

# Agenda – Legislation, Justice and Constitution Committee

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Meeting Venue:

On-site – Committee Room 4, Tŷ Hywel

Meeting date: 21 November 2022

Meeting time: 12.30

For further information contact:

P Gareth Williams

Committee Clerk

0300 200 6565

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

(12.30)

## 2 Agriculture (Wales) Bill: Ministerial evidence session

(12.30 – 13.30)

(To Follow)

Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd James Owen, Deputy Director, Land Management Reform Division, Welsh Government

Dorian Brunt, Senior Lawyer, Legal Services Department – Rural Affairs, Welsh Government

William Cordingley, Government Lawyer, Legal Services Department – Wildlife, Welsh Government

[Agriculture \(Wales\) Bill](#), as introduced

[Explanatory Memorandum](#)

[Statement of Policy Intent](#)

Attached Documents:

LJC(6)–30–22 – Paper 1 – Briefing

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

(13.30 – 13.35)



**Senedd Cymru**  
**Welsh Parliament**

## **Made Negative Resolution Instruments**

### **3.1 SL(6)277 – The Feed Additives (Authorisations) (Wales) Regulations 2022**

(Pages 1 – 3)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)–30–22 – Paper 2 – Draft report

## **Affirmative Resolution Instruments**

### **3.2 SL(6)281 – The Renting Homes (Wales) Act 2016 (Amendment of Schedule 12 and Consequential Amendment) Regulations 2022**

(Pages 4 – 8)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)–30–22 – Paper 3 – Draft report

LJC(6)–30–22 – Paper 4 – Written Statement by the Minister for Climate Change, 10 November 2022

## **4 Inter-Institutional Relations Agreement**

(13.35 – 13.40)

### **4.1 Correspondence from the Counsel General and Minister for the Constitution: The Producer Responsibility Obligations (Packaging Waste) (Amendment) (England and Wales) Regulations 2022**

(Page 9)

Attached Documents:

LJC(6)–30–22 – Paper 5 – Letter from the Counsel General and Minister for the Constitution, 16 November 2022

#### **4.2 Written Statement and correspondence from the First Minister: British–Irish Council Summit**

(Pages 10 – 12)

Attached Documents:

LJC(6)–30–22 – Paper 6 – Written Statement by the First Minister, 17 November 2022

LJC(6)–30–22 – Paper 7 – Letter from the First Minister, 17 November 2022

### **5 Papers to note**

(13.40 – 13.45)

#### **5.1 Correspondence from the Minister for Finance and Local Government: Legislative Consent Memoranda for the UK Infrastructure Bank Bill**

(Pages 13 – 26)

Attached Documents:

LJC(6)–30–22 – Paper 8 – Letter from the Minister for Finance and Local Government to the Climate Change, Environment and Infrastructure Committee, 10 November 2022

LJC(6)–30–22 – Paper 9 – Letter from the Climate Change, Environment and Infrastructure Committee to the Minister for Finance and Local Government, 3 October 2022

#### **5.2 Correspondence from the Minister for Finance and Local Government: Welsh Government response to Committee's report on the Legislative Consent Memoranda on the Procurement Bill**

(Pages 27 – 36)

Attached Documents:

LJC(6)–30–22 – Paper 10 – Letter from the Minister for Finance and Local Government, 14 November 2022

#### **5.3 Written Statement by the Counsel General and Minister for the Constitution: Independent Commission on the Constitutional Future of Wales**

(Page 37)

Attached Documents:

LJC(6)–30–22 – Paper 11 – Written Statement by the Counsel General and Minister for the Constitution, 14 November 2022

- 5.4 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: SL(6)284 – The Marine, Fisheries and Aquaculture (Financial Assistance) Scheme (Wales) Regulations 2022**

(Page 38)

Attached Documents:

LJC(6)–30–22 – Paper 12 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 15 November 2022

- 6 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting**  
(13.45)

- 7 Agriculture (Wales) Bill: Consideration of evidence**  
(13.45 – 14.00)

- 8 Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Online Safety Bill**  
(14.00 – 14.10) (Pages 39 – 43)  
[Supplementary Legislative Consent Memorandum \(Memorandum No. 2\): Online Safety Bill](#)

Attached Documents:

LJC(6)–30–22 – Paper 13 – Legal advice note

- 9 Legislative Consent Memorandum on the Social Housing (Regulation) Bill: Draft report**  
(14.10 – 14.20) (Pages 44 – 56)

Attached Documents:

LJC(6)–30–22 – Paper 14 – Draft report

LJC(6)–30–22 – Paper 15 – Letter from the Minister for Climate Change to the Local Government and Housing Committee, 10 November 2022

LJC(6)–30–22 – Paper 16 – Letter from the Local Government and Housing Committee to the Minister for Climate Change, 31 October 2022

## **10 Legislative Consent Memorandum on the Schools Bill: Draft report**

(14.20 – 14.30)

(To Follow)

Attached Documents:

LJC(6)–30–22 – Paper 17 – Draft report

## **11 Welsh Government Draft Budget 2023–24**

(14.30 – 14.40)

(Pages 57 – 59)

Attached Documents:

LJC(6)–30–22 – Paper 18 – Draft letter

## **12 SICM(6)1 – The Climate Change (Targeted Greenhouse Gases) Order 2022: Draft report**

(14.40 – 14.50)

(Pages 60 – 64)

Attached Documents:

LJC(6)–30–22 – Paper 19 – Draft report

LJC(6)–30–22 – Paper 20 – Draft letter

## **SL(6)277 – The Feed Additives (Authorisations) (Wales) Regulations 2022**

### **Background and Purpose**

The Feed Additives (Authorisations) (Wales) Regulations 2022 (“the Regulations”) are made by the Welsh Ministers in exercise of the powers conferred by Articles 9(1) and 18A(3) of Regulation (EC) No 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition (“Regulation 1831/2003”).

A feed additive may not be placed on the market, processed or used unless it is covered by an authorisation granted in accordance with Regulation 1831/2003. Authorisations are valid for ten years.

The Regulations provide for the authorisation of eleven feed additives:

- Schedules 1 to 3, 7 and 9 contain new authorisations.
- Schedules 4 to 6 and 8 contain renewals of prior authorisations.
- Schedules 10 and 11 contain authorisations for a new formulation of, and a modified form of, decoquinate.

The Regulations also amend four retained EU Regulations that authorise the feed *Bacillus subtilis* ATCC PTA-6737 to update the name of the bacterial strain to “*Bacillus velezensis*”. A transitional provision provides that products labelled with the previous name but otherwise produced in accordance with the relevant authorisation may continue to be used.

The Regulations revoke retained EU Regulations containing the prior authorisations for feed additives now authorised in the Schedules. Transitional provisions allow for the continued production and labelling of products under the prior authorisations for a limited time.

### **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 point is identified for reporting under Standing Order 21.2 in respect of this instrument.



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

The Schedules to the Regulations contain new authorisations and renewals of existing authorisations, with or without modifications. Regulation 6 modifies an existing authorisation, while regulations 4 to 7 amend existing authorisations. Regulation 8 and Schedule 12 revoke existing authorisations.

