Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 1 – Senedd
Meeting date: 6 November 2017
Meeting time: 14.30

For further information contact:
Gareth Williams
Committee Clerk
0300 200 6362
SeneddCLA@assembly.wales

1 Introduction, apologies, substitutions and declarations of interest

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

2.1 SL(5)141 – The Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2017

(Pages 1 – 9)

CLA(5)-26-17 – Paper 1 – Regulations

CLA(5)-26-17 – Paper 2 – Explanatory Memorandum

CLA(5)-26-17 – Paper 3 – Report

3 Paper(s) to note

3.1 European Union (Withdrawal) Bill 2017

(Pages 10 – 27)

PTN 1 – Statement by the Welsh Government: Update on Brexit Negotiations – 24 October 2017

PTN 2 – Letter from the Llywydd to David Davis on the EU (Withdrawal) Bill – 24 October 2017

PTN 3a – Letter from Robin Walker to the Chair on the EU Withdrawal Bill – 24 October 2017

PTN3b – Letter from Chair of Constitutional and Legislative Affairs Committee to the UK Government – 31 July 2017

3.2 Assembly Reform: Disqualification

(Pages 28 – 33)

PTN 4a – Letter from the Llywydd to the Chair on Disqualification – 26 October 2017

PTN 4b – Letter from the Chair to the Llywydd– 4 October 2017

PTN 4c – Letter from the Llywydd to the Chair – 18 August 2017

3.3 SL(5)127 – The Well-being of Future Generations (W) Act 2015 (Assessments of Local Well-being) Regs 2017: Correspondence from the Cabinet Secretary for Environment and Rural Affairs

(Pages 34 – 36)

PTN 5 – Letter from the Cabinet Secretary for Environment and Rural Affairs on the Well-being of Future Generations (Wales) Act 2015 (Assessments of Local Well-being) Regulations 2017 – 24 October 2017

3.4 SL(5)128 – The Education (Supply of Information about the School Workforce) (Wales) Regulations 2017: Correspondence from Defenddigitalme

(Page 37)

PTN 6 – Letter from Defenddigitalme on SL(5)128 – The Education (Supply of Information about the School Workforce) (Wales) Regulations 2017 – 29 October 2017

3.5 SL(5)121 – The Education (Student Information) (Wales) Regulation 2017: Correspondence from Defenddigitalme

(Pages 38 – 40)

PTN 7 – Letter from Defenddigitalme on SL(5)121 – The Education (Student Information) (Wales) Regulation 2017

4 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

Items 5 and 6.

5 A stronger voice for Wales

(Pages 41 – 122)

CLA(5)-26-17 – Paper 4 – Stronger Voice for Wales: Draft Report

CLA(5)-26-17 – Paper 5 – Correspondence from a member of the public

CLA(5)-26-17 – Paper 6 – Legal advice note

CLA(5)-26-17 – Paper 7 – Stronger Voice for Wales: Proposal for activity to publicise the report

6 Forward Work Programme

(Pages 123 – 125)

CLA(5)-26-17 – Paper 8 – Forward Work Programme

Date of the next meeting

13 November 2017.

WELSH STATUTORY INSTRUMENTS

2017 No. 996 (W. 254)

ACQUISITION OF LAND, WALES

COMPENSATION

The Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2017

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in relation to Wales, increase the maximum and minimum amounts of home loss payments payable under the Land Compensation Act 1973 ("the Act") to those occupying a dwelling who have an owner's interest. These Regulations also increase the amount of home loss payment payable under the Act in any other case.

A person who is displaced from a dwelling by compulsory purchase or in other circumstances specified in section 29 of the Act is entitled to a home loss payment.

Section 30(1) of the Act provides that in cases where a person occupying a dwelling on the date of displacement has an owner's interest, the amount of home loss payment is calculated as a percentage of the market value of that interest, subject to a maximum and minimum amount.

Section 30(2) of the Act specifies the amount of the home loss payment in any other case.

Regulation 2(a) of these Regulations increases the maximum amount payable under section 30(1) of the Act from £55,000 to £57,500 and regulation 2(b) increases the minimum amount from £5,500 to £5,750.

Regulation 2(c) increases the home loss payment in any other case, under section 30(2) of the Act, from £5,500 to £5,750.

The revised amounts apply where the displacement occurs on or after 4 December 2017.

Regulation 3 revokes, with savings, the Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2016.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

WELSH STATUTORY INSTRUMENTS

2017 No. 996 (W. 254)

ACQUISITION OF LAND, WALES

COMPENSATION

The Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2017

Made *16 October 2017*

Laid before the National Assembly for Wales *18 October 2017*

Coming into force *4 December 2017*

The Welsh Ministers make the following Regulations in exercise of the powers conferred upon the Secretary of State by section 30(5) of the Land Compensation Act 1973(**1**) and now exercisable by them in relation to Wales(**2**):

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2017 and they come into force on 4 December 2017.

(2) These Regulations apply in relation to Wales.

(**1**) 1973 c. 26; section 30 was substituted by section 68(3) of the Planning and Compensation Act 1991 (c. 34) with effect from 25 September 1991 (*see* S.I. 1991/2067, article 3).

(**2**) The functions of the Secretary of State under section 30 were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2; and Schedule 1. The functions of the National Assembly for Wales under section 30 were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(3) In these Regulations "the Act" ("*y Ddeddf*") means the Land Compensation Act 1973.

Revision of prescribed amounts for home loss payment

2. When the date of displacement is on or after 4 December 2017—

(a) the prescribed maximum amount of home loss payment for the purposes of section 30(1) of the Act is £57,500;

(b) the prescribed minimum amount of home loss payment for the purposes of section 30(1) of the Act is £5,750; and

(c) the prescribed amount of home loss payment for the purposes of section 30(2) of the Act is £5,750.

Revocation and savings

3.—(1) Subject to paragraph (2), the Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2016(**1**) are revoked.

(2) The Regulations referred to in paragraph (1) will continue to have effect in relation to a displacement occurring before 4 December 2017.

Carl Sargeant
Cabinet Secretary for Communities and Children, one of the Welsh Ministers
16 October 2017

(**1**) S.I. 2016/1072 (W. 257).

Explanatory Memorandum to The Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2017

This Explanatory Memorandum has been prepared by the Education & Public Services Department of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2017.

Carl Sargeant
Cabinet Secretary for Communities and Children
18 October 2017

1. Description

These Regulations will increase the maximum and minimum amounts, as well as the flat rate amount of home loss payments payable under the Land Compensation Act 1973 ("the Act").

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

3. Legislative background

These Regulations are made under section 30(5) of the Act.

Home loss payments are payable under the Act to owner-occupiers and tenants of dwellings displaced by compulsory purchase or other circumstances specified in section 29 of the Act. The payments are made by the following bodies, depending on the circumstances:

a) The acquiring authority;
b) The authority which made the housing order;
c) The authority or housing association carrying out the improvement or redevelopment; or
d) The landlord.

They are paid to:

(a) an owner-occupier at a rate of 10% of the market value of their interest in a dwelling, subject to maximum and minimum thresholds; and

(b) a tenant at a flat rate equal to the minimum payment to an owner-occupier.

The current maximum threshold is £55,000 and the minimum threshold is £5,500. The current flat rate is also £5,500 and these amounts were set in 2016, by the Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2016 No. 1072 (W.257) ("the 2016 Regulations") which came into force on 5 December 2016.

Article 2 of and Schedule 1 to The National Assembly for Wales (Transfer of Functions) Order 1999 SI 1999/672 transferred the power to make regulations for Wales under Section 30(5) of the Act, to the National Assembly for Wales. Paragraph 30 of Schedule 11 to the Government of Wales Act 2006 transferred these functions to the Welsh Ministers.

These Regulations follow the negative resolution procedure.

4. Purpose & intended effect of the legislation

These Regulations will increase the maximum and minimum amounts of home loss payments and increase the flat rate payment.

