in paragraph (g). Therefore, this requires further explanation as to whether the reference is incorrect and should be referring to another paragraph (possibly paragraph (i)).

**14. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In Schedule 2, in paragraph 3(7), there is a difference between the English and Welsh text. In the English text, it refers to “the qualifications **and experience** prescribed by paragraph 1”. However, in the Welsh text, the words “**and experience**” are missing from the translation.

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

In Schedule 2, in paragraph 4, there is a definition of “the health service” for “this Schedule”. However, this term is only used on one occasion in the Schedule, in paragraph 1(1)(a)(i). Therefore, it should be included in the existing interpretation provision of paragraph 1(3) which defines another term for “this paragraph” rather than for the entire Schedule.

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

In Schedule 3, in paragraph 1, the terminology varies between “person” in sub-paragraphs (a) to (d), and “qualified practitioner” in sub-paragraphs (e) to (i). Is there a reason for the change in terminology or should they use the defined term “qualified practitioner” especially when referring to individuals who are included in the ophthalmic list. The same varying of terms takes place in paragraph 2 in relation to the supplementary list.

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

In Schedule 3, in paragraph 6(a), it refers to “the information **and document**, if applicable, required by regulation 16.” However, we believe this should state “**and certificate**” rather than “**and document**” because it is referring to an enhanced criminal record certificate in regulation 16(3).

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



Paragraph 10(1)(b) of Schedule 3 refers to an “offence, incident, **conviction** or investigation” (emphasis added). Paragraph 10(1)(a), (c), (d) and (e) refer (in various configurations) to an “offence, investigation or incident”.

Welsh Government is asked to explain why the additional word “conviction” is included in paragraph 10(1)(b). The same question arises in relation to paragraph 15(2)(b) of Schedule 3.

#### **19. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In Schedule 4, in paragraph 10(3)(a)(iii), there is a slight difference between the English and Welsh text. In the English text, it states “**when and** as required under paragraph 9(3)” but it has been translated as meaning “as required under paragraph 9(3)”. Paragraph 9(3) uses the phrase “when required to do so” in both language texts.

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

In Schedule 4, in paragraph 15(1), it states “the **information** the contractor provided in accordance with **paragraph 7 of Schedule 3**”. Should this state “**the declarations**” rather than “the information” as paragraph 7 of Schedule 3 deals with declarations unless the reference itself is incorrect as information is provided in accordance with other paragraphs of Schedule 3.

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

In Schedule 4, in paragraph 22(2)(b)(i), the term “the practitioner” is defined, and is used in paragraph 22. However, in paragraph 22(3), the term “the qualified practitioner” is used at the end of that paragraph. Is this intentional as “qualified practitioner” is also a defined term in these Regulations or should it refer to “the practitioner”?

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

In Schedule 4, in paragraph 27(2)(b), it states that nothing prevents “a body corporate from using the name by which it is enrolled **in the register maintained** under the Opticians Act 1989”. However, there are several registers maintained under the Opticians Act 1989, and “the register” isn’t defined as a term for the purposes of Schedule 4 (only for Schedule 3). Therefore, should this provision specify the register and is it referring to the register of bodies corporate maintained under section 9 of the Opticians Act 1989? If so, should the defined term “corporate optician” rather than “body corporate” be used in the provision?

### **Merits Scrutiny**

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



### **23. 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 throughout these Regulations, various incorrect references for provision divisions and sub-divisions are used. As an example, in paragraph 7(2) of Schedule 6, a reference is incorrectly described as “paragraph (b)”, rather than the correct description of “sub-paragraph (b)”. The Welsh Government is reminded of the importance of using the correct references for divisions and sub-divisions when drafting subordinate legislation.

### **Welsh Government response**

A Welsh Government response is required in relation to points 1-22.

#### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**12 October 2023**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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**Legislation, Justice and Constitution Committee**



## **SL(6)391 – The School Teachers’ Pay and Conditions (No. 2) (Wales) Order 2023**

### **Background and Purpose**

This Order provides for the remuneration and conditions of employment of school teachers in maintained schools in Wales. The Order does so by giving effect to:

- The School Teachers’ Pay and Conditions (Wales) Document 2022 and guidance on school teachers’ pay and conditions (revised) – September 2023 (**the 2022 Document**), and
- The School Teachers’ Pay and Conditions (Wales) Document 2023 and guidance on school teachers’ pay and conditions (**the 2023 Document**).

[The 2022 Document](#) makes changes for the 2022/23 year by providing slightly amended calculations of the 1.5% non-consolidated lump sum payment which formed part of the 2022/23 pay award. The Explanatory Memorandum states that “*An amended methodology has been used to calculate the non-consolidated payment as a result of representations made by teacher unions. The amended methodology results in a very slight increase in each case.*” These changes will apply to the period 1 September 2022 to 31 August 2023.

[The 2023 Document](#) makes other changes to pay and conditions. In response to negotiations with teacher unions and employers, from 1 September 2023 a 5% uplift will be applied to all scale points and allowances. The 2023 Document also provides clarity on administrative tasks not to be routinely carried out by teachers (see paragraph 51.9 of, and Annex 3 to, the 2023 Document).

The Order comes into force on 28 October 2023, therefore the changes made by this Order include retrospective provision. Such retrospective provision is permitted under the Education Act 2002, i.e. the Act under which this Order is made.