Article 13 of Regulation 1831/2003 provides for the modification, suspension or revocation of an authorisation. Article 13(6) provides that the terms of any modification, suspension or revocation must be in a form prescribed by the appropriate authority (and in accordance with Article 2, “prescribed” means “prescribed by regulations”).

The equivalent Scottish Regulations referenced in the Explanatory Memorandum cite Article 13(6) in the preamble, whereas the equivalent English Regulations do not.

The Welsh Government is asked to clarify whether the Welsh Ministers are exercising the power in Article 13(6) of Regulation 1831/2003 in making the Regulations.

## **Merits Scrutiny**

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

## **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.**

There are a number of inconsistencies in how technical terms are treated within the Schedules to the Regulations. For example:

- In Schedule 7, in the heading of the table, the words in quotation marks for the additive category “zootechnical ***additives***” differ from the words used for the additive category in the table (“zootechnical ***feed additive***”).
- In Schedule 1, in the second column for the entry “*Characterisation of the active substance(s)*”, the words “*Manganese-2-aminopentanedioic acid, sodium and*” should be on a new line, rather than immediately after the closing bracket for the previous formula.
- In the tables in Schedules 2, 6, 7 and 8, in the respective entries for “*Analytical Methods*”, the capitalisation and hyphenation of the term “*Pulsed field gel electrophoresis*” varies. In the Welsh text of those Schedules, the capitalisation of the term is also inconsistent.
- In the Schedules, where a technical term is abbreviated, the Welsh text generally uses the English abbreviation. However, in Schedule 5, the first letters of the corresponding Welsh words are used to create a different Welsh abbreviation. Either approach is valid, but the inconsistency could cause confusion.



The Schedules provide the authorisations for the use of the specified feed additives. The Welsh Government is reminded that care should be taken to treat relevant technical terms consistently, to ensure that the terms of authorisation are clear and to avoid any risk of confusion.

## **Welsh Government response**

A Welsh Government response is required in respect of the technical scrutiny point only.

### **Legal Advisers**

#### **Legislation, Justice and Constitution Committee**

**16 November 2022**



Senedd Cymru

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

—  
Welsh Parliament

**Legislation, Justice and Constitution Committee**

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# Agenda Item 3.2

## **SL(6)281 – The Renting Homes (Wales) Act 2106 (Amendment of Schedule 12 and Consequential Amendment) Regulations 2022**

### **Background and Purpose**

These Regulations amend Schedule 12 to the Renting Homes (Wales) Act 2016 to:

- (i) extend the six-month minimum notice period for a landlords' notice, which is already required in relation to new periodic standard contracts, to converted periodic standard contracts with effect from 1 June 2023;
- (ii) enable community landlords to align the rent variation date for new and existing tenancies so that, in the year following implementation, such a landlord will be able to vary the rent not less than 51 weeks after the previous increase; and
- (iii) provide that pre-existing rent variation clauses in assured tenancies in the private rented sector will continue to apply following conversion to a periodic standard contract where the landlord is a private landlord.

In addition, and as a result of (ii) above, a consequential amendment to the Renting Homes (Wales) Act 2016 (Saving and Transitional Provisions) Regulations 2022 is made.

### **Procedure**

Draft affirmative.

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

### **Technical Scrutiny**

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

### **Merits Scrutiny**

The following 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.**

The extension of the notice period under converted periodic standard contracts from 2 months to 6 months means that a private landlord is restricted in taking possession of their property for a longer period of time than is currently the case. Article 1 of the First Protocol to the European Convention on Human Rights protects a person's enjoyment of their property – this applies to a private landlord's enjoyment of their property. The Welsh



Government is asked to confirm whether it has undertaken a human rights impact assessment in relation to these Regulations and to provide further information as to the outcome of such assessment.

## **Welsh Government response**

### **Merit Scrutiny point 1**

A thorough assessment of provisions contained within these regulations has taken place to ensure they are compatible with Convention rights.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**15 November 2022**



Senedd Cymru

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

Welsh Parliament

**Legislation, Justice and Constitution Committee**

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Llywodraeth Cymru  
Welsh Government

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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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**TITLE** Outcome of consultation on Renting Homes (Wales) Act 2016 –  
Notice Periods for Converted Contracts and laying of associated  
regulations

**DATE** 10 November 2022

**BY** Julie James, Minister for Climate Change

The Renting Homes (Wales) Act 2016 comes into force on 1 December 2022. The Act will improve security of tenure for renters by, amongst other things, increasing the period of notice that a landlord must give when seeking repossession of their property in instances where the renter is not at fault.

On 20 September, I issued a [Written Statement](#) announcing a consultation on a proposal to apply a six-month no-fault notice period to existing tenancies that convert to occupation contracts under the Act, to take effect from 1 June 2023 (the six-month notice period already applies to new contracts starting from 1 December).

The consultation was promoted directly to landlords via Rent Smart Wales and in the national media. Consultation events were also held in collaboration with the National Residential Landlords Association and Tenants Participation Advisory Service Cymru.

Just over 1400 completed responses were received to the consultation, of which over 90% were from private landlords and lettings agents. I am grateful to everyone who gave their time to respond. The vast majority of landlords and letting agents were against extending six-month notice periods to existing tenancies, and of those that were in agreement most favoured applying the change at a later date. The National Residential Landlords Association opposed the extension but suggested, if the extension went ahead that it should be delayed for up to two years. On the other hand, all tenants and tenant representative bodies that replied were in favour of the proposed extension, with most also arguing it should be applied from 1 December rather than 1 June 2023.

The proposed extension of the six-month no-fault notice period was always going to generate highly contrasting views. Whilst noting the views of those landlords and agents that responded, I have decided that the societal and individual benefits accruing from the extension outweigh the negative impact on individual landlords, particularly in view of

shorter notice periods of one month or less applying where there is a breach of contract. At the same time, I am also mindful that landlords will not have had an opportunity to take the proposal into account in agreeing new contracts prior to the announcement of the consultation. Notwithstanding the calls from tenant representatives to introduce the extended no-fault notice period as soon as possible, I believe it is appropriate to allow landlords more time to plan than applying the change from 1 December would allow. This is also in keeping with the general commitment we have made to giving six months' notice of significant matters relating to implementation of the 2016 Act. Therefore, I have decided to proceed with applying the extension from 1 June 2023. I believe this achieves a reasonable balance between the rights of tenants and those of landlords. I have today laid [regulations](#) before the Senedd to give effect to my decision, and those regulations will be debated before the 2016 Act itself is implemented on 1 December.

I would also like to update Members on progress on implementing the 2016 Act generally. I have recently made three sets of regulations under the negative approval procedure. These are:

- [the Renting Homes \(Rent Determination\) \(Converted Contracts\) \(Wales\) \(Amendment\) Regulations 2022](#), made on 24 October in response to comments from the Legislation, Justice and Constitution Committee, for which I am grateful;
- [the Renting Homes \(Wales\) Act 2016 \(Consequential Amendments to Secondary Legislation\) \(Amendment\) Regulations 2022](#), made on 24 October in response to comments from the Legislation, Justice and Constitution Committee, for which I am grateful; and
- [the Renting Homes \(Fitness for Human Habitation\) \(Amendment\) \(Wales\) Regulations 2022](#), which update a now out-of-date reference to a British Standard for wiring regulations and also increase from 7 to 14 days the time allowed for the landlord to provide the contract-holder with a report following an electrical safety inspection (the latter in response, in particular, to concerns raised by large social housing providers).