In view of the increase in the Office for National Statistics' (ONS) mix-adjusted house price index for the UK during the period 2016-2017, Ministers in the Department for Communities and Local Government (DCLG) have made The Home Loss Payments (Prescribed Amounts) (England) Regulations 2017 No. 769, which came into force on 1 October 2017. This had the effect of increasing the maximum and minimum thresholds to £61,000 and £6,100 respectively and the flat rate to £6,100 in England.

Taking into account the increase in the ONS' mix-adjusted house price index for Wales during the same period, the Welsh Ministers have decided to increase the maximum and minimum thresholds to £57,500 and £5,750 respectively and the flat rate to £5,750.

While the house price index, as set out in the latest ONS house price index, has shown a 5.7% increase in house prices in England for the 12 month period until April 2017, there was only a 4.2% increase in house prices in Wales over the same period. The proposed increase in the thresholds in Wales is designed to reflect this.

These Regulations implement the change. The current thresholds and flat rate, prescribed by the 2016 Regulations, will continue to apply in relation to an owner-occupier or tenant displaced before 4 December 2017.

5. Consultation

These Regulations prescribe the maximum and minimum amounts and flat rate amount of home loss payments in line with the latest ONS house price index in Wales. Therefore no formal consultation has been undertaken in this instance as the increase is governed by a predetermined formula.

6. Publicity

The Welsh Government will inform Local Authorities and Registered Social Landlords of the increased thresholds and flat rate when these Regulations are laid before the National Assembly for Wales.

7. Regulatory Impact Assessment

The Regulatory Impact Assessment Code for Subordinate Legislation was considered in relation to these Regulations. The Regulations increase a statutory fee by a predetermined formula and as such, it has not been considered necessary to undertake a Regulatory Impact Assessment.

8. Competition Assessment

Not appropriate.

9. Post implementation review

Home loss payment thresholds are reviewed annually alongside the mix-adjusted house price index for England and Wales.

SL(5)141 - The Home Loss Payments (Prescribed Amounts) (Wales) Regulations 2017

Background and Purpose

These Regulations, which apply in relation to Wales, increase the maximum and minimum amounts of home loss payments payable under the Land Compensation Act 1973 ("the Act") to those occupying a dwelling who have an owner's interest. These Regulations also increase the amount of home loss payment payable under the Act in any other case.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument. The first being that the increased thresholds and flat rate will be lower than the equivalent thresholds and flat rate applicable in England (Standing Order 21.3(i)). The second point, as stated in the Explanatory Memorandum, is that no formal consultation has been undertaken and no Regulatory Impact Assessment has been carried out by the Welsh Government because the increase is governed by a predetermined formula (Standing Order 21.3(ii)).

Implications arising from exiting the European Union

No implications arising from exiting the European Union have been identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
26 October 2017

STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **Update on Brexit Negotiations**

DATE **24 October 2017**

BY **Carwyn Jones AM, First Minister**

I would like to make a statement on recent developments with regard to the UK's decision to leave the EU.

In my written statement earlier today, I reported on recent meetings with the UK Government, including last week's Joint Ministerial Committee (European Negotiations) which was attended by the Cabinet Secretary for Finance and Local Government.

From that, members will have seen that at last there is some indication that the Government realises it needs to work far more closely with the Devolved Administrations on these vital issues. We secured an assurance that we would be more fully involved with the development of future policy positions when the negotiations move into the second phase of detailed discussions on our future relationship with the EU.

Though, Llywydd, I have say that this would not be difficult, given the way in which papers on vital issues such as Customs Arrangements, the Ireland/Northern Ireland border, and even the largely devolved policies of Research and Development were published without any input from this Welsh Government.

Moreover, on the constitutional implications of Brexit within the UK and the crucial issue of providing legal certainty as we leave the EU, we appear to have seen a significant shift in the UK Government's position. In line with the ideas we set out in July, we have agreed with the Scottish and UK Governments, the principles that should underpin common frameworks that could be developed jointly between administrations for areas where cooperation or common standards are needed when EU frameworks cease to operate (I have published these principles for Members, via a Written Statement). Work to take this forward is now underway and I look forward to this Assembly having the opportunity to scrutinise future joint agreements.

And while it is far too early to conclude that the UK Government will address our fundamental concerns on the EU (Withdrawal) Bill, it is clear that they do at least recognise the seriousness of the issues we have raised and the breadth of support within Parliament for the amendments which we, together with the Scottish Government, have proposed. As a Government we are absolutely clear that we will not recommend that this Assembly gives its consent to the legislation unless and

until there are meaningful amendments on two fronts. First, to remove the imposition of new restrictions on the legislative competence of the Assembly, and second, to ensure that UK Ministers must consult us before making any changes to legislation within devolved competence, however 'technical'. To use a rather hackneyed phrase, the ball is now in their court.

If we have seen some positive developments in terms of the domestic agenda, I see less reason to be optimistic over the negotiations with the EU-27.

Last week, the European Council met to consider whether sufficient progress had been made to proceed to the second phase of negotiations. Regrettably, they concluded that more work has still to be done on the terms of the UK's exit from the EU before negotiations can commence on the long-term relationship and the vital question of transitional arrangements.

In the view of our EU partners, the UK Government has not given sufficient clarity on how to protect the rights of EU nationals in the UK, on how to resolve the complex issues arising from the Northern Ireland land border, nor on the financial terms on which the UK should leave. This is deeply worrying and a massive failure of policy and political leadership.

What would we have said if we had been told on June 30 last year that 16 months later - and less than 18 months before we will leave the EU by default even if no agreement is reached – that we would have not even started negotiating the terms of our future relationship with the EU?

Of course, the issue of how to disentangle the hugely complex nexus of ties that have bound us together with our closest neighbours for more than 40 years was always going to be highly complex.

But on citizens' rights, we argued from day 1 that the UK Government could and should have made a generous and unilateral offer to secure the existing rights of all EU citizens who have chosen to live and work in the UK for the future. It is not too late to do so now.

This is not just a moral issue - EU nationals living in Wales make a valuable contribution to our businesses, our public services and our society and we can ill afford to lose them.

In terms of the Ireland/Northern Ireland border, it has become increasingly clear that a so-called soft border can only be maintained if we continue to work within a Customs Union with the EU. And again, here, the choice should be clear cut. The UK Government has presented no evidence at all to justify its assumption that the economic advantages of moving away from a Customs Union – seduced by the prospect of hypothetical new free trade agreements – would compensate for the disadvantages of erecting new barriers to the 'free and frictionless' flow of trade to our biggest market.

And while it would clearly be wrong to sell UK taxpayers' short in terms of any financial settlement, we need to recognise two things. Firstly, that the potential for

economic damage from no deal would make any loss to the exchequer from a one-off payment recognising our liabilities pale into insignificance. And secondly, that we have moral and political responsibilities to honour commitments made with our agreement as a member-state. I ask Members here to think how we would react if the European Commission notified us that the Structural Fund Operational Programmes in Wales agreed with them after years of development and negotiation were going to be drastically cut back because of a decision taken in another member-state which the rest of the EU had had no opportunity to influence.

To the prospect of five or six more years of funding for apprenticeships, for crucial infrastructure like the Metro, for support to harness the potential of our Universities to apply research to the real world economy which we believed was secure, being snatched away?

The failure to ensure sufficient progress on these issues by the time of the October European Council is a critical one. While the UK Government has at long last accepted the need – which we have advocated since the referendum – for a transition period to provide an element of economic certainty, businesses and business organisations are telling us that they need to take critical investment decisions right now. There really is no time to lose. Don't take my word for it: ask the CBI.