Jeremy Miles MS, Minister for Education and Welsh language issued a [written statement](#) on the Order on 5 October 2023.

### **Procedure**

Negative

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



## Technical Scrutiny

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

## Merits Scrutiny

One point is 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**

We note that this Order is part of the Welsh Government's response to concerns about pay and conditions for teachers in Wales. We also note the following from the Regulatory Impact Assessment:

*"This option will meet previously agreed commitments on teachers' pay and conditions by implementing the Year 2 award of 5% from September 2023 and providing clarity on clerical and administrative tasks that should not be routinely carried out by teachers. The agreement has already helped avoid further industrial action being taken by teacher unions so reducing potential disruption to young people's education. It may also have a positive impact on retention of teachers in Wales and attracting newly qualified teachers to the profession in Wales. Clarification of the statutory position that teachers should not be required routinely to participate in any administrative, clerical and organisational tasks will potentially help improve school efficiency and avoid unnecessary teacher workload."*

## Welsh Government response

A Welsh Government response is not required.

### Legal Advisers

Legislation, Justice and Constitution Committee

10 October 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Legislation, Justice and Constitution Committee

## **SL(6)390 – The Environmental Protection (Single-use Plastic Products) (Wales) Act 2023 (Commencement No. 1) Order 2023**

### **Background and Purpose**

The Environmental Protection (Single-use Plastic Products) (Wales) Act 2023 (“the Act”) prohibits the supply of specified single-use plastic products to consumers in Wales, unless an exemption applies. The specified products and relevant exemptions are set out in the Table in the Schedule to the Act.

Sections 3, 4, 17, 21, 22 and 23 of the Act came into force on 7 June 2023, the day after the Act received Royal Assent.

The Environmental Protection (Single-use Plastic Products) (Wales) Act 2023 (Commencement No. 1) Order 2023 (“the Order”) brings into force all other provisions of the Act, with the exception of three entries in the Table of prohibited single-use plastic products.

As a result, from 30 October 2023 it will be an offence for a body corporate, a partnership, an unincorporated association or a sole trader to supply, or offer to supply, the following single-use plastic products to a consumer in Wales, unless an exemption applies:

- cups,
- cutlery,
- drink-stirrers,
- straws,
- plates,
- takeaway food containers,
- balloon sticks, and
- cotton buds.

### **Procedure**

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**

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

### **Merits Scrutiny**



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

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

In accordance with section 21(3) of the Act, the Order is subject to the draft affirmative procedure. It is very unusual for a commencement order to be subject to this level of Senedd scrutiny; the majority of commencement orders are not subject to any Senedd scrutiny procedure.

**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.**

According to paragraph 4.4 of the Explanatory Memorandum, Welsh Government intends to introduce the prohibition of the specified single-use plastic products in phases.

The Order brings into force eight of the 11 entries in the Table of prohibited products in the Schedule to the Act. Welsh Government is asked to explain:

- why the prohibitions relating to lids for cups or takeaway food containers, carrier bags and products made of oxo-degradable plastic are not being commenced at this stage,
- when the remaining entries in the Table will be commenced, and
- how many further phases are planned to bring the remaining prohibitions into force?

**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.**

The United Kingdom Internal Market Act 2020 (“UKIMA”) contains market access principles which, broadly, ensure that goods which may be sold lawfully in one part of the UK may also be sold elsewhere in the UK, free from any relevant requirements that would otherwise apply to the sale in that other part of the UK. Paragraph 13 of Schedule 1 to UKIMA provides that the market access principles do not apply to legislation so far as it prohibits the sale of certain specified single-use plastic items.

It is noted that the products listed in the entries in the Table brought into force by the Order are the same as the items excluded from the UKIMA market access principles by paragraph 13 of Schedule 1 to UKIMA.

The products listed in the three entries in the Table which are not brought into force by the Order – lids for cups or takeaway food containers, carrier bags and products made from oxo-degradable plastic – are not included in paragraph 13 of Schedule 1 to UKIMA and so do not appear to be covered by the exclusion from the market access principles.

During passage of the Bill that became the Act, this Committee raised concerns about the impact of the UKIMA market access principles on the effectiveness of the Bill’s provisions.



Welsh Government is asked whether it continues to hold the view that the Act will be “*fully effective and enforceable*”<sup>1</sup> when fully commenced.

## Welsh Government response

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

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**10 October 2023**

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<sup>1</sup> [Letter from the Minister for Climate Change to the Legislation, Justice and Constitution Committee, 9 December 2022](#)



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—  
Welsh Parliament

**Legislation, Justice and Constitution Committee**

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# Agenda Item 5.1

## **SL(6)382 - The Local Elections (Principal Areas) (Single Transferable Vote) (Wales) Rules 2023**

### **Background and Purpose**

On 6 May 2022, the provisions of the Local Government and Elections (Wales) Act 2021 (**the 2021 Act**) relating to the single transferable vote (**STV**) system at the election of councillors to a principal council (i.e. a county council or a county borough council) came into force. These provisions allow principal councils to decide to conduct elections using the STV system instead of the simple majority system.

Section 13 of the 2021 Act inserted section 36A of the Representation of the People Act 1983, which enables the Welsh Ministers to make rules for the conduct of local government elections in Wales. That power has been exercised to make the Local Elections (Principal Areas) (Wales) Rules 2021 (**the 2021 Rules**). The 2021 Rules set out how elections to principal councils must be conducted where the simple majority system is in use. They do not make provision for the conduct of elections where the STV system is in use.