Following the agreement by the Senedd on 8 November of the [Renting Homes \(Wales\) Act 2016 \(Consequential Amendments\) Regulations 2022](#), which make amendments to primary legislation as a consequence of the provisions of the 2016 Act, I have now made those regulations. Furthermore, I have also now made the [Renting Homes \(Wales\) Act 2016 \(Saving and Transitional Provisions\) Regulations 2022](#), which could not be made before the consequential amendment regulations.

Finally, I would like to acknowledge the huge effort being made, in particular by landlords in the private and social rented sectors, by lettings agents and by the many tenant and landlord representative bodies to prepare for implementation of the Act. As I have said before, implementing the 2016 Act represents a radical change to housing law that will improve the security of tenure and safety of tenants and clarify and streamline housing law for landlords. We are currently commissioning an independent evaluation of the 2016 Act and, whilst any change of this magnitude will inevitably involve some teething problems, I believe the 2016 Act will lay the foundation for a more stable and successful rented sector in the years to come.



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

16 November 2022

Dear Huw,

I am writing to inform the Committee that I have given consent to the UK Government exercising a delegated legislative power in a devolved area in relation to Wales.

In 2019, Ministers across the UK collectively agreed to introduce a new Extended Producer Responsibility (EPR) regime for packaging, which will replace the current regime. However, the start date for the new EPR regime is not until 2024, which means amendments are needed to the current England and Wales regulations to ensure there are targets in place for the interim period.

Agreement has been given to the making of The Producer Responsibility Obligations (Packaging Waste) (Amendment) (England and Wales) Regulations 2022. This instrument is being made by the Secretary of State in exercise of powers conferred by section 50 of and paragraphs 1(1) and 2(2) of Schedule 4 to the Environment Act 2021. The regulations will roll forward the existing targets for 2023, until the new extended producer responsibility regulations for packaging come into force.

The SI amends the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (S.I. 2007/871). Those Regulations impose on producers of packaging, obligations to recycle packaging waste in order to attain overall recycling and material-specific recycling targets. These Regulations set an overall recycling target of 67.6% and material-specific recycling targets for glass (82%), plastic (61%), aluminium (69%), steel (87%), paper/board (83%) and wood (35%) as well as a specific re-melt target for glass (72%).

Yours sincerely,

**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.



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## STATEMENT BY THE WELSH GOVERNMENT

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**TITLE**            **British-Irish Council Summit in Blackpool**

**DATE**            **17 November 2022**

**BY**                **Mark Drakeford MS, First Minister**

The 38<sup>th</sup> meeting of the British-Irish Council on 10/11 November was hosted by the UK Government in Blackpool. I attended the meeting virtually.

The Summit programme was opened by the Prime Minister, who attended events on Thursday 10<sup>th</sup> November. The Summit Plenary session on Friday 11<sup>th</sup> November was Chaired by the Rt Hon Michael Gove MP, Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations.

Other attendees included Taoiseach Micheál Martin TD, the First Minister of Scotland the Rt Hon Nicola Sturgeon MSP, the Chief Minister of Jersey Kristina Moore, the Chief Minister of Guernsey Deputy Peter Ferbrache, the Chief Minister of the Isle of Man Alfred Cannan MHK, and the Secretary of State for Northern Ireland Rt Hon Chris Heaton-Harris MP.

The theme of this Summit was Sustainable Growth and Regeneration. The Council focussed on efforts underway across BIC Member Administrations to stimulate and support sustainable economic growth, the development of more inclusive communities, and to address pressures on housing in particular. The Council also noted the recent Ministerial meeting of the BIC Social Inclusion work sector, which took place in Cardiff.

In addition, the Council discussed the latest political developments including: the Russian invasion of Ukraine, the impact of the rising cost of living, shared climate and decarbonisation objectives, and ongoing relations with the EU. The Council received an update on Northern Ireland and looked forward to the restoration of the devolved institutions. The Council also noted that 2023 would mark the 25th anniversary of the Belfast/Good Friday Agreement, and underlined the importance of supporting the effective functioning of all of the agreement's institutions, including the British-Irish Council.

In contributing to this discussion, I highlighted a number of areas that need to remain as high priorities for the BIC:

- working alongside communities to achieve sustainable growth, investing in infrastructure, people and places, to create the conditions in which businesses will invest;
- the role of direct Government investment in growth strategies, in areas such as climate change, research and innovation, and supporting nascent industries;
- the cost of living crisis and the need for significant further action to support vulnerable households struggling with rising costs, with a focus on practical solutions;
- the energy crisis and the need to focus on renewable energy, for the benefit of energy security, the climate crisis and to make household energy affordable;
- the concerning impacts of Brexit including on research, trade and Welsh ports, and the need for stability and improvements in the trading and the wider relationship between the UK and the EU.

A joint Communiqué was issued after the meeting, which is available at:

<https://www.britishirishcouncil.org/bic/summits>

The next Council Summit will be hosted by the Government of Jersey.



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

[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

17 November 2022

Dear Huw,

**Inter-Institutional Relations Agreement: British-Irish Council Summit in Wales**

Further to my letter of 9<sup>th</sup> November regarding the inter-institutional relations agreement, the British-Irish Council Summit in Blackpool and the discussion of sustainable growth and regeneration, I would like to draw your attention to my written [statement](#) of today, and to the BIC [communiqué](#) summarising the outcomes of the Summit and Ministerial discussion.

Yours sincerely,

**MARK DRAKEFORD**

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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.





Our re: MA/RE/3374/22

Llyr Gruffydd MS  
Chair  
Climate Change, Environment and Infrastructure  
Senedd Cymru

SeneddClimate@senedd.wales

10 November 2022

Dear Llyr,

Thank you for your report on behalf of the Climate Change, Environment and Infrastructure Committee on the Legislative Consent Memoranda for the UK Infrastructure Bank Bill.

I appreciate the work the Committee has undertaken in scrutinising the LCMs on this Bill, and I note we share a number of the same concerns.

I agree with the Committee that the Bank could potentially play an important role in scaling up and accelerating investment to support Wales' transition to net zero.

We therefore have been actively engaging with the UK Government to bring forward sensible amendments to the Bill to ensure that devolution is respected.

The Committee highlights the importance of clauses 2 (Objectives and activities) and 3 (Strategic priorities and plans) to the Bill, and it notes that currently there is no role for the Welsh Government or the Senedd. We share this concern and are in discussions with UK Government on amendments to address this.

More generally, we also share your concern about there being no role for the Welsh Government in the governance of the Bank, and we are seeking to address this with UK Government through specific amendments to the Bill.

Like the Committee, we were pleased to see that there was an amendment in the House of Lords to broaden the definition of infrastructure to include "nature-based solutions" to avoid any ambiguity in the acceptability of such propositions to the Bank. We support this amendment being retained through the House of Commons.