Llywydd, last week I was attacked for saying that no deal was unthinkable and that it was impossible to mitigate the effects of such a disastrous conclusion to the negotiations with the EU 27. Let me quote just a few of the examples of expert organisations' warnings of the impact of no deal published in just the last month:

- The BMA says it would 'remove the guarantee of consistent and timely access to radioisotopes' which are 'vital..for the treatment of cancer', 'potentially resulting in delays in diagnosis and cancelled operations for patients'
- The British Airlines Pilots Association says 'UK airlines could find they have to stop flying – it's that serious'
- The British Retail Consortium says reverting to WTO tariffs might mean UK shoppers paying up to a third more for everyday food items, with the price of cheese up 30% and tomatoes up nearly 20% while the introduction of customs controls with little notice would create 'enormous disruption and have a potential impact on the availability of food on the shelves'
- The Freight Transport Association says a cliff edge solution would 'send costly shockwaves through EU trade flows and supply chains'
- The Agriculture and Horticulture Development Board models a 'Fortress UK' scenario where we trade on WTO terms would render upland farms economically unsustainable.
- And the leading Dutch bank, Rabobank, estimates that 'no deal' could lead to a level of GDP 18% lower in 2030 than it would have been had we remained in the EU.

A disorderly Brexit would take decades to recover from and lead to chaos and damage to our economy, our social fabric and our security. Preventing this outcome, not preparing contingency plans for it, is what we should be doing, and what we are doing. To do otherwise would be like a passenger on the Titanic who, seeing the iceberg straight ahead, goes below to find his lifejacket and pack his bags, rather than rushing to the bridge and hammering on the door in a desperate attempt to alert the captain to the disaster ahead.

So I repeat what I said last week - 'no deal' cannot be an option. However difficult, the UK Government must do absolutely everything in its power to reach a position on the terms of exit so that the December European Council will move negotiations into the second phase and very rapidly thereafter conclude agreement on a transition phase of at least two years. Our offer to support and contribute to the negotiations remains and we continue to press at every opportunity to ensure the interests of Wales are taken into proper account.

Check against delivery

Embargoed until after Carwyn Jones, First Minister has delivered the statement.

Elin Jones AC, Llywydd
Cynulliad Cenedlaethol Cymru
Elin Jones AM, Presiding Officer
National Assembly for Wales

The Rt Hon David Davis MP
Secretary of State for Exiting the European Union
Department for Exiting the European Union
9 Downing Street
LONDON
SW1A 2AS

Your ref:
Our ref: EJ/RT

24 October 2017

Dear Secretary of State

EU (Withdrawal) Bill

The EU Withdrawal Bill will have a significant impact on Wales' devolution settlement. I am pleased that you have acknowledged this and the need to seek the consent of the National Assembly for Wales for the Bill.

As well as discussing aspects of the Bill with the Welsh Government, I would like to stress the need for UK Government to engage directly with the National Assembly. Given the Assembly's role in scrutinising the implications of the Bill before considering whether to pass a legislative consent motion, it is in the UK Government's interests to foster open and positive engagement with the Assembly's committees, in particular.

I was pleased that your Parliamentary Under-Secretary of State was able to attend the recent meeting of the UK Interparliamentary Forum on Brexit. You will have noted the statement from that forum that:

"…it is essential that DExEU Ministers are available to give evidence to all parliamentary committees with a role in scrutinising the Brexit process and the European Union (Withdrawal) Bill."

Cynulliad Cenedlaethol Cymru
Bae Caerdydd, Caerdydd, CF99 1NA
Llywydd@cynulliad.cymru
www.cynulliad.cymru
0300 200 7403

National Assembly for Wales
Cardiff Bay, Cardiff, CF99 1NA
Llywydd@assembly.wales
www.assembly.wales
0300 200 7403

Elin Jones AC, Llywydd
Cynulliad Cenedlaethol Cymru
Elin Jones AM, Presiding Officer
National Assembly for Wales

At the recent Joint Ministerial Committee (European Negotiations) you agreed a commitment that common policy frameworks "will respect the devolution settlements and the democratic accountability of the devolved legislatures." The recognition given to the role of devolved parliaments is a step in the right direction.

Accordingly, I expect full engagement with the Assembly's committees from all relevant UK Government departments, which should respect and respond to representations made to them in areas within the Assembly's competence.

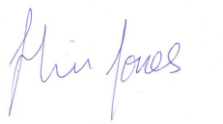
You will have seen the National Assembly's cross-party External Affairs Committee Report published in June 2017 into The Great Repeal Bill White Paper: Implications for Wales.

You will also be aware that the same Committee, building on this report, has published a series of proposed amendments to the Bill. These are based on written and oral evidence received from a wide range of stakeholders and have benefitted from the input of constitutional and legal experts from across the United Kingdom.

Given the cross party nature of the Committee's deliberations and the unanimous support for its recommendations, I have no hesitation in adding my support to the Committee's proposals.

I hope that by the time the Bill proceeds to the Lords, the Government will have taken the opportunity to address the important points relating to the devolution settlement that have been raised by the Committee.

Yours sincerely



Elin Jones AM
Llywydd

cc Alun Cairns MP, Secretary of State for Wales
Damian Green MP, First Secretary of State
Carwyn Jones AM, First Minister of Wales
David Rees AM, Chair, External Affairs and Additional Legislation Committee
Huw Irranca-Davies AM, Chair, Constitutional and Legislative Affairs Committee

Department for Exiting the European Union

Robin Walker MP
Parliamentary Under Secretary for Exiting the European Union
9 Downing Street
SW1A 2AG

+44 (0)20 7276 1234
psrobinwalker@dexeu.gov.uk
www.gov.uk

Huw Irranca-Davies AM
Chair, Constitutional and
Legislative Affairs Committee
National Assembly for Wales
Cardiff, CF99 1NA

26th October 2017

Dear Huw,

EUROPEAN UNION (WITHDRAWAL) BILL

Thank you for your letter of 31 July and for your comments on the devolution provisions of the European Union (Withdrawal) Bill. I am responding on behalf of the Secretary of State for Exiting the European Union. I apologise for the delay in responding and I hope this letter addresses your concerns.

The appropriateness of the transitional arrangement and the differences between the powers of UK Ministers compared to Welsh Ministers

As you know, the Bill will replicate the common UK approach created by EU law in UK law and maintain the scope of devolved decision-making powers immediately after exit. The provisions in the Bill that prevent the modification of retained EU law replicate the existing limit on devolved institutions legislating or otherwise acting incompatibly with EU law. By preventing problematic or uncoordinated divergence, the Bill maximises certainty for businesses and individuals across the country.

As you recognise, this is a transitional measure while consultation and decisions are taken on where it may be in our shared interests to continue to have common approaches. It is the aim of the UK Government to retain common frameworks only where they are needed, and as I have expressed repeatedly, it remains our expectation that the outcome of this process will be a significant increase in the decision-making power of each devolved administration. The First Secretary and the Secretary of State for Exiting the European Union want to work closely and constructively with the Welsh Government and the other devolved administrations on this.

You referenced the difference between the powers given to UK Ministers and Welsh Ministers in relation to modifying retained direct EU legislation in otherwise devolved areas. Amending such legislation is not currently within the competence of the devolved administrations and the Bill does not change that. Where a matter is by

agreement released from the temporary competence restriction, the relevant devolved legislature(s) will be able to modify the retained direct EU legislation in the area that has been released. In the meantime, whilst these discussions are taking place with devolved administrations we will seek to minimise any changes to the frameworks we have replicated.

Scrutiny of secondary legislation

I agree that scrutiny of the Welsh Ministers' exercise of delegated powers is a matter for the Assembly. The Bill proposes scrutiny arrangements for all instruments brought forward under the Bill, as is appropriate when new powers are introduced. Currently, the scrutiny arrangements for instruments made by Welsh Ministers are equivalent to those for instruments made by Ministers of the Crown. However, as you know, the Government of Wales Act 2006 (as amended) gives the Assembly the power to vary Assembly scrutiny arrangements provided in enactments including in Acts of Parliament. This Bill preserves that for the powers it delegates to Welsh Ministers.