These Local Elections (Principal Areas) (Single Transferable Vote) (Wales) Rules 2023 (**the STV Rules**) amend the 2021 Rules to provide for the conduct of elections where the STV system is used. The 2021 Rules will continue to make provision about the simple majority system for the conduct of elections in principle areas which have not decided to use the STV system.

STV is a preferential voting system, which means voters are asked to rank the available candidates in order of preference, using numbers. Voters may choose to rank all the available candidates or only as many as they wish. STV is considered to be a system of proportional representation. It usually produces results which generally reflect the proportions of votes cast for the different political parties, groups and independents in an individual electoral area and across the election as a whole.

The STV system is formally defined in [section 6\(2\) of the 2021 Act](#).

The following prescribed form for the front of the STV ballot paper is set out in the STV Rules:



**Election of councillors to [insert the name of the county or county borough council] – [insert name of ward]**

You can make as many or as few choices as you want to.  
Put the number **1** in the voting box next to your first choice.  
Put the number **2** in the voting box next to your second choice.  
Put the number **3** in the voting box next to your third choice. **And so on.**

**JAMES, Lisa**  
6, Y Stryd, Y Dre CY36 4EZ  
**Promotion of Ethics in Local Government Party**

Emblem	<input type="checkbox"/>
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**KAY, Michael**  
12, High Street, CP1 5LL  
**Electoral Law Improvement Party**

Emblem	<input type="checkbox"/>
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**THOMAS, Gareth**  
Iceland  
**Electoral Law Improvement Party**

Emblem	<input type="checkbox"/>
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**THOMAS RICHARDS, Angharad**  
The County of Hafod  
**Good Law Party**

Emblem	<input type="checkbox"/>
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**WILLIAMS, Sian**  
92, The Avenue, CP12 3LO  
**Independent**

<input type="checkbox"/>
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**WYATT, Cath**  
The County of Cornwall  
**Efficiency Party**

Emblem	<input type="checkbox"/>
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**XERRI, Mathew**  
24 Pen-y- Lan, CP2 6NQ  
**Good Law Party**

Emblem	<input type="checkbox"/>
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## Procedure

Draft affirmative.

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

## Technical Scrutiny

The following 6 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

We note the following minor drafting errors.

- In rule 2(a), the description of the amendment, “in the words in brackets” fails to identify the location and is unhelpful because all of the definitions listed in rule 3(3) include words in brackets afterwards. It would have been sufficient to state “for “section 202(1)” substitute “sections 202(1) and 203(1)”” as there is only a single reference to section 202(1) in rule 3(3).
- References to “paragraph” should instead be references to “sub-paragraph”.
  - In rules 3(5)(c) and 7(5)(c), the locations of the amendments are incorrectly described as “before paragraph (a)”. However, they should both be described as “sub-paragraph (a)” as they are divisions within paragraphs found in rule 31 of Schedules 1 and 2 respectively to the 2021 Rules.
  - In rules 4(2) and 8(2), in the new rules 60J, 60K, 60O, 60P, 64N, 64O, 64S and 64T, there are repeated references to “paragraph (a) (“transferable papers”)” and “paragraph (b) (“non-transferable papers”)”. However, the descriptions of these references are incorrect and they should all be described as “sub-paragraph (a) (“transferable papers”)” and “sub-paragraph (b) (“non-transferable papers”)”.
- In rule 8(1), in the English text, there are words missing in the description of the location of the amendment to the heading of Part 4 of “Schedule 2 2021 Rules”. It should state “Schedule 2 to the 2021 Rules”.

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

New rule 60F sets out a list of defined terms which apply to Chapter 2. When a rule in Chapter 2 uses one of those terms, readers are often reminded that the term is defined in rule 60F. For example:





- Rule 60F defines “quota”.
- Rule 60I(2) uses the term “quota”.
- Rule 60I(5) reminds readers that the meaning of “quota” can be found in rule 60F.

We note that rule 60F also defines “stage of the count”. However, when “stage of the count” is used in, for example, rules 60I, 60K and 60Q, there is no reminder that the meaning of “stage of the count” can be found in rule 60F. See also the use of the term “continuing candidate” in rule 60N.

The same issue arises as regards the definitions set out in rule 64J.

We also note that rule 3 of the 2021 Rules includes definitions that apply to the 2021 Rules as a whole; for example, rule 3 defines “the 1983 Act” as meaning the Representation of the People Act 1983. However, where the 2021 Rules use the term “the 1983 Act” there is no reminder that the definition can be found in rule 3.

We would be grateful if the Welsh Government could explain its approach to definitions and when it is necessary to remind readers of where definitions can be found.

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

In some places, the STV Rules refer to the transfer of papers generally in accordance with a particular rule. However, in other places, these STV Rules refer to the transfer of papers in accordance with specific paragraphs of a particular rule.

For example:

- Rule 60P(3) refers to the transfer of papers “in accordance with this rule”.
- Rule 64T(3) refers to the transfer of papers “in accordance with paragraphs (4) and (5) of this rule”.

It is unclear whether this difference is intended and what effect it has on the transfer of papers.

See also rules 60J, 60K, 64N, 64O and 64S.

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

New rule 60P(5) refers to the transfer value of a vote as “the value at which the vote **on the ballot paper** was received by the excluded candidate” (emphasis added). However, the equivalent rule 64T(5) refers to the transfer value of a vote as “the value at which the vote was received by the excluded candidate”.