During the past few months there has been significant instability at Westminster which has resulted in a considerable number of changes in HM Treasury Ministers which has hampered the progress of our discussions towards any prospective agreement. There have also been

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delays to the Bill's passage through the Commons due to the changes in UK ministerial responsibilities, and other announcements such as the Growth Plan 2022. I understand that the Bill will now progress to Committee Stage on 22 November. The Welsh Government will continue to engage with UK Government and seek appropriate amendments that respect devolution.

As negotiations are ongoing, unfortunately I cannot be more specific on the exact nature of the amendments until further progress is made. However, any agreement will result in a further SLCM and an opportunity for the Committee to report further on the matter.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive, flowing style.

**Rebecca Evans AS/MS**

Y Gweinidog Cyllid a Llywodraeth Leol

Minister for Finance and Local Government

**Pwyllgor Newid Hinsawdd,  
yr Amgylchedd a Seilwaith**

**Climate Change, Environment,  
and Infrastructure Committee**

Rebecca Evans MS  
Minister for Finance and Local Government

3 October 2022

Dear Rebecca,

Please find enclosed a copy of the Climate Change, Environment and Infrastructure Committee report on the *Legislative Consent Memoranda for the UK Infrastructure Bank Bill*.

We would be grateful for a response in 30 working days, by 14 November 2022, or no later than 5 working days before the debate on the Legislative Consent Memoranda is scheduled, whichever is sooner.

I am copying this letter to the Minister for Climate Change; the Chair of the Legislation, Justice and Constitution Committee; the Chair of the Finance Committee, and, the Chair of the Economy, Trade, and Rural Affairs Committee.

Yours sincerely,



Llyr Gruffydd MS,  
Chair, Climate Change, Environment and Infrastructure Committee

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

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# Legislative Consent Memoranda for the UK Infrastructure Bank Bill

October 2022

## Overall conclusion

The Committee has serious concerns about the Bill, as drafted. We are not in a position to form a view on legislative consent until the outcome of ongoing intergovernmental discussions on amendments to ensure the Bill fully reflects devolved competence are known. We will review our position in light of any amendments to the Bill, which we expect to be included in future memoranda.

## 1. Introduction

1. On 25 May 2022, the Minister for Finance and Local Government ('the Minister') laid the Legislative Consent Memorandum for the UK Infrastructure Bank Bill ('the LCM') before the Senedd.
2. On 7 June 2022, the Business Committee referred the LCM to the Finance Committee, the Economy, Trade and Rural Affairs ('ETRA') Committee, the Climate Change, Environment and Infrastructure Committee ('the Committee') and the Legislation, Justice and Constitution ('LJC') Committee for consideration with a reporting deadline of 29 September 2022. In referring the LCM, the Business Committee encouraged the Finance Committee, ETRA Committee and this Committee to discuss between them which would take the lead on scrutiny.
3. On 8 July 2022, the Minister laid the Supplementary Legislative Consent Memorandum (LCM No.2) for the UK Infrastructure Bank Bill ('the Supplementary LCM') before the Senedd.



4. On 12 July 2022, the Business Committee referred to the Supplementary LCM to the same committees referred to in paragraph 2 for consideration with a reporting deadline of 19 November 2022.

## Our approach

5. At its meeting on 30 June 2022, the Committee agreed to write to the Minister seeking clarification on the Bill's provisions insofar as they relate to the Committee's remit. The Committee also wrote to John Flint, Chief Executive Officer of the UK Infrastructure Bank. The exchanges in correspondence can be found on [Senedd Cymru's website](#).

6. This report sets out the Committee's views on the Bill and the Memoranda insofar as they relate to its remit. Reports by the Finance Committee and the LJC Committee can be found on [Senedd Cymru's website](#).

## 2. Policy background

7. In 2018, the UK National Infrastructure Commission recommended establishing a UK national infrastructure bank to replace the functions of the European Investment Bank after Brexit. The [UK Government's consultation](#) (November 2019) also found support for such a body.

8. The UK Government's [National Infrastructure Strategy](#) (November 2020) included a commitment to establish a "major new national infrastructure bank" that would operate with a "high degree of operational independence" but within a mandate set by government.

9. The creation of a UK infrastructure Bank ('the Bank') was announced by the Chancellor at the Spending Review 2020. The Spending Review 2020 stated:

*"Increased infrastructure investment is supported by a new National Infrastructure Strategy, which sets out the government's plans to transform the UK's economic infrastructure. It is based around three central objectives: economic recovery, levelling up and unleashing the potential of the Union, and meeting the UK's net zero emissions target by 2050. These objectives will be supported by the creation of a new infrastructure bank to catalyse private investment in projects across the UK; as well as through a comprehensive set of reforms to the way infrastructure is delivered."*

10. In March 2021, the UK Government published its [Policy Design](#) for the Bank, which sets out the Bank's relationship with the devolved administrations, among other things. It states:

*"The Bank will operate across the whole of the UK, working closely with public and private sectors to support infrastructure investment in every nation. Building strategic relationships with the devolved administrations, local authorities across the UK and relevant institutions such as the Scottish National Investment Bank and Development Bank of Wales, will be a priority".*

**11.** The Policy Design also states the UK Government would be "engaging with representatives from the devolved administrations in the next phase of the Bank's design".

**12.** The Bank was launched on a non-statutory basis on 17 June 2021. To coincide with the launch, the UK Government published the UK Infrastructure Bank Framework Document ('the Framework Document'), which sets out the accountabilities and relationships between the Bank, the Shareholder (HM Treasury) and the Shareholder Representative (UK Government Investments).

**13.** In March 2022, ahead of the Bank's first strategic plan, the Chancellor wrote to the Bank to outline the UK Government's policy priorities for the institution and to provide additional clarity on its mandate. The letter sets out the Chancellor's expectations for the Bank:

- to work constructively with government and institutions in each nation of the UK to maximise the impact of its investments;
- to develop a nuanced understanding of the characteristics of the market in all four nations so that it can target its investments appropriately;
- to prioritise the building of strong relationships with the Scottish National Investment Bank and the Development Bank of Wales and working closely with the Northern Ireland Executive in ways that are compatible with the UK's devolution arrangements;
- to focus its investment and engagement towards building its presence in the market in all four nations; and
- to monitor the impact that the Bank is having in each nation.

**14.** The Bank published its Strategic Plan 2022 in June 2021.

## 3. The UK Infrastructure Bank Bill

### Purpose of the Bill

**15.** The UK Infrastructure Bank Bill ('the Bill') was introduced in the House of Lords on 11 May 2022.

**16.** The Explanatory Notes ('EN') to the Bill state:

*"The purpose of this Bill is to place the UK Infrastructure Bank ('the Bank') on a statutory footing. The Bank is an operationally independent institution wholly owned by government. The Bank's purposes are to help tackle climate change and to support regional and local economic growth, through investment in infrastructure (emphasis added)."*

### Progress through the UK Parliament

**17.** The Bill completed Report Stage in the House of Lords on 4 July 2022, where a series of amendments were agreed. Further details of amendments relevant to our consideration can be found in Section 5 of this report.

**18.** The Bill had its first reading in the House of Commons on 11 July 2022. The date for second reading has yet to be announced.