We want to work closely with the devolved legislatures to ensure that they are satisfied that they are able to undertake the appropriate level of scrutiny over the use of the powers in the Bill. It is important that we can strike the right balance between the need for robust legislative oversight and ensuring our law works correctly when we leave the EU.

Scope of the powers under clauses 7, 8 and 9

You raised a number of concerns in relation to the scope of the delegated powers in the Bill. The exact number of statutory instruments which will be required will depend partly on the outcome of the negotiations. As such, more detail will be available on the steps needed as the negotiations progress.

This inability to set out in advance how the powers will be used is part of the reason why we have chosen to constrain the powers in a number of ways, to reassure Parliament and the devolved legislatures that these powers will only be used for the purpose for which they were designed.

The need for these powers has been widely recognised. We have placed a number of limitations and restrictions on the powers. For example, the correcting power and power to implement the withdrawal agreement will be time limited. We have set out the proposed limitations on each of the powers in the delegated powers memorandum published alongside the Bill[1]. However, it is essential that the powers in the Bill are broad enough to capture all of the necessary corrections and provide the necessary flexibility to cater for a range of negotiated outcomes.

You expressed concern about the appropriateness of UK Ministers and Welsh Ministers making regulations that could amend legislation made by the National

[1] available at https://publications.parliament.uk/pa/bills/cbill/2017-2019/0005/delegated%20powers%20memorandum%20for%20European%20Union%20(Withdrawal)%20Bill.pdf.

Assembly for Wales. Corrections to the law will be needed in all types of legislation. If Welsh Ministers were not able to correct Acts of the Assembly this would result in a statute book that no longer operated as intended.

It is therefore right that devolved ministers have the power to correct all domestic legislation in devolved areas so that they can ensure the statute book continues to function on exit day. All secondary legislation made under the powers in the Bill will be subject to the usual scrutiny procedures of the UK Parliament and the National Assembly for Wales.

Making sure the statute book works for exit day will be a joint endeavour. The Government wants to work closely with the devolved administrations throughout the exit process to deliver laws that function correctly across the UK in time for exit. The UK Government will not normally make corrections to devolved domestic legislation without the agreement of the relevant devolved administration.

You also raised concerns relating to the ability of UK Ministers to make regulations that could change the powers of the National Assembly for Wales. While the powers in the Bill are capable of amending the Government of Wales Act (GoWA), we are clear that wherever possible we will use existing powers in GoWA to, for example, correct any deficiencies in that Act, and we will do so in consultation with the Welsh Government.

The scope of the Bill's correcting power is significantly reduced by correcting, on the face of the Bill, as many deficiencies in GoWA as possible. This is an exceptional step, which we have only taken for the devolution settlements as we recognise their importance. We intend for more substantive corrections, for example to reservations in the new Schedules 7A and 7B, to be made, as far as possible, using the existing mechanisms in GoWA (e.g. section 109 orders). We consider this to be a better approach: it will allow us more time to consult with the Welsh Government on the changes, as well as provide a formal role for the Assembly in approving the amendments.

The Charter of Fundamental Rights

You enquired whether there will be any rights or principles that will not be converted into UK law. There are, of course, rights in the Charter that are intrinsically linked to being part of the EU. These include rights like standing for election or voting in European Parliament elections or the right to petition the European Parliament. These will naturally fall away as a consequence of our exit from the EU.

However, I want to assure you that the Government is clear that the removal of the Charter from UK law is not intended to affect the substantive rights that individuals already benefit from in the UK. This is because the Charter of Fundamental Rights did not create any new rights. Instead it was intended to catalogue the rights that already existed in EU law - and as you reference in your letter this law is being converted into UK law on the point we exit the EU.

The Charter also only applies to Member States when acting within the scope of EU law. We will not be a member state, nor will we be acting in the scope of EU law, once we leave the EU.

The Charter of Fundamental Rights is also only one element of the UK's human rights architecture. Most of the rights protected in the Charter are also protected in other international instruments, notably the European Convention on Human Rights, but also UN and other treaties too.

I hope you find that our response has addressed the principal concerns you raise and explains the Government's position. I regret that the Secretary of State for Exiting the European Union is unable to attend the proposed joint meeting of the your committee and the External Affairs Committee. I have however discussed this matter with the Secretary of State for Wales, who would welcome the opportunity to give evidence to your committee on the Bill. As Parliamentary Under Secretary of State, with responsibility for devolution in my department, I would be happy to support him at this session.

I am copying this letter to the First Secretary of State, the Secretary of State for Wales and the Chair of the External Affairs and Additional Legislation Committee.

ROBIN WALKER MP
PARLIAMENTARY UNDER SECRETARY OF STATE
FOR EXITING THE EUROPEAN UNION

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

National Assembly for Wales
Constitutional and Legislative Affairs Committee

Rt Hon David Davis MP
Secretary of State for Exiting the European Union

31 July 2017

European Union (Withdrawal) Bill

At our last meeting on 17 July we gave some initial consideration to the European Union (Withdrawal) Bill, which received its first reading in the House of Commons.

We thought it would be helpful to highlight some initial concerns we have identified. As part of our work on the Bill with the Assembly's European and External Affairs Committee, we are seeking views on these concerns over the summer.

1. The powers of the National Assembly for Wales

Clause 11 of the Bill freezes the competence of the National Assembly for Wales in relation to EU law. The National Assembly for Wales must currently comply with EU law and the Bill says that, after exit, the National Assembly for Wales will still have to comply with the body of EU law that will be retained after exit.

The Explanatory Notes to the Bill say that this "is intended to be a transitional arrangement while decisions are taken on where common policy approaches are or are not needed. It provides that the devolved legislatures or administrations may only modify retained EU law to the extent that they had the competence to do so immediately before exit. This means that devolved institutions will still be able to act after exit as they could prior to exit in relation to retained EU law".

Cynulliad Cenedlaethol Cymru
Bae Caerdydd, Caerdydd, CF99 1NA
SeneddMCD@cynulliad.cymru
www.cynulliad.cymru/SeneddMCD
0300 200 6565

National Assembly for Wales
Cardiff Bay, Cardiff, CF99 1NA
SeneddCLA@assembly.wales
www.assembly.wales/SeneddCLA
0300 200 6565

However, the Bill does not include any such freezing in relation to the Westminster Parliament, which means that the UK's withdrawal from the EU is having an uneven impact on the constituent countries that make up the UK. As for moving out of this transitional arrangement, the Explanatory Notes clearly say that the agreement of the National Assembly for Wales will be needed when deciding where responsibilities will be held in future.

We are therefore concerned about the appropriateness of this transitional arrangement and in particular that the National Assembly for Wales will still have to comply with retained EU law, while the Westminster Parliament will not.

2. Procedures for subordinate legislation

The Bill sets out the procedure that applies to regulations made under the Bill, including regulations made by the Welsh Ministers that will be laid before the National Assembly for Wales.

Paragraphs 1(2), 5(2) and 6(2) of Schedule 7 to the Bill set out the regulations that are subject to the affirmative resolution procedure. Any other regulations are subject to the negative procedure (but see also regulations made in urgent cases, for example under paragraph 3 of Schedule 7).

We are concerned that the Bill dictates to the National Assembly for Wales the procedure to be applied to regulations that are made by the Welsh Ministers in devolved areas and that are laid before, and scrutinised by, the National Assembly for Wales.

We are also concerned that the procedure chosen for some of the regulation-making powers in the Bill may not be appropriate.

3. Powers to make regulations under clauses 7, 8 and 9 and Schedule 2 – scope of the powers

The powers to make regulations under clauses 7, 8 and 9 and Schedule 2 set out a complex mix of rules as to when the powers can and cannot be used.