It is unclear whether this difference is intended and what effect it has on the transfer value of a vote.



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

New rules 60T and 64X set out the procedure for re-counting votes. These rules largely reflect existing rules 57 of Schedule 1 and 61 of Schedule 2. However, those existing rules include additional provision confirming that the rules that apply to a re-count also apply to any further re-counts. We note that new rules 60T and 64X do not include that additional provision.

## 6. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

- In rule 3(3)(b), in the new rule 22(3A)(a), there is a difference between the English and Welsh text. The English text refers to “Appendix **2A**” but the Welsh text refers to “Appendix **2**”.
- In rule 8(2), in the new rule 64G(3)(a), there is a difference between the English and Welsh text. The English text refers to “the **registration** officer” but it has been translated in the Welsh text as meaning “the **returning** officer”.
- In rule 8(2), in the new rule 64R(1), there is a difference between the English and Welsh text. The English text refers to “rule 64N **or 64O**” but the Welsh text only refers to “rule 64N”.
- In Schedule 3, in the new Appendix 5A, in the new “Official Proxy Poll Card” on page 50 (English text)/ page 64 (Welsh text), there is a difference between the English and Welsh text. In the final sentence of the right-hand column, the English text refers to “A poll card sent or delivered to **the proxy of an elector...**” but this has been translated as meaning “A poll card sent or delivered **to an elector...**” in the Welsh text.

The same error also occurs in Schedule 7, in the new Appendix 5A for Schedule 2 to the 2021 Rules, in the new “Official Proxy Poll Card” on page 77 (English text)/ page 83 (Welsh text).

- In Schedule 6, in the new Appendix 4A, in the “Instructions on marking the ballot papers and completing the postal voting statement”, in point 2 on page 69 (English text)/ page 74 (Welsh text), there is a difference between the English and Welsh text. In the Welsh text, there is an additional paragraph which isn’t found in the English text immediately after the words that correspond to “Put the number 3 in the voting box next to your third choice. And so on”. The additional paragraph in the Welsh text provides instructions to the reader concerning inserting the numbers in the boxes on the right-hand side of the voting paper next to the candidate’s name.
- In Schedule 6, in the new Appendix 4A, in the “Instructions on marking the ballot papers and completing the postal voting statement” in point 2 on page 69 (English text)/ page 74 (Welsh text), there is a difference between the English and Welsh text. In the English



text, in the paragraph which begins with the words “Where the ballot paper has been sent to a person voting as proxy,....” there is a reference to “a suitable form of words **for marking** the ballot paper”. But this has been translated as meaning “a suitable form of words **for the instructions for marking** the ballot paper” in the Welsh text. It appears that the Welsh text is correct on this occasion as the words “for the instructions” have been included earlier in the same phrase in point 2 of these instructions and in a similar provision later in Schedule 8, in point 3 of the new Appendix 6A.

- In Schedule 7, in the new Appendix 5A, in the new “Official Proxy Poll Card”, on the “Back of card” on page 78 (English text)/ page 83 (Welsh text), there is a difference between the English and Welsh text. In the English text, the word ‘write’ appears at the end of the sentence “Do not mark the ballot paper in any other way **write**”. As a result, the English text doesn’t make sense and the translation has omitted the word in the Welsh text. It appears that the Welsh text is correct as the same sentence has been used without “write” elsewhere in approximately 9 places in the Schedules.

## Merits Scrutiny

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

### **7. 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**

New rule 32(12) sets out information that must be included inside voting compartments in polling stations when the STV system is used. The information that must be included is:

- (a) an instruction to the voter to put the number 1 in the voting box next to their first choice;
- (b) an explanation to the voter that they may make as many or as few additional choices as they wish, together with an instruction on how to do this by putting the number 2 next to their second choice, the number 3 next to their third choice and so on.”

Given that the STV system will be novel to many voters, did the Welsh Government consider including more information inside voting compartments, including, for example, an explanation of the consequences of making additional choices (i.e. that votes may be transferred where a candidate is elected and has a surplus of votes)?

## Welsh Government response

A Welsh Government response is required for points 2 to 7.

## Committee Consideration



The Committee considered the instrument at its meeting on 2 October 2023 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—

Welsh Parliament **Pack Page 48**

**Legislation, Justice and Constitution Committee**

**Government Response: *The Local Elections (Principal Areas) (single Transferable Vote) (Wales) Rules 2023***

**Technical Scrutiny point 2:** *As the report acknowledges, various key terms have been clearly defined in the interpretation provisions in the SI, and no further provision is necessary to give effect to the those defined terms. A signpost within an SI to a defined term may be used if the drafter considers it helpful or appropriate, having regard to the nature of the term being defined and where it is defined in the Statutory Instrument. In this instance the Welsh Government are satisfied that it was helpful to remind the reader of the definition of the term “Quota”.*

**Technical Scrutiny point 3:** *The Welsh Government’s intention is that rule 60P(3) has the same effect as that in rule 64T(3). It is clear from the drafting of, for example, rule 60P(3), that the only parts of rule 60P(3) that could apply are paragraphs (4) and (5). This is equally applicable to the rules 60J, 60K, 64N, 64O and 64S.*