## 4. The LCM and SLCM

### Provisions for which consent is required

**19.** According to the LCM, Senedd consent is required for the entire Bill (clauses 1 to 11) as the Senedd has competence to legislate in the same or similar terms in relation to Wales. The LCM states:

*"The main subject matter of the Bill, providing financial assistance and advisory support to projects relating to infrastructure (to include water, electricity, gas, telecommunications, sewerage, railways (including rolling stock), roads or other forms of transport and climate change), is a devolved area of the law."*

**20.** Paragraphs 24 to 42 of the LCM outline the provisions of the Bill for which the Welsh Government considers Senedd consent is required.

- 21.** Paragraphs 43 to 46 of the LCM set out the UK Government's view on consent.
- 22.** According to the UK Government, Senedd consent is only required for clauses 2,3,4,5,8 and 11 of the Bill.

### **Amendments for which consent is required**

- 23.** Paragraphs 14 to 29 of the Supplementary LCM provide details of amendments to the Bill agreed at Report Stage in the House of Lords for which the Welsh Government considers Senedd consent is required.
- 24.** According to the Supplementary LCM, "The UK Government's view on the need for consent remains the same as outlined in the first LCM tabled on 25 May 2022".

### **The Welsh Government's current policy position**

- 25.** The LCM states "the Bill as currently drafted threatens devolved competencies. i.e., powers are reserved for UK Ministers and HM Treasury in a manner that undermines the responsibilities and obligations Welsh legislators were elected to protect".

- 26.** It goes on to state:

*"The Bill as introduced provides no role for the Senedd, the Welsh Ministers, or Welsh Government officials in the governance of the Bank, while reserving certain activities for Parliament, the Chancellor and HM Treasury, such as the power for HM Treasury to amend the Bank's strategic direction including in areas of devolved competence without consulting the Senedd or Welsh Government."*

- 27.** The LCM explains that "Welsh Government officials have sought amendments relating to the remit of the bank in areas of devolved competence to ensure devolution is respected, but to date the UK Government has not yet made any such changes". The Minister has written to the UK Government "to advocate that the Senedd, the Welsh Ministers and Welsh Government officials all exercise equivalent powers to those of our UK counterparts". She has called for the UK Government "to amend the Bill to enable the Senedd and the Welsh Ministers to take their appropriate role within Governance structures to ensure proper democratic accountability".
- 28.** In conclusion, the LCM reiterates that a number of the clauses for which Senedd consent is needed "are of constitutional concern to the Welsh Government, thus, despite the merits of some of the clauses, the Welsh Ministers' final position on whether to recommend consent is



subject to the outcome of ongoing discussions with the UK Government regarding bringing forwards amendments to the Bill”.

**29.** The SLCM explains the UK Government has yet to make any amendments to the Bill to address the Welsh Government’s concerns.

## 5. Clauses of interest to the Committee

**30.** The following paragraphs provide an explanation of the clauses of particular interest to the Committee, given its remit, and amendments made to those clauses during Report Stage in the House of Commons.

### Clause 2 – objectives and activities

**31.** Clause 2(3) provides the Bank’s objective are: to help tackle climate change, including by supporting efforts to meet the target for 2050 set out in section 1 of the Climate Change Act 2008, and to support regional and local economic growth.

**32.** Clause 2(4) provides the Bank’s activities are: providing financial assistance to projects wholly or mainly relating to infrastructure; providing loans to relevant public authorities for such projects; acting as a centre of expertise and providing advisory and other support services in relation to such projects; and any other activities that are incidental or conducive to, or otherwise connected with, the aforementioned activities.

**33.** Clause 2(5) of the Bill, as introduced to the House of Lords, provided the meaning of ‘infrastructure’ includes technologies and facilities relating to: water, electricity, gas, telecommunications, sewerage or other services (including the provision of heat), railways (including rolling stock), roads or other forms of transport; and climate change (including the removal of greenhouse gases from the atmosphere).

**34.** As set out in the Supplementary LCM, during the House of Lords Report Stage, amendments were made to expand the meaning of ‘infrastructure’ so as:

- to include ‘structures underpinning the circular economy, and nature-based solutions’; and
- to make it clear that energy efficiency, in relation to electricity, gas and the provision of heat, is within the definition of infrastructure.

**35.** Clause 2(7) provides that the Treasury may, by regulations, amend the Bank's objectives and activities. These regulations would be subject to approval by the UK Parliament.

### **Clause 3 – Strategic priorities and plans**

**36.** Clause 3 places a requirement on the Treasury to prepare a statement of strategic priorities for the Bank within six months of the Act coming into force. The Treasury may revise or replace the statement. A copy of the statement (or revised statement) must be laid before the UK Parliament.

**37.** The Bank must publish and act in accordance with strategic plans which reflect the Treasury's statement, and update those plans whenever the Treasury revises or replaces its statement.

## **6. Committee consideration**

### **Alignment with Welsh strategic priorities**

**38.** During its consideration of the memoranda, the Committee considered whether and how the Bank's strategic priorities and objectives align with those of the Welsh Government.

**39.** John Flint, Chief Executive Officer of the UK Infrastructure Bank explained the Bank held regular meetings with the Welsh Government, Welsh local authorities and wider stakeholders, including the Development Bank of Wales, which "helped to align" its Strategic Plan with Welsh priorities and policy drivers. He added:

*"When making investment decisions we consider the extent to which each investment opportunity delivers on our Strategic Plan and towards wider UK policy on climate change and economic infrastructure, including that of Wales".*

**40.** John Flint said the Bank's Strategic Plan "will be refreshed regularly and so will remain up to date with Welsh policy". In addition, he said the Bank will continue to engage frequently with Welsh Government, local authorities, and other market players on the delivery of the Plan.

**41.** Although the Minister said the Bank "has the potential to support the Welsh Government's infrastructure priorities", she emphasised the need for equivalence between administrations in terms of the Bank's governance. This would enable the Welsh Government (and the other Devolved Governments) to influence the setting of the Bank's Strategic Priorities and Plans.

## The Bank's statutory objectives

### A nature objective?

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**42.** The Bank's statutory objectives are to help tackle climate change and to support economic growth. Alongside Spring Budget 2021, the UK Government committed to review the case for "broadening the UK Infrastructure Bank's environmental objectives" to include areas such as improving the UK's natural capital. In reporting its findings, the UK Government concluded:

*"...we believe that support for nature-based solutions can be delivered through the Bank's existing policy framework, without the addition of a specific third objective on nature. This will enable the Bank to focus on building its capability to meet its two stretching objectives on tackling climate change and supporting regional and local economic growth".*

**43.** However, it went on to "encourage the Bank to consider the role it could play in nature-based solutions and how that might develop over time".

**44.** The Committee sought the Minister's view on the Bank's objectives, including whether they should be extended, for example, to include tackling the decline in biodiversity. According to the Minister, the objectives "are sufficiently broad to encompass a comprehensive range of interventions with respect to climate change, including biodiversity, nature-based solutions or the circular economy". However, she added, "I would not be averse to seeing these objectives on the face of the Bill".

**45.** The Minister reiterated the need for equivalence between administrations in terms of the Bank's governance, so as to enable them to have a say in honing of the Bank's objectives where necessary.

### Balancing objectives

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**46.** The Framework Document recognises the potential for tension between the Bank's objectives to help tackle climate change and to support economic growth, particularly in the near term. It states, "Where an investment is primarily to support economic growth, the [Bank] will ensure that it does not do significant harm against its climate objective". In commenting on this, the Minister said, "it is clear to me that the Bank's exercise of due diligence in regard of this stipulation must be central to determining whether a project is supported or otherwise".