The powers in clauses 7, 8 and 9 and Schedule 2 are limited in various ways. For example, the clause 7 power must only be used to deal with any failure or deficiency in retained EU law arising from withdrawal. The clause 8 power must only be used to secure compliance

with international obligations arising from withdrawal. The clause 9 power must only be used for the purposes of implementing the withdrawal agreement.

There are also other limitations on what the regulations can do. For example, the power to make regulations in clauses 7, 8 and 9 and Schedule 2 cannot be used to impose a tax or to change the Human Rights Act 1998 (see clauses 7(6), 8(3) and 9(3) for the full list of such limitations).

However, the Bill says that the power to make regulations under clauses 7, 8 and 9 and Schedule 2 includes the power to do anything that could be done by an Act of Parliament. This means that regulations could be used to amend primary legislation, including primary legislation passed by the National Assembly for Wales. The Committee has taken a strong interest in the use of Henry VIII powers when scrutinising Bills and as a matters of principle believes that, where such powers are used, the affirmative procedure must apply.

In addition, UK Ministers (but not the Welsh Ministers) could use powers given to them in the Bill to make regulations that amend the Government of Wales Act 2006, in a way that changes the powers of the National Assembly for Wales. Any such regulations would be subject to the affirmative procedure (see paragraphs 1(2)(f), 5(2)(f) and 6(2)(f) of Schedule 7 to the Bill).

We are concerned about:

- **whether the powers to make regulations under the Bill are as clear as they could be;**

- **the extent of the powers and accordingly whether they should be subject to more limitations or fewer limitations;**

- **whether the extent of the powers in clauses 7, 8, 9, and Schedule 2(and the consequential and transitional powers in clause 17) provide scope for them to be used inappropriately;**

- **whether it is appropriate for the Bill to give the UK Ministers and the Welsh Ministers the power to make regulations that could be used to amend primary legislation made by the National Assembly for Wales; and**

- **whether it is appropriate that the Bill gives the UK Ministers the power to make regulations that could change the powers of the National Assembly for Wales.**

4. Powers to make regulations under clause 7 and Schedule 2 – powers of UK Ministers compared to powers of the Welsh Ministers

Clause 7 of the Bill gives very broad powers to UK Ministers to make subordinate legislation in the form of regulations; those regulations will be able to do anything that an Act of Parliament can do, and therefore the regulations could be used to amend primary legislation.

The broad scope of such powers always raises constitutional concerns, but the Committee highlights certain aspects of these powers that are of particular concern to Wales.

The Bill creates the concept of "retained EU law" which will apply in the UK after exit day. Retained EU law is made up of:

- "EU-derived domestic legislation" (clause 2 of the Bill). This category of retained EU law includes all the regulations that have been made by the Welsh Ministers to implement EU law in Wales. For example, the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017 were made by the Welsh Ministers to implement EU Directives on the marketing of fruit.[1]

- "direct EU legislation" (clause 3 of the Bill). This category of retained EU law includes legislation made at EU level which has direct effect in Member States, meaning that the Member State does not have to do anything to implement the law because it applies automatically once it is made at EU level. For example, EU Regulation 1169/2011 was made by the European Parliament and the Council of the European Union (based on a proposal from the European Commission), and sets out requirements around food packaging and labelling. Other examples of direct EU legislation includes EU Regulations in areas such as fishing, agriculture, environment and medicines.

[1] For information, examples of EU-derived domestic legislation made by the Welsh Ministers are included in the Annex

- Other EU rights and obligations (clause 4). This category of retained EU law includes any other EU rights and obligations, not captured under clause 3 or 4. For example, article 18 of the Treaty on the Functioning of the European Union prohibits discrimination on the ground of nationality, and that right will form part of retained EU law (although the actual text of article 18 will not form part of retained EU law, the substance of the right will).

While UK Ministers are given very broad powers in relation to all three categories of retained EU law, the Welsh Ministers are given far narrower powers. In particular, the Welsh Ministers are not given any powers to modify retained EU law that comes within clause 3 or 4 of the Bill, even where the retained EU law applies in Wales and is in devolved areas such as fishing, agriculture and the environment. Also, while the Welsh Ministers are given powers to modify retained EU law that comes within clause 2, those powers are significantly narrower than the powers given to UK Ministers; Schedule 2 to the Bill sets out the constraints that apply to the powers given to the Welsh Ministers.

Notwithstanding our concerns at the breadth of powers generally, we are also concerned at the implications of giving powers to UK Ministers, including powers to modify direct EU legislation in devolved areas in Wales, which are much broader than the powers being given to the Welsh Ministers.

5. The Charter of Fundamental Rights

Clause 5(5) of the Bill says that the Charter of Fundamental Rights will not be part of domestic UK law on or after exit day, but clause 5(6) says that this does not affect the retention of fundamental rights or principles. So while the Charter itself will not form part of domestic UK law after exit, the underlying fundamental rights and principles will. The Explanatory Notes to the Bill say: "By converting the EU *acquis* into UK law, those underlying rights and principles will also be converted into UK law, as provided for in this Bill".

We are concerned about whether those underlying fundamental rights and principles are sufficiently safeguarded under the Bill. In particular, are there any fundamental rights and principles that will not be converted into domestic legislation?

I hope you find our initial views helpful as we consult over the summer and that they will be of use as you take the Bill through the UK Parliament.

I am copying this letter to the Secretary of State for Wales, the First Minister of Wales, the National Assembly's Chair of the External Affairs and Additional Legislation Committee, the

Llywydd of the National Assembly for Wales, the Chair of the House of Commons Public Administration and Constitutional Affairs Committee, the Chair of the House of Lords Constitution Committee, the Chair of the House of Lords EU Select Committee and the Chair of the Finance and Constitution Committee in the Scottish Parliament.

Yours sincerely

Huw Irranca-Davies
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Annex - Examples of EU-derived domestic legislation made by the Welsh Ministers

School Milk (Wales) Regulations 2017/724

Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017/691

Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017/567

Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017/565

Bathing Water (Amendment) (Wales) Regulations 2017/453

Building Regulations &c. (Amendment) (Wales) Regulations 2016/611

Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016/386

Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016/387

Common Agricultural Policy (Amendment) (No. 2) (Wales) Regulations 2016/217

Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2015/2020

Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015/1867

Planning (Hazardous Substances) (Wales) Regulations 2015/1597

Country of Origin of Certain Meats (Wales) Regulations 2015/1519

Environmental Damage (Prevention and Remediation) (Amendment) (Wales) Regulations 2015/1394

Common Agricultural Policy Basic Payment and Support Schemes (Wales) Regulations 2015/1252

Common Agricultural Policy (Integrated Administration and Control System and Enforcement and Cross Compliance) (Wales) Regulations 2014/3223

Rural Development Programmes (Wales) Regulations 2014/3222

Agricultural Subsidies and Grants Schemes (Appeals) (Wales) (Amendment) Regulations 2014/2894

Animal By-Products (Enforcement) (Wales) Regulations 2014/517

African Horse Sickness (Wales) Regulations 2013/1662

Animal Health (Miscellaneous Fees) (Wales) Regulations 2013/1241

Plant Health (Fees) (Wales) Regulations 2012/1493

Beef and Veal Labelling (Wales) Regulations 2011/991

Eggs and Chicks (Wales) Regulations 2010/1671

Air Quality Standards (Wales) Regulations 2010/1433

Animals (Divisional Veterinary Managers) (Wales) Regulations 2010/619

Private Water Supplies (Wales) Regulations 2010/66

European Fisheries Fund (Grants) (Wales) Regulations 2009/360

Bluetongue (Wales) Regulations 2008/1090

Export and Movement Restrictions (Foot-and-Mouth Disease) (Wales) Regulations 2007/3296

Environmental Noise (Wales) Regulations 2006/2629

Elin Jones AC, Llywydd
Cynulliad Cenedlaethol Cymru
Elin Jones AM, Presiding Officer
National Assembly for Wales

Huw Irranca-Davies AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Your ref:
Our ref: EJ/HG

26 October 2017

Dear Huw

Assembly reform: disqualification

In my letter of 18 August, I outlined the work that the Assembly Commission is leading on behalf of the Assembly to consider how the powers in the Wales Act 2017 relating to the Assembly's electoral and institutional arrangements might be exercised. I look forward to receiving your views on any legislative reforms required relating to defamation, contempt of court and Assembly privilege in due course.