**Technical Scrutiny point 4:** *The Welsh Government consider that the intended effect of the drafting in rules 60P(5) and 64T(5) is the same and it is not considered that the omission of “on the ballot paper” in rule 64T(5) alters the legal effect of the provisions. Whilst this is considered to be sufficiently clear and does not alter the legal effect, the Welsh Government will however seek to correct this prior to the making of the Statutory Instrument.*

**Technical Scrutiny point 5:** *The Welsh Government consider that the differences between the processes underpinning a count under STV and first-past-the-post justify the different approaches to STV Rules and the 2021 Rules. The provision that the Committee refers to in the 2021 Rules is considered a clarificatory provision. The Welsh Government consider that it is inherent from the drafting of the STV Rules that a re-count is available in respect of a re-count given that the option must be offered to any candidate or election agent present before the returning officer is able to move to the next stage of the STV count.*

**Technical Scrutiny point 6:** *The Welsh Government is grateful to the Committee for identifying these minor equivalence points between the English and Welsh texts. We accept the points raised and will be making the corrections identified in the table annexed to this response prior to the making of the Rules.*

**Merit Scrutiny point 7:** *The Welsh Government did give consideration to this, however advice from experts tends to recommend that information on STV for voters should be kept as simple as possible. The Welsh Government commissioned research on the implementation of STV, which has helped to inform the drafting of the Rules:*

[Implementation of a Single Transferable Vote \(STV\) system for local elections in Wales \(gov.wales\)](#)

*This specifically recommended that:*

*“Voter educational material should focus on how to fill in ballots and avoid discussion of transfers”.*

*Technical drafting corrections to be made prior to the making of the Rules*

CORRECTIONS MADE TO THE WELSH TEXT PRIOR TO MAKING	CORRECTIONS MADE TO THE ENGLISH TEXT PRIOR TO MAKING
<p><b>Rheolau Etholiadau Lleol (Prif Ardaloedd) (Pleidlais Sengl Drosoglwyddadwy) (Cymru) 2023</b></p>	<p><b>The Local Elections (Principal Areas) (Single Transferable Vote) (Wales) Rules 2023</b></p>
<p>In the Welsh text only, in Rule 3(3)(b), in the new rule 22(3A)(a), Appendix “2” will be replaced with Appendix “2A”.</p>	
<p>In Rules 3(5)(c) and 7(5)(c), “paragraff” will be replaced with “is-baragraff”.</p>	<p>In Rules 3(5)(c) and 7(5)(c), “paragraph” will be replaced with “sub-paragraph”.</p>
	<p>In the English text only, in Rule 8(1), “to the” will be inserted between “Schedule 2” and “2021 Rules”.</p>
<p>In the Welsh text only, in Rule 8(2), in the new rule 64R, after “reol 64N”, “neu 64O” will be inserted.</p>	
<p>In the Welsh text only, in rule 8(2), in the new rule 64G(3)(a), for the words “swyddog canlyniadau”, there will be substituted “swyddog cofrestru”.</p>	
<p>In Rule 64T(5), after “y bleidlais”, the text “ar y papur pleidleisio” will be inserted.</p>	<p>In Rule 64T(5), after “the vote”, the text “on the ballot paper” will be inserted.</p>
<p>In the Welsh text only, in Schedule 3, in the new Appendix 5A (“Cerdyn Pleidleisio Swyddogol Dirprwy”), for “etholwr” there will be substituted “ddirprwy etholwr”</p>	
<p>In the Welsh text only, in Schedule 7, in the new Appendix 5A (“Cerdyn Pleidleisio Swyddogol Dirprwy”) on page 77, for “etholwr” there will be substituted “ddirprwy etholwr”.</p>	

<p>In the Welsh text only, in Schedule 6, in new Appendix 4A, at point 2 on page 74 of the Welsh text, the following text will be omitted – “Dylid rhoi'r rhif neu'r rhifau yn y blwch ar ochr dde y papur pleidleisio gyferbyn ag enw'r ymgeisydd y bwriedir i'r rhif fod ar ei gyfer.”</p>	
	<p>In the English text only, in Schedule 6, in new Appendix 4A, at point 2 on page 69 in the paragraph which begins with the words “Where the ballot paper has been sent to a person voting as proxy,....” for the words “<i>a suitable form of words for marking the ballot paper</i>” there will be substituted “<i>a suitable form of words for the instructions for marking the ballot paper</i>”.</p>
	<p>In the English text only, in Schedule 7, in the new Appendix 5A (“Official Proxy Poll Card”), on the “Back of card” on page 78, in the sentence that begins with the words “Do not mark the ballot paper...” at the end of that sentence, the word “write” is to be omitted.</p>



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

## Agenda Item 6.1



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref CG/PO/332/2023  
Ein cyf/Our ref CG/PO/332/2023

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

9<sup>th</sup> October 2023

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

I am writing in accordance with the inter-institutional relations agreement to notify you of the fourth meeting of the Inter-Ministerial Standing Committee, which will take place on 19 October.

The Standing Committee will be chaired by Scotland's Deputy First Minister and Cabinet Secretary for Finance, Shona Robinson MSP. I will represent the Welsh Government at the meeting.

In this virtual meeting I anticipate the discussion will focus on UK legislation and International Relations.

I will provide an update after the meeting.

I have also copied this letter to the Finance Committee, the Economy, Trade and Rural Affairs Committee, and the Culture, Communications, Welsh Language, Sport, and International Relations Committee.