**47.** The Committee asked John Flint to explain how the Bank determines whether an investment would "do significant harm". He told us:

*"All investments financed by the Bank undergo environmental, social, resilience & governance (ESRG) screening. Our identification of ESRG concerns and "significant harm" is risk-based and seeks to ensure that adequate mitigations are in place. This includes, amongst other things, assessing how projects manage their direct and indirect environmental and social impact, the climate resilience of their projects, risks and the robustness of their ESRG governance structures. UKIB requires ongoing regular reporting on key metrics and annual and environmental reports from our clients to ensure ongoing alignment with our mandate."*

**48.** John Flint added the Bank is "currently further enhancing our ESRG, including improving our approach to "do no significant harm", so ensuring it is fit for purpose in this fast-progressing area". He said details of the Bank's evolving ESRG approach will be set out in its annual reports.

**49.** Even though a specific investment decision may not meet the threshold of 'significant harm', the Committee was concerned that a series of decisions could be considered cumulatively to cause significant harm. The Committee, therefore, asked John Flint to explain whether and how the Bank will consider the cumulative impact of its investment decisions. John Flint said the Bank "recognises the importance of monitoring cumulative impact". He added:

*"We consider every new investment in relation to assets already financed, including impact and additionality. In accordance with our net zero mandate, the cumulative contribution of the Bank to climate mitigation will be measured over time. The location specific environmental characteristics of investment projects are considered in our assessment of cumulative impact, including in relation to our "do no significant harm" principle."*

## **Meaning of infrastructure**

**50.** The Committee sought the Minister's views on the meaning of 'infrastructure'. She told us, the meaning "appears to be reasonably broad". Again, she reiterated the need for equivalence between administrations in terms of the Bank's governance, so as to enable the UK Government and the Devolved Administrations "to revisit collaboratively and with full respect to devolved competencies the objectives and definitions if they were found, for example, to be too restrictive".

**51.** The Framework Document sets out types of projects the Bank should not support, including projects involving extraction, production, transportation and refining of crude oil, natural gas or thermal coal with 'very limited exemptions'. It provides a non-exhaustive list of

exemptions. The Committee asked John Flint to provide details of the criteria the Bank uses when determining whether a project should be subject to an exemption. He explained:

*"Exemptions will be considered in the context of the energy transition where the benefit of moving a technology, business or sector to a lower carbon emissions intensity is crucial to net zero and we can evidence the relative avoided emissions from the investment. Fossil fuel generation of any kind will only be considered by exception with adequate and proportionate carbon capture storage where emissions will be reduced over the lifetime of the asset. Judgements on exemptions will always be made in collaborative and transparent fashion."*

**52.** John Flint also explained the Bank is required to seek written approval from shareholders "before entering into any transaction that is or could be deemed novel, contentious, or repercussive". He said, "Where possible and practical to do so, we will look to consult with the Welsh Government on any potentially contentious issues arising from our activities in Wales".

## Our view

### A role for the Welsh Government and the Senedd

If Wales is to reach its 2050 net zero target it will require significant infrastructure investment from both the public and the private sectors. We believe the Bank could potentially play an important role in scaling up and accelerating investment to support Wales' transition to net zero. While we support, in principle, the creation of the Bank, we have serious concerns about the Bill, as drafted.

The Bank, which will operate on a UK-wide basis, will exercise functions in Wales in areas of devolved competence. The Bill fails to take account of this. There is no role for the Welsh Government or the Senedd in the Bank's governance arrangements: the Bank's strategic priorities are set by the UK Government (clause 3); the power to amend the Bank's activities and the meaning of 'infrastructure' rest with the UK Government and UK Parliament (clause 2); the power to give direction to the Bank about how to deliver its objectives rests with the UK Government (clause 4); and oversight of the Bank's effectiveness will be a matter for the UK Parliament (clause 9). This is unacceptable.

We support the Welsh Government's calls for the UK Government to amend the Bill to provide the Welsh Government and the Senedd with roles in the Bank's governance equivalent to those

of their UK counterparts. As yet, the Welsh Government has not been prepared to share details of the amendments it is seeking with Senedd committees.

#### Investing in nature

Given the escalating nature emergency and the need to rapidly accelerate action to address it, we are disappointed the UK Government ruled out the inclusion of a statutory nature objective following its review of the Bank's environmental objectives. We believe this is a missed opportunity.

Notwithstanding the above, we were encouraged to hear from the Minister that the Bank's objectives are sufficiently broad to enable investment in nature-based solutions and biodiversity. We welcome the amendment agreed in the House of Lords to expand the meaning of 'infrastructure', which provides legal certainty that nature-based solutions are within the scope of the Bank. We hope this amendment will be retained as the Bill passes through the House of Commons.

Eich cyf/Your ref  
Ein cyf/Our ref

Huw Irranca-Davies  
Chair, Legislation, Justice and Constitution Committee

14 November 2022

Dear Huw,

Thank you for the report on the Welsh Government's Legislative Consent Memoranda (LCM) on the Procurement Bill which was laid in the Senedd on 26 October.

I have considered the eight recommendations in the report and I am pleased to provide my response to each of them below.

**Recommendation 1.** The Senedd's consent should also be sought for clauses 114 and 116, and any future memoranda in respect of the Bill should identify them accordingly.

[I do not accept this recommendation.](#)

[I do not agree with the conclusion that clauses 114 and 116 of the Bill would amount to relevant provision for the purposes of Standing Order 29.](#)

[As I explained in response to the Committee's questions on the LCM, these clauses are technical provisions which are concerned with how the Bill works rather than substantive provisions, and as a matter of practice we do not generally include non-operative clauses within Legislative Consent Memoranda.](#)

**Recommendation 2.** The Minister should provide an update on engagement between the Welsh Government and the UK Government in respect of the following outstanding concerns raised at paragraph 119 of the Memorandum:

- a. the drafting of a power to add international agreements to the list in Schedule 9 as a concurrent power with no requirement to obtain the consent of Welsh Ministers when UK Government Ministers are exercising this power in relation to devolved areas;

[Detailed discussions are ongoing at official level on similar provisions contained in the Trade \(Australia and New Zealand\) Bill. Once any agreement has been achieved, it is expected that the outcome of those discussions will be reflected for this power in the Procurement Bill.](#)

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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.

- b. the definition of Welsh Contracting Authorities;

My officials are regularly meeting with UK Cabinet Office officials to resolve this issue. Discussions have been positive, and we are hopeful for a successful outcome.

- c. the drafting of commencement powers as Minister of the Crown only powers;

There was an initial commitment from UK Government to Welsh Ministers having commencement powers in the Bill. Discussions are continuing between officials on the powers with an agreement on the way forward expected imminently.

- d. the inclusion of concurrent powers to make consequential etc provision no requirement to obtain the consent of Welsh Ministers when UK Government Ministers are exercising these powers in relation to devolved areas.

My officials have asked for the power to be amended to Concurrent plus powers and discussions are ongoing.

On all of these outstanding matters of concern, the door has not been closed and engagement is continuing with the UK Government at both Ministerial and official levels.