As part of this work, careful consideration has been given to the Fourth Assembly's Constitutional and Legislative Affairs Committee's inquiry into disqualification from being an Assembly Member in 2014. The Committee's recommendations include a number calling for legislative change (see Annex to this letter). At the time, these issues were not within the Assembly's competence. However, the devolution of powers over the Assembly's electoral arrangements with effect from April 2018, and the development of Assembly Reform legislation, could provide an opportunity to give effect to the Committee's recommendations.

I would welcome your Committee's views on how your predecessors' recommendations should be taken forward, and whether there are any other issues relating to disqualification which should be considered as part of the development of an Assembly Reform Bill.

Cynulliad Cenedlaethol Cymru
Bae Caerdydd, Caerdydd, CF99 1NA
Llywydd@cynulliad.cymru
www.cynulliad.cymru
0300 200 7403

National Assembly for Wales
Cardiff Bay, Cardiff, CF99 1NA
Llywydd@assembly.wales
www.assembly.wales
0300 200 7403

Elin Jones AC, Llywydd
Cynulliad Cenedlaethol Cymru
Elin Jones AM, Presiding Officer
National Assembly for Wales

I am acutely aware of your Committee's substantial workload and the need for you to balance competing priorities. For that reason, I thought it best to write to you as early as possible so that you have sufficient lead-in time and provide you with an opportunity to inform the development of the legislation. It would be helpful to receive your views on any issues which might require legislative change as part of the reform programme by the end of 2017.

Yours sincerely

Elin Jones AM
Llywydd

Annex: Relevant recommendations on disqualification made by the Fourth Assembly's Constitutional and Legislative Affairs Committee

Recommendation 2 - we recommend that the UK Government brings forward appropriate legislation to amend the Government of Wales Act 2006 to provide that disqualification from a particular public office should take effect on taking the oath or affirmation of allegiance as an Assembly Member. This change should not apply to a very limited number of posts - as specified in section 16 of the 2006 Act or by order - where being a candidate would, for example, give rise to a conflict of interest or appear to undermine impartiality.
Recommendation 3 - we recommend that the UK Government brings forward appropriate legislation to remove the relevant provisions in The National Assembly for Wales (Representation of the People) Order 2007 requiring candidates, when accepting nomination, to declare that to the best of their knowledge and belief, they do not hold a disqualifying office.
Recommendation 5 - we recommend that the UK Government amends section 16 of the Government of Wales Act 2006 to ensure that any disqualifications it contains are set out fully rather than by reference to other legislation and that all disqualifications it specifies take effect on nomination.
Recommendation 6 - we recommend that the UK Government amends section 16(1) of the Government of Wales Act 2006 to remove the Auditor General and Public Services Ombudsman for Wales, so that they may be included in an appropriate disqualification order with other offices.
Recommendation 7 - we recommend that the UK Government amends section 16(4) of the Government of Wales Act 2006 so that a person who holds office as lord-lieutenant, lieutenant or high sheriff should be disqualified from being an Assembly Member.
Recommendation 21 - we recommend that the UK Government prohibits the practice of standing as an Assembly Member and a Member of the House of Lords, but that such a prohibition should not be applied to anyone who is currently serving as a member of both institutions.

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

National Assembly for Wales
Constitutional and Legislative Affairs Committee

Elin Jones AM
Y Llywydd

4 October 2017

Annwyl Llywydd

ASSEMBLY REFORM: DISQUALIFICATION, DEFAMATION, CONTEMPT OF COURT AND ASSEMBLY PRIVILEGE

Thank you for your letter of 18 August 2017, which we considered at our meeting on 25 September 2017.

We have a busy programme of work scheduled for the autumn term, focusing on the scrutiny of legislation, the completion of our Stronger Voice inquiry and scrutiny of the UK Government's EU (Withdrawal) Bill. Nevertheless, as a first step, we have asked for some advice on the issues you have raised with a view to considering them later in the term.

We will write again once we have considered that advice and once our programme of work on the scrutiny of the Withdrawal Bill becomes clearer in light of the Bill's passage through the UK Parliament.

Yours sincerely

Huw Irranca-Davies

Huw Irranca-Davies
Chair

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

Cynulliad Cenedlaethol Cymru
Bae Caerdydd, Caerdydd, CF99 1NA
SeneddMCD@cynulliad.cymru
www.cynulliad.cymru/SeneddMCD
0300 200 6565

National Assembly for Wales
Cardiff Bay, Cardiff, CF99 1NA
SeneddCLA@assembly.wales
www.assembly.wales/SeneddCLA
0300 200 6565

Elin Jones AC, Llywydd
Cynulliad Cenedlaethol Cymru
Elin Jones AM, Presiding Officer
National Assembly for Wales

Huw Irranca-Davies AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Your ref:
Our ref: EJ/HG

18 August 2017

Dear Huw

Assembly reform: disqualification, defamation, contempt of court and Assembly privilege

As you will be aware, the Wales Act 2017 provides the Assembly with powers to determine its own internal, operational and electoral arrangements. The Commission is leading work to explore how these powers might be used to ensure that this institution is a stronger, more accessible, inclusive and forward-looking legislature that delivers effectively for the people of Wales.

Earlier this year I announced that the Commission intends to introduce legislation in 2018 to change the Assembly's name. I have also established an Expert Panel to consider matters relating to the size and electoral arrangements of the Assembly. Once the Panel has reported, the Commission will consider the full scope of the reform programme and the legislative proposals we intend to bring forward.

As part of this scoping work, the Commission is also considering whether any reform is required to the sections of the Government of Wales Act 2006 relating to the Assembly's internal arrangements which the Wales Act 2017 will bring within the Assembly's legislative competence. This includes provisions which fall within the remit of your Committee, and on which I would welcome your views.

Cynulliad Cenedlaethol Cymru
Bae Caerdydd, Caerdydd, CF99 1NA
Llywydd@cynulliad.cymru
www.cynulliad.cymru
0300 200 7403

National Assembly for Wales
Cardiff Bay, Cardiff, CF99 1NA
Llywydd@assembly.wales
www.assembly.wales
0300 200 7403

Elin Jones AC, Llywydd
Cynulliad Cenedlaethol Cymru
Elin Jones AM, Presiding Officer
National Assembly for Wales

Disqualification

Sections 16 to 19 of GOWA make provision in relation to disqualification from membership of the Assembly. As part of the scoping work, my officials are giving careful consideration to the recommendations made in the Fourth Assembly's Constitutional and Legislative Affairs Committee's 2014 report on disqualification. I will write further in the autumn to seek your Committee's views on these issues.

Defamation, contempt of court and Assembly privilege

Sections 42 and 43 of GOWA provide protections for Assembly Members from proceedings against them on the basis of defamation and, in some circumstances, contempt of court. The protection offered to Members is narrower than that offered by the principle of parliamentary privilege which operates in Westminster, although wider than the statutory protection in Scotland and Northern Ireland.

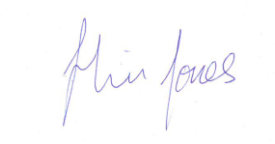
You will be aware that Assembly privilege is not a reserved matter under the Wales Act 2017. In principle, therefore, the Assembly could confer new privileges on itself, subject to the other reservations and competence tests which might apply.