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

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

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CF99 1SN

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[Correspondence.Mick.Antoniw@gov.Wales](mailto:Correspondence.Mick.Antoniw@gov.Wales)

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

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

# Agenda Item 7.1

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



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: JJ/PO/333/2023

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

10 October 2023

Dear Huw,

Thank you for the report from the Legislation, Justice and Constitution Committee on the Welsh Government's Legislative Consent Memorandum on the UK Energy Bill.

I fully appreciate the challenges this Bill has created for effective scrutiny from the Senedd. We discussed those challenges during the debate on the LCM on 12 September 2023, so I will not repeat the points I raised. However, I do want to reassure the Committee that the Welsh Government is fully committed to doing all that we can to ensure that our legislature gets the opportunity to properly scrutinise UK legislation which engages the Sewel convention and requires Senedd consent. I hope that the challenges we faced on the UK Energy Bill will be unique and I will set out to you in further correspondence the steps we want to take learning the lessons from this Bill.

One of the report recommendations requested the full details of the internal processes followed by individual Welsh Government departments and collectively by the Welsh Cabinet when liaising with the UK Government on UK Bills which engage Standing Order 29.

The Counsel General's 8 September letter to the Committee explored the process within Welsh Government surrounding decisions relating to UK Bills. The position remains that every Bill is different. We expect timely and open engagement from the UK government on all potentially relevant UK legislation, in line with commitments made as part of the IGR Review.

Yours sincerely,

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

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CF99 1SN

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

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

Eich cyf/Your ref: CG/PO/340/2023  
Ein cyf/Our ref CG/PO/340/2023

Llywodraeth Cymru  
Welsh Government

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

11<sup>th</sup> October 2023

Dear Huw

Further to the Committee session on 10 July 2023, where we discussed work on improving the availability of disaggregated data on the criminal justice system in Wales, I am writing to the Committee with a fuller update on work being driven forward by Welsh Government in this area.

### Justice Data Dashboards published by Welsh Government

Whilst existing justice data for Wales can be found in various published statistical releases, it is often split across open data tables and geographical tools. To realise more value from existing published data on the justice system in Wales, analysts from the Welsh Government Knowledge and Analytical Services (KAS) directorate are developing interactive Power BI dashboards to bring together and disseminate Welsh justice data.

The first of these, focused on Youth Justice, was [published](#) on Thursday 31 August. The dashboard brings together Wales-specific data from across the accompanying tables of [Youth Justice annual statistics, published by the Youth Justice Board for England and Wales](#).

There are four main topic areas included in the dashboard, as outlined below. “Children” in this dashboard refers to people aged 10 to 17.

- Children who offend – the number and characteristics of children receiving cautions or sentences in Wales
- Proven Offences – the number and nature of proven offences committed by children in Wales.
- Outcomes – the number of cautions or sentences given to children in Wales.
- Welsh Youth Justice Performance Indicators – a set of performance indicators specific to the Youth Justice system in Wales, including accommodation, education, training and employment (ETE), substance misuse and mental health.

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

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

The source data for the Youth Justice dashboard is published annually, and it is our intention to update in a timely manner. We are also considering other sources of data relating to Youth Justice to include in future updates.

Analysts are currently developing a further suite of dashboards for publication, which include topics such as courts, prisons, crime occurrences, legal aid and workforce statistics with the aim of making these dashboards publicly available during 2023-24. Drafts of some of these have previously been shared with the Committee.

### Work to improve our understanding of the Wales justice data landscape and current gaps

Welsh Government officials have continued work to identify crime and justice data requirements in Wales. The Knowledge and Analytical Services directorate have undertaken work to map the existing criminal justice data published on government websites, to identify where disaggregated data is available for Wales and the specific areas of data where Welsh specific data is missing.

For the first time, this work has given us a comprehensive view of the Welsh criminal justice data landscape, allowing us to clarify our understanding of what is available and where there are gaps which could be addressed. This includes mapping out the available data on crime, prisons and probation, youth justice and the criminal justice workforce.

This mapping exercise, including the current gaps we think could be addressed, has been shared with the Ministry of Justice who have agreed to consider it and provide a response on what is feasible in the short and longer term. Given the scale of the work, the MoJ have asked for our view on the most important areas to address and I wrote to Lord Bellamy on 14 September to highlight the following priorities:

- Areas where MoJ has provided data in response to FoI requests, but data is not routinely published.
- Improved data on race and ethnicity in line with the Criminal Justice Anti-Racist Wales Action Plan
- Data relating to the Women's Justice Blueprint and Youth Justice Blueprint
- Improving the availability and accessibility of existing published Wales-specific data, for instance through dashboards similar to the ones now being published by Welsh Government.

MoJ are continuing to consider this work. If it leads to improvements, our intention would be to expand the mapping work to cover other areas of the broader justice system such as courts, tribunals and legal aid.

### Better Outcomes through Linked Data (BOLD)

The BOLD programme is a three-year, cross-Government (Welsh and UK Government) pilot programme, created to demonstrate how individuals with complex needs may be better supported by the Government through linking and improving data in a safe, secure and ethical way. To ensure that BOLD delivers for the individuals with complex needs that it aims to serve, four projects have been identified that could deliver the greatest impact with the highest probability of success. The four key vulnerability projects chosen are: Substance Misuse, Homelessness, Reducing Reoffending and Victim Pathways.

As part of this programme Wales received circa £500k of funding for a data linking project investigating substance misuse services and pathways in Wales. The Welsh Substance Misuse pilot is a joint project across Welsh Government, Public Health Wales and the SAIL databank.