**Recommendation 3.** The Minister should, for reasons of transparency, publish her letters of 18 May and 23 May 2022 to the Minister for Brexit Opportunities and Government Efficiency, and the responses (if any) received.

The letters are attached as Annex 1.

**Recommendation 4.** The Minister should set out the point in the Bill's passage when she would consider using the intergovernmental relations mechanisms to resolve outstanding areas of concern within the Bill.

We have maintained a good working relationship with the UK Government on the Procurement Bill and, so far, we have been able to reach agreed solutions without needing to consider any dispute resolution mechanisms such as the inter-governmental agreement. Since discussions are ongoing with the UK Government, it would not be appropriate to use the intergovernmental relations mechanisms to resolve outstanding areas of concern within the Bill at this time.

This is in line with the Intergovernmental Relations Review agreement which states: *Escalation of a disagreement between governments as a dispute will only be considered after due and full consideration has been given at portfolio-level (including F:ISC regular engagement), where a disagreement cannot be resolved at portfolio level, and has significant implications for the relationship between two or more governments.*

Given the current relationship with UK Government on this Bill, and the guidance on using intergovernmental relations mechanisms, it is not possible (or appropriate) to predict when relationships would breakdown to the point that use of these mechanisms should be considered.

**Recommendation 5.** The Minister should set out any scenarios in which she would consider using an intergovernmental agreement to resolve outstanding areas of concern within the Bill.

It is not anticipated that the intergovernmental relations mechanism will be required to resolve any outstanding matters. However, should relationships breakdown in the future, we would look to escalate through the Inter-Ministerial Standing Committee in the first instance.

We will of course keep the situation under review and acknowledge that the inter-governmental dispute resolution mechanism is available to resolve any issues that cannot be resolved through the portfolio level engagement should it be needed.



**Recommendation 6.** The Minister should set out her views on the procedures applied to all powers for the Welsh Ministers to make subordinate legislation under the Bill.

**Recommendation 7.** The Minister should provide an update on discussions between the Welsh Government and the UK Government in relation to concerns raised by the Delegated Powers and Regulatory Reform Committee in respect of the Bill.

Considering the links between Recommendation 6 and 7, this response covers both recommendations.

My officials have discussed the concerns raised in the Delegated Powers and Regulatory Reform Committee's Report with their counterparts in the UK Cabinet Office. My officials have contributed to the response where there were Welsh policy considerations.

I was content with the procedures applied to all powers for the Welsh Ministers to make subordinate legislation under the Bill as introduced. However, some procedures will change as a result of some points raised in the Delegated Powers and Regulatory Reform Committee's report. We understand the response to the report is due to be published imminently.

I remain content with the procedures applied to the powers for the Welsh Ministers to make subordinate legislation under the Bill following the amendments agreed at official level.

**Recommendation 8.** The Minister should provide a response to all recommendations contained within this report within three weeks of its laid date, or ahead of any future laying of memoranda by the Welsh Government in respect of the Bill, whichever is the soonest.

Accepted.

I trust the responses provided are helpful. Please do not hesitate to contact me if you need anything further.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The script is cursive and fluid.

**Rebecca Evans AS/MS**

Y Gweinidog Cyllid a Llywodraeth Leol  
Minister for Finance and Local Government



Rt. Hon. Jacob Rees-Mogg M.P.  
Minister for Brexit Opportunities and Government Efficiency  
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By email to:  
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Dear Minister,

Thank you for your letters dated 18 May and 23 May in response to the UK Government's request that the Welsh Government commence the legislative consent process for the Procurement Bill in the Senedd Cymru.

The Procurement Bill provides HM Government and the Devolved Administrations with an excellent opportunity to overhaul the public procurement regime and drive flexibility in our procurement processes. I have been pleased to see our officials working together on this important legislation.

I note from your correspondence, and the subsequent Legislative Consent Motion which was lodged with the Senedd on 9 June, that you have some concerns about the Bill as drafted. Regarding your concern about the Definition of Welsh Contracting Authorities within the Bill, it has always been the intention of HM Government to find a workable, practical solution which will be easy for affected Contracting Authorities to implement and follow.

Additionally, I have noted your concern regarding powers in respect of implementing future trade agreements. I understand the position and recognise that there are some cross-cutting Trade implications which need to be taken into account in this regard.

Since May our officials have continued to work closely together on identifying potential technical and legal solutions and I was pleased to see that some of these issues, for example, with regard to the disapplication power for healthcare services and the removal of the Wales Procurement Policy Statement from any civil proceedings remedies regime, have been resolved. I have asked my officials to continue working collaboratively with your officials throughout the summer and September in order to resolve the remaining issues whilst the Bill is going through the parliamentary process.

I want to thank you for your continued engagement and support of the Procurement Bill and assure you that I will respond in more depth in due course.

Yours sincerely,

Pack Page 30

Jan. 1911.



Eich cyf/Your ref  
Ein cyf/Our ref: RE/700/2022

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cc The Rt Hon Penny Mordaunt MP, Minister of State for Trade Policy  
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cc The Rt Hon Simon Hart MP, the Secretary of State for Wales  
Email: [secretary.state@ukgovwales.gov.uk](mailto:secretary.state@ukgovwales.gov.uk)

23 May 2022

Dear Jacob,

Thank you for your letter regarding the introduction of the Procurement Bill (the Bill) to Parliament on 11 May 2022.

I agree in principle that the Bill engages the legislative consent motion process in legislating for procurements undertaken by devolved Welsh authorities and certain private utilities as defined in the Bill. I am therefore content, in principle, to begin the legislative consent process in the Senedd Cymru.

I have written to you separately however regarding some issues with the definition of devolved Welsh authorities within the Bill and I look forward to receiving your response.

Due to the size of the Bill, my officials are continuing with the devolution analysis for the legislative consent memorandum. My officials are also working with yours to agree a list of government amendments required.

In relation to the section in your letter entitled "Power to implement procurement aspects of trade agreements", this is an area of significant concern with the Bill. Thank you for the assurance provided in your letter. However, the Welsh Government has been clear that the use of concurrent powers undermines the devolution settlement and that we cannot recommend consent to the Senedd where concurrent powers are proposed.

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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.

When the Welsh Ministers were considering their position regarding the Bill, the following assurances were made by Minister Lopez, the then Parliamentary Secretary for the Cabinet Office, in her letter of 16 July 2021:

- that the legislation will not fetter either the legislative competence of the Senedd or the executive competence of Welsh Ministers, e.g., no concurrent powers so as to engage Schedule 7B Government of Wales Act 2006, full autonomy in taking forward any secondary legislation for Welsh contracting authorities (i.e., those bodies with wholly or mainly devolved functions)
- that Welsh Ministers will be granted equivalent powers to UK Ministers in relation to those contracting authorities carrying out wholly or mainly devolved activities (Welsh contracting authorities).

In light of the assurances provided by Minister Lopez above, I ask that you reconsider your position and that the power to implement procurement aspects of trade agreements in the Bill are amended to give Welsh Ministers an equivalent power. This is a matter of grave importance to the Welsh Ministers, I have therefore copied this letter to the Minister of State for Trade Policy and the Secretary of State for Wales.