I would welcome the views of your Committee on:

- the provisions in sections 42 and 43, in particular whether any legislative changes would be desirable as part of the Commission's reform work;
- whether any other reforms to the privileges of the Assembly would be desirable, and if so whether the Assembly reform legislation could be an appropriate legislative vehicle.

To ensure that your Committee's views can inform the development of the legislation, it would be helpful to receive your views on any issues which might require legislative change as part of the reform programme by the end of 2017.

Yours sincerely



Elin Jones AM
Llywydd

Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros yr Amgylchedd a Materion Gwledig
Cabinet Secretary for Environment and Rural Affairs

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-(L)/LG/0683/17

Huw Irranca-Davies AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
SeneddCLA@assembly.wales

24 October 2017

Dear Huw

Thank you for your letter of 16 October, seeking clarification on whether the Welsh Ministers made and adopted a noise map by the end of June 2017, as required by the Environmental Noise (Wales) Regulations 2006, which transpose the 2002 Environmental Noise Directive into Welsh law.

As discussed in the Welsh Government's earlier response to the Committee's comments on the Well-being of Future Generations (Wales) Act 2015 (Assessments of Local Well-being) Regulations 2017, a tension exists between the requirements of the Directive to, on the one hand, make and adopt noise maps by the end of June, and, on the other hand, include the previous calendar year's data. This is an issue because some of the previous calendar year's input data, produced by the Department for Transport, which is required to calculate the noise levels, only becomes available for use shortly before the June deadline.

Calculating noise levels at the residences of several hundred thousand people living around more than 1,500 km of major roads across Wales is a significant undertaking which takes time to complete following receipt of all the necessary input data. These practical issues, which are beyond our control, meant the map could not be produced in accordance with the June deadline required in regulation 7(2) of the 2006 Regulations.

However, the scoping and project definition were carried out well in advance, in late 2015 (http://gov.wales/topics/environmentcountryside/epq/noiseandnuisance/environmentalnoise/noisemonitoringmapping/third-round-noise-mapping/?lang=en), the contractors were appointed in early 2016, and the final specification for the work was agreed between my officials and the noise mapping contractors and all the input data gathered ready for processing before the end of June 2017.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

I would like to assure the Committee the revised noise maps are on course to be finalised and reported to the European Commission on time, by the end of December 2017. We also aim to publish the revised noise maps on the Lle website before the end of the year. Until this happens, the 2012 noise maps remain live and are considered representative of current noise levels at most locations.

Of the first four rounds of noise mapping required under the Directive (2007, 2012, 2017 and 2022), the first round only mapped a limited number of sources and the fourth round will have to use a new, harmonised calculation method. Only the second and third rounds (2012 and 2017) offer the possibility of comparing two consecutive rounds of noise maps produced in the same way, identifying changes in noise exposure over a 5-year period. I trust the Committee will therefore understand why it is important for us to produce the new noise maps to the same standards as the 2012 round, in order to provide the best possible evidence base to inform the new noise action plan for Wales.

Regards

Lesley

Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros yr Amgylchedd a Materion Gwledig
Cabinet Secretary for Environment and Rural Affairs

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

National Assembly for Wales
Constitutional and Legislative Affairs Committee

Lesley Griffiths AM
Cabinet Secretary for Environment and Rural Affairs

October 2017

Dear Lesley

Well-being of Future Generations (Wales) Act 2015 (Assessments of Local Well-being) Regulations 2017

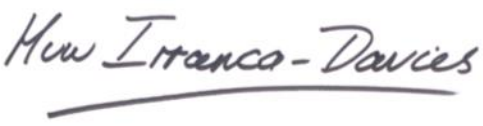
The Committee considered the Well-being of Future Generations (Wales) Act 2015 (Assessments of Local Well-being) Regulations 2017 at our meeting on 9 October 2017, along with the Government response to the merits point identified in relation to the requirements for noise maps.

During our consideration, attention was drawn to the Environmental Noise (Wales) Regulations 2006 (the 2006 Regulations).

Regulation 7 of the 2006 Regulations imposes a clear statutory duty on the Welsh Ministers to make and adopt noise maps. Regulation 7 required the Welsh Ministers to make and adopt a noise map by the end of June 2017.

In the circumstances, I would be grateful for clarification on whether the Welsh Ministers made and adopted a noise map by the end of June 2017, as required by the 2006 Regulations.

Yours sincerely



Huw Irranca-Davies
Chair

Cynulliad Cenedlaethol Cymru
Bae Caerdydd, Caerdydd, CF99 1NA
SeneddMCD@cynulliad.cymru
www.cynulliad.cymru/SeneddMCD
0300 200 6565

National Assembly for Wales
Cardiff Bay, Cardiff, CF99 1NA
SeneddCLA@assembly.wales
www.assembly.wales/SeneddCLA
0300 200 6565

October 29, 2017

Constitutional and Legislative Affairs Committee
National Assembly for Wales

Dear Chairman, and Honourable Members of the Committee,

thank you for your letter of October 27. We write again to conclude the comment on that SI and note the oral consideration given on October 16 to

SI 2017 No. 940 (W. 233) The Education (Supply of Information about the School Workforce) (Wales) Regulations 2017[1]

In conclusion, we would like to recommend two actions:

1. In the interests of transparency and public trust, would be pleased if you would ensure publication of the **Data Privacy Impact Assessment** as soon as possible.

2. To meet your assurance that the purposes expressly set out on the face of the Education Act 2005 and none other, including immigration purposes or commercial use, we would encourage the implementation of the process recommend a compulsory published **register of third party use**.

While you write that the DAA places certain obligations upon the organisation in respect of what they can and cannot do with the data, we believe the powers of the SI are substantial:

Persons to whom the Welsh Ministers may supply information for qualifying purposes include in 7.
—(1) For the purposes of section 114(3) of the 2005 Act, the following are prescribed persons—

(b) the Secretary of State;
(h) persons conducting research relating to qualifying workers or qualifying trainees which may be expected to be of public benefit.

We are concerned that the effect of the Digital Economy Act 2017, Part 5 is the removal of horizontal data protections across government and once personal data are under the powers of the Secretary of State, data may be passed to other government departments and public bodies.

Further, the persons in 7(h) are open ended, and while you may believe that there are no commercial use plans, it appears that there are no limitations on commercial companies accessing these data on the face of the SI if they can (also) demonstrate public interest. In fact, very similar wording means commercial companies do get access to identifying workforce data in England, but it is not published or we believe, communicated to staff from whom the data come.

Separately, we also ask you to address a further SI which we have only just been made aware of SI No. 886 The Education (Student Information) (Wales) Regulations 2017 (W. 214)

We write separately, attached to this same email correspondence, to keep the two distinct.

Sincerely,

Jen Persson
Director, defenddigitalme

[1] Statutory Instrument No. 940/2017 https://www.legislation.gov.uk/wsi/2017/940/made

October 29, 2017

Constitutional and Legislative Affairs Committee
National Assembly for Wales

Dear Chairman, and Honourable Members of the Committee,
separately from our recent correspondence on SI 2017 No. 940 (W. 233) we ask you to address

SI No. 886 The Education (Student Information) (Wales) Regulations 2017 (W. 214)[1]

These regulations made on September 7, were laid before the National Assembly For Wales on 11 September and came into force on October 6. They enable the extraction of student confidential data and its onwards sharing with third parties, without consent.

Data affected include (a) surname; (b) each first name; (c) gender; (d) date of birth; (e) ethnic group; (f) home address and postcode; (g) the unique learner number allocated to an individual, plus further extensive detail on the relevant qualifications or regulated qualifications.

This extremely short time period is we suggest, unsuitable to create a national database, of named sensitive data for indefinite retention and third party sharing on the basis of a Statutory Instrument.