The Welsh pilot has 4 themes for analysis:

- Prevention of escalation of Substance Misuse
- Reducing Reoffending
- Intergenerational Substance Misuse
- Substance Misuse Treatment Effectiveness.

The Welsh Substance Misuse pilot is currently undertaking analysis across all four themes, with publications due by March 2024.

#### Race Disparity Evidence Unit (RDEU)

We have established a Race Disparity Evidence Unit (RDEU), as set out in our Programme for Government.

The Unit's mission is to improve the availability, quality, granularity and accessibility of evidence about individuals with protected and associated characteristics. This will enable decision makers to develop better informed policies that can be monitored and evaluated for their impact. In turn, this will drive us towards better outcomes for people with protected and associated characteristics and contribute to the national well-being goal of a more equal Wales.

The RDEU has been working with different policy areas on ethnicity classifications, data collection and terminology so there is clarity and consistency across the board as well as conducting several mapping exercises to facilitate this and undertaking an extensive programme of stakeholder engagement.

The RDEU has developed a framework for measuring the overall impact of the Welsh Government's Anti-racist Wales Action Plan and is assessing the feasibility of using this framework.

The Anti-racist Wales Action Plan is also supported by an External Accountability Group populated by experts with lived experience. A research sub-group of the External Accountability Group has been established and had its first meeting in September. This group will support the RDEU with shaping the development of measurement indicators and how to incorporate lived experience research. This includes contributing to research and evaluation in eight different areas (Crime & Justice, Education, Environment, Childcare & Play, Health, Sanctuary, Refugee & Asylum, Welsh Government HR, and Social Care).

Working with different policy and government areas will ensure consistency of data classifications and impact measurements of the Anti-Racist Wales Action Plan.

This remains an important area of priority for the Welsh Government, and we will continue to work with the UK Government and with expert stakeholders in Wales to maximise progress.

Yours sincerely



**Mick Antoniw AS/MS**

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

# Agenda Item 7.3

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

Our ref: CG/PO/339/2023



Llywodraeth Cymru  
Welsh Government

Huw Irranca-Davies MS  
Chair  
Legislation, Justice and Constitution Committee  
Senedd Cymru  
[SeneddLJC@Senedd.Wales](mailto:SeneddLJC@Senedd.Wales)

12<sup>th</sup> October 2023

Dear Huw,

Thank you for your letter of 22<sup>nd</sup> September 2023 seeking responses to questions in relation to the Retained EU Law (Revocation and Reform) Act. My answers are set out in the following Annex.

**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**

1. ...please would you:

*i. confirm and provide details of the consent process which has been agreed between the UK Government and the Devolved Governments,*

No mechanism has been agreed between UK Government and the Devolved Governments about how consent should be obtained in relation to UK Ministers making regulations using powers in the REUL Act in an area of devolved competence in Wales. We are about to write again at Ministerial level on this issue to emphasise a clear process is needed to respect the devolution process for both governments and legislatures.

*ii. confirm that the consent process “protects and respects the devolution settlement”, and*

As above, we will need further input from UK Government in order to finalise this.

*iii. provide a copy of the relevant intergovernmental agreement to Senedd Committees.*

I will be happy to provide this to the Committees as and when anything is agreed.

2. ...What advice and guidance has been provided to individual departments in the Welsh Government about the work they must undertake to ensure they are confident that the retained EU law listed in the Schedule to the REUL Act is no longer needed?

Welsh Government officials in the central team dealing with post-Brexit matters worked with individual policy teams to ensure that the contents of the Schedule for revocation were fit for purpose when it was constructed in the latter Parliamentary stages at Westminster. Those policy teams have also worked with UK Departments to ensure that all necessary measures are retained.

3. ...Please can you confirm the nature and details of this engagement, and what analysis the Welsh Government has undertaken on the 93 pieces of retained EU law which are included in Schedule 2 to these Regulations.

The large majority of those 93 pieces are matters of reserved competence as regards Wales. On those few which did touch on devolved competence in Wales, there was contact by UK Departments to Welsh Government counterparts in the preparation of the Regulations. In that context, Welsh Government analysis has been proportionate and appropriate.

*4. ...What mechanisms, if any, exist within the Welsh Government to monitor changes to retained EU law in reserved areas that may impact Wales, including its impact in devolved areas up to June 2026?*

It is a priority for Welsh Government to focus on issues of devolved competence in Wales arising from the implementation of the REUL Act. We have not established a universal mechanism to address instruments covering matters of reserved competence in Wales. We will keep any such instruments under review and address any implications for matters that are the responsibility of the Welsh Government accordingly.

*5. ...Please would you confirm that this is the position across all Welsh Government departments.*

Yes, this is the position across the whole of the Welsh Government.

*6. The two items that are the subject of the aforementioned correspondence from the Minister for Climate Change show that for one set of Regulations (relating to fluorinated greenhouse gases) the relevant common framework was used but not for another (relating to National Emissions Ceiling Regulations).*

*i. Please would you explain why this was the case?*

As the Committee will be aware through its oversight of the Common Frameworks programme, there are varying levels of engagement between the UK Government and the devolved governments depending on the relevant Framework area. In policy areas where Frameworks processes are well embedded, information on policy and legislative proposals are shared constructively and in a timely manner with the Welsh Government.

*ii. You have previously told us that you did not have sight of Schedule 1 to the REUL Act prior to its addition to the Bill during the amending stages in the UK Parliament. Can you confirm whether the decision to include any of the retained EU law listed on Schedule 1 to the REUL Act went through the corresponding common framework?*

We would expect that discussions would have taken place via the relevant Common Framework. This follows a commitment by the UK Government to the proper use of Common Frameworks and that they would not seek to make changes to REUL within Common Frameworks without following the ministerially-agreed processes outlined in the documents.



Mick Antoniw MS  
Counsel General and Minister for the Constitution

22 September 2023

Dear Mick,

**Retained EU Law (Revocation and Reform) Act 2023**

Thank you for your letter of 12 September 2023 which we considered at our meeting of 18 September 2023. We welcome the responses you provided to the questions we asked in our letter on 14 July.

In recent weeks we have considered correspondence from other Welsh Ministers which relate to the *Retained EU Law (Revocation and Reform) Act 2023* (the REUL Act). While we have written to those Ministers with some specific questions, there are matters on which we would welcome your views. In addition, we would also like to follow-up on a number of issues raised in your most recent letter to us.

As such, I would be grateful if you could provide a response to our further questions, which are included in the annex to this letter, by 12 October 2023.

Yours sincerely,



Huw Irranca-Davies  
Chair

1. In your letter you state that Nusrat Ghani MP, Minister of State for Industry and Economic Security, wrote to you on 2 August requesting Welsh Ministers' consent to regulations which would remove "a small number of instruments in the Schedule [to the REUL Act] that should, on further investigation, be preserved as they are still of use". We have also received correspondence from the Minister for Climate Change and the Minister for Rural Affairs and North Wales and Trefnydd in which they have informed us that they too have consented to UK Ministers making regulations using powers in the REUL Act. You will be aware that the REUL Act does not contain a provision requiring the consent of the Welsh Ministers to be sought before a UK Minister exercises a delegated power in a devolved area under that Act. In your letter you state that the issue of an 'alternative consent mechanism' is not yet fully resolved. Given the correspondence we refer to above, please would you:
  - i. confirm and provide details of the consent process which has been agreed between the UK Government and the Devolved Governments,
  - ii. confirm that the consent process "protects and respects the devolution settlement", and
  - iii. provide a copy of the relevant intergovernmental agreement to Senedd Committees.
2. In your letter you state that cross-government work to review Schedule 1 to the REUL Act has continued. As mentioned in question 1, you state that the Minister of State for Industry and Economic Security wrote to you on 2 August requesting Welsh Ministers' consent to regulations which would remove a small number of instruments from Schedule 1 to the REUL Act because the Health and Safety Executive has identified these instruments as "the legal basis for the continued safe use of [biocidal products containing copper]". You confirm that Welsh Government officials have further reviewed the provisions identified by the Health and Safety Executive and agree that they should be preserved. The identification of these provisions is a welcome but serious matter. In a letter to the Climate Change, Environment and Infrastructure (CCEI) Committee, the Minister for Climate Change said her department has "assessed the Schedule through a *light touch policy review*". [Emphasis added]. What advice and guidance has been provided to individual departments in the Welsh Government about the work they must undertake to ensure they are confident that the retained EU law listed in the Schedule to the REUL Act is no longer needed?
3. We believe the regulations which are the subject of the letter from the Minister of State for Industry and Economic Security are The Retained EU Law (Revocation and Reform) Act 2023 (Revocation and Sunset Disapplication) Regulations 2023. In addition to this

instrument “prevent[ing] the revocation of instruments which further analysis has indicated should not have been included in the REUL Act’s revocation Schedule”, these Regulations also “will revoke 93 pieces of REUL, using the power conferred in section 14(1) of the REUL Act to revoke pieces of legislation which are redundant, have been superseded or no longer have any legal effect in the UK following our exit from the EU”. The UK Government’s draft explanatory memorandum states that “the [devolved administrations] were engaged on the purpose and contents of this instrument”. Please can you confirm the nature and details of this engagement, and what analysis the Welsh Government has undertaken on the 93 pieces of retained EU law which are included in Schedule 2 to these Regulations.

4. In your letter, you confirm that “Our review to date has been primarily focused on instruments in devolved areas”. What mechanisms, if any, exist within the Welsh Government to monitor changes to retained EU law in reserved areas that may impact Wales, including its impact in devolved areas up to June 2026?
5. In her letter to the CCEI Committee, the Minister for Climate Change stated “More generally, we do not have plans at this stage to use any powers under the REUL Act to revoke or reform assimilated law.” The Minister also stated “The Welsh Government has no plans to use its powers under the Act to revoke any further pieces of assimilated law, or to introduce new legislation to replace legislation contained in the Schedule 1 of the Act.” Please would you confirm that this is the position across all Welsh Government departments.
6. The two items that are the subject of the aforementioned correspondence from the Minister for Climate Change show that for one set of Regulations (relating to fluorinated greenhouse gases) the relevant common framework was used but not for another (relating to National Emissions Ceiling Regulations).
  - i. Please would you explain why this was the case?
  - ii. You have previously told us that you did not have sight of Schedule 1 to the REUL Act prior to its addition to the Bill during the amending stages in the UK Parliament. Can you confirm whether the decision to include any of the retained EU law listed on Schedule 1 to the REUL Act went through the corresponding common framework?

# Agenda Item 10

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

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