The public consultation[2] was conflated with another on use of destinations data, and its is not clear that this Regulation permits *identifiable* individual level data sharing, not sharing of anonymous statistics. That it had only 10 responses shows that its significance was entirely overlooked, and missed by organisations such as ourselves interested in civil liberties and child rights.

The assessment makes an utterly inadequate assessment of the sensitivity of linkage of longitudinal data from a lifetime of education with DWP and HMRC records - use for which the individual has not given consent and will not be asked. There are far reaching implications for privacy and ethics and discriminatory outcomes affecting individuals and groups.

We believe the assessment of child rights is flawed. It concludes, “We have not identified any potential adverse impacts on young people.” But there is not a single mention of lifetime privacy impact. Step 3 in the assessment concludes that it does “not directly relate with the UNHRC”.

Article 16 of the UN Convention on the Rights of the Child is overlooked: “*No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.” And the voice of young people has not been considered, an Article 12 requirement of the UNCRC.*

This is also incompatible with recital 38 of the GDPR that children’s data merit special protections.

The EU Charter of Fundamental Rights [34] , Article 52 also protects the rights of individuals about data and privacy and Article 52 protects the essence of these freedoms.

The third parties listed who will get given access to the data without consent and without a right to refuse, include the Student Loans Company and “*persons who, for the purpose of promoting the education or well-being of students in Wales, require the information for that purpose”*.

That near-identical wording was used in 2012 to change the law in England. Our children’s privacy has been outsourced to third parties ever since. Not anonymised data, but identifiable and confidential pupil-level data is handed out to commercial companies, charities and press.

[1] SI 886 http://www.legislation.gov.uk/wsi/2017/886/contents/made

[2] Impact Assessment https://consultations.gov.wales/sites/default/files/consultation_doc_files/170901-childrens-rights-impact-assessment-en.pdf

It appears that there are no limitations on commercial companies accessing these data on the face of the SI if they "require student information for that purpose".

The open ended list of third party sharing in Schedule 2 Part 2 and identifiable and sensitivity of personal data involved, means the purposes of data sharing in this regulation are fundamentally incompatible with Article 8, the right to privacy in the Human Rights Act 1998[3] when their data will be passed to third parties beyond their control and interfere with their private life.

We are concerned that the effect of the Digital Economy Act 2017, Part 5 is the removal of horizontal data protections across government and once personal data are under the powers of the Secretary of State, data may be passed to other government departments and public bodies.

We ask you to consider that in 2015 37,000 students responded to UCAS' Applicant Data Survey[4]. Sixty-two per cent of applicants think sharing their personal data for research is a good thing, and 64% see personal benefits in data sharing. But over 90% of applicants say they should be asked first, regardless of whether their data is to be used for research, or other things. See page 3 Annex.

Young people do not want or find it reasonable that their personal confidential data is used, particularly on an identifiable basis, beyond their control. This piece of legislation builds-in failure of public trust in data handling by design by ignoring the right to privacy.

It's not in young people's best interests to be made more digitally disempowered and lose control over their digital identity. The GDPR requires data privacy by design.This approach is unsuitable.

Suggestions and Questions:

1. Confirm if a privacy impact assessment (a government mandatory minimum measure since 2008),[5] was done and when it might be published. Revisit the consultation conclusion if not.

2. Publish the assessment of the impact on fundamental human rights with regards to privacy, the European Convention on Human Rights and the Human Rights Act 1998, and UNCRC.

3. How will students be told and will the SI principles of Data Protection law of fair processing and communicating purposes, data minimisation and retention be met? The SI has no limitations.

4. Will there be a published third-party register[6] which and why organisations access this data?

5. Is there any independent oversight of the decision making process for data access approvals and scope creep of these uses?

6. The Statutory Instrument should have considered wording on safeguards, oversight, rights to subject access, rectification and erasure, and right to objection or broad compatibility with GDPR. There is no connection made with the potential impact this will have on individuals as the effect of policy using destinations data, or to ensure policy is based on accurate data. If these issues are too late to consider in the SI, a published Code of Practice may be of merit.

Thank you for your consideration.
Sincerely,
Jen Persson
Director, defenddigitalme

---

[3] http://www.legislation.gov.uk/ukpga/1998/42/pdfs/ukpga_19980042_en.pdf

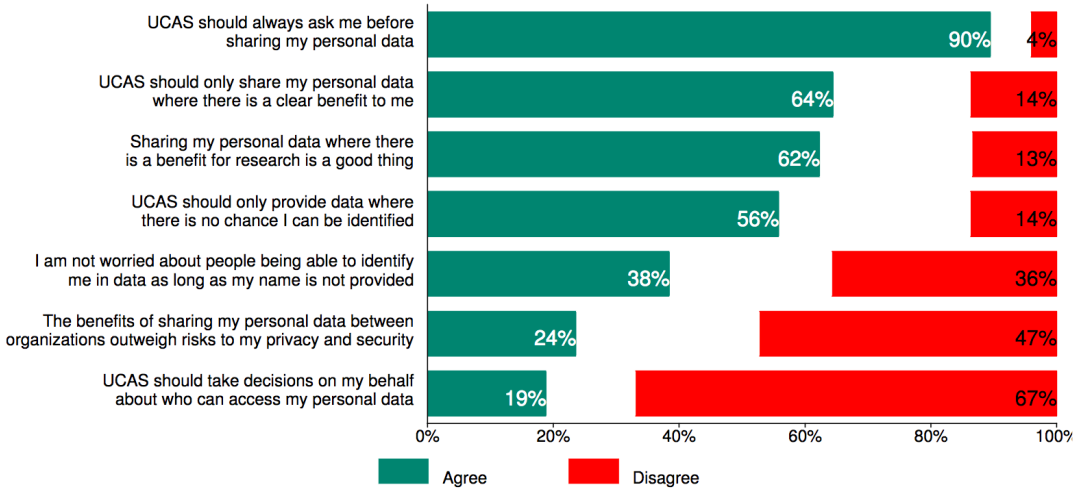
[4] 37,000 students respond to UCAS' Applicant Data Survey https://www.ucas.com/corporate/news-and-key-documents/news/37000-students-respond-ucas%E2%80%99-applicant-data-survey

[5] See Cabinet Office, Cross Government Actions: Mandatory Minimum Measures, 2008, Section I, 4.4: All departments must "conduct privacy impact assessments so that they can be considered as part of the information risk aspects of Gateway Reviews".

[6] A third party use of pupil data in England is published https://www.gov.uk/government/publications/national-pupil-database-requests-received

Annex: Extracts from the UCAS survey to which 37,000 students responded in 2015[7]

Figure 2 Proportion of respondents (weighted) who agree or disagree with various general statements about the use of their personal data.



The responses from applicants showed a preference for remaining in direct control of their personal data. The large majority of applicants (90 per cent) agreed with the statement that they should be asked before their personal data was provided, over twenty times more than disagreed with that statement (4 per cent).

Three scenarios were presented. In each case a substantial proportion (between 40 per cent and 78 per cent) said they would trust UCAS less with their data, or would consider not using UCAS to apply to higher education, if their data were provided without their consent. For the scenario of personal data being provided to Government to speed up an application for a student loan, 60 per cent of applicants said they would be content with the arrangement, 34 per cent said they would continue to use UCAS but would trust UCAS less, and an additional 6 per cent said they would consider not using UCAS if their data were used in that way.

When asked to consider that their personal data was provided to Government and other organisations for statistical research purposes, 44 per cent said they would be content, 48 per cent said that they would continue to use UCAS but would trust it less, and an additional 8 per cent said they would consider not using UCAS.

[7] Survey of 2015 cycle UCAS applicants on the use of their personal data https://www.ucas.com/file/36556/download?token=lvGg2GQe

Agenda Item 5

Document is Restricted

Document is Restricted

Document is Restricted

Document is Restricted

Agenda Item 6

Document is Restricted