I look forward to hearing from you soon.

Yours sincerely,

A handwritten signature in black ink, reading "Rebecca Evans". The signature is written in a cursive, flowing style.

**Rebecca Evans AS/MS**

Y Gweinidog Cyllid a Llywodraeth Leol  
Minister for Finance and Local Government



Ein cyf/Our ref: RE/699/2022

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18 May 2022

Dear Jacob,

### **Procurement Bill: Cross Border Procurement**

Thank you for your letter of 11 May. I confirm that I will be providing a formal response to your letter in relation to those matters outlined under the heading of "Next steps."

Meanwhile, I would like to draw your attention to a particular area of concern to Welsh Ministers in relation to cross border procurement.

An assurance was made by Minister Lopez, the then Parliamentary Secretary for the Cabinet Office, in her letter of 16 July 2021, that we agree the list of contracting authorities to which the "Welsh" elements of the Bill will apply (i.e., those bodies with wholly or mainly devolved functions) and to which the UK Government elements will not.

Since then, discussions have been ongoing between Welsh Government and UK Government Officials on the definition for Welsh Contracting Authorities (WCAs) in the Bill - with the draft wording being amended a number of times.

The Bill as introduced contains provision which restricts the exercise of Welsh Ministers' powers under the Bill to the purpose of regulating (a) contracting authorities that are devolved Welsh authorities (within the meaning given in section 157A of the Government of Wales Act 2006) (b) contracting authorities that are not devolved Welsh authorities but are to be treated as devolved Welsh authorities or (c) the award of contracts under a devolved Welsh procurement arrangement, or the management of such contracts (see clause 99(1)). Any reference in the Bill to a "devolved Welsh authority" is to include a reference to an authority that is to be treated as a devolved Welsh authority (see clause 99(4)).

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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.

We are mostly content with the definition as it stands for most Welsh Contracting Authorities. This goes some way towards addressing our concern that the “Welsh” rules (as a consequence of the exercise of the Welsh Ministers powers and the separate provision for Wales) should apply to a wider range of contracting authorities than would fall within the Government of Wales Act definition of “devolved Welsh authority”. Our main concern is about the implications for contracting authorities, other than utilities, which fall within category (b) (i.e. contracting authorities that are not devolved Welsh authorities but are to be treated as devolved Welsh authorities) when they carry out a cross border procurement i.e. a single procurement which relates to both Wales and England.

Our interpretation of clause 99(3) is that it would mean that in these circumstances, the authority will be bound by the ‘Welsh’ rules for procurements which are wholly in respect of Wales but not for any other procurements, including cross border procurements. Ultimately this means that for any cross border procurements which are for the supply of goods, services or works of which, say, 90% is for use in Wales and 10% is for use in England, then the ‘English’ elements of the rules would apply. Examples of what this might mean currently for Contracting Authorities falling within the wider definition of “devolved Welsh authority” (“category (b) authorities”) when carrying out cross-border procurements are currently as follows:

- Category (b) authorities carrying out a cross border procurement in Wales and England would have to have regard to the NPPS and not the WPPS, as the duty to have regard to the WPPS only applies to devolved Welsh authorities (clause 13). An example of this is registered social landlords (RSLs) procuring work in relation to their housing stock which they have in both Wales and England in one contract. The English NPPS would apply, even though the main element of their housing stock is based in Wales.
- Prohibition of a separate pre-qualification stage for procurements below GPA thresholds (clause 78) applies to contracting authorities other than devolved Welsh authorities. Category (b) authorities when carrying out a cross border procurement would be subject to this prohibition and would not be able to utilise the flexibility of using a pre-qualification stage.
- For any contracts valued above £2m let in Wales, category (b) authorities carrying out a cross border procurement will need to comply with the requirement to publish the contracts (clause 51(3)). But this requirement does not apply to devolved Welsh authorities so will not be a requirement for category (a) authorities when carrying out any procurement (including a cross border procurement) nor is it a requirement for a category (b) authority when carrying out a procurement only in relation to Wales.
- Category (b) authorities carrying out cross border procurement would also need to comply with the requirement to update published contracts valued over £2m when they have been modified, or to publish contracts if a modification has taken the value over £2m (clause 70(6)). This is not a requirement for category (a) authorities when carrying out any procurement (including a cross border procurement) nor is it a requirement for a category (b) authority when carrying out a procurement only in relation to Wales.

Both UKG Ministers and Welsh Ministers have regulation making powers within this Bill, and the Bill makes separate provision for Wales in some areas. As both Governments develop policies within their competence in the future there may be further divergence and the impact on category (b) authorities carrying out cross border procurements could therefore be much greater moving forward and could therefore have a real impact on the implementation of Welsh policies for the authorities affected. This would not be acceptable for Welsh Ministers.

The drafting of the definition of “devolved Welsh authority” in the Bill means that when category (b) authorities are carrying out a cross border procurement the English regulations take precedence, which is not what Welsh Ministers require for bodies undertaking wholly or mainly devolved functions.

The Explanatory Note (587) to this section in the Bill refers to this point, It explains that subsection (3) defines another category of contracting authority to be treated as a devolved Welsh authority and states:

”These are contracting authorities that operate to some extent outside Wales, but whose functions are both exercisable wholly or mainly in relation to Wales and are not wholly or mainly reserved. These authorities are only to be treated as devolved Welsh authorities when awarding or managing a contract in relation only to their functions in Wales. In respect of a contract that relates to more than just functions in Wales, the authority would not be a devolved Welsh authority.”

It is this last section that is not acceptable to Welsh Ministers if the procurement being undertaken relates mainly to Wales then we believe that they should be treated as a devolved Welsh authority for the purposes of this Bill.

You may be aware that my officials have already requested an approach, which would require contracts for services/goods/works for use in both Wales and England to be procured in accordance with the provisions applicable to the main geographical location and function of the contract in question. This is a similar approach to mixed procurements in the current PCR. However, we understand that you are not minded to accept this approach. It is important to ensure that we reach agreement on the scope of the Welsh Ministers powers to regulate in relation to Welsh Contracting Authorities (WCAs) and the application of separate provisions in relation to WCAs.

Given the above and the assurance provided by Minister Lopez, I would ask you to consider an amendment to the Bill so that the drafting of the definition of category (b) authorities would reflect where procurement undertaken by an authority is wholly or mainly in relation to Wales that they are treated as a devolved Welsh authority.

Yours sincerely,



**Rebecca Evans AS/MS**

Y Gweinidog Cyllid a Llywodraeth Leol  
Minister for Finance and Local Government



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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE** Statement on the progress of the Independent Commission on the Constitutional Future of Wales

**DATE** 14 November 2022

**BY** Mick Antoniw MS, Counsel General and Minister for the Constitution

In July I provided a progress report on the work of the Independent Commission on the Constitutional Future of Wales and undertook to provide a further report in the autumn.

[Information on the Commission's work can be found in the most recent progress report received from the Co-chairs.](#)

The First Minister, the leader of Plaid Cymru and I recently met the Co-chairs to discuss their work. They advised that they are on track to deliver their interim report by the end of this year. I will provide members again with a further update after receipt of that report.



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: MA/LG/2062/22

Huw Irranca-Davies MS  
Chair  
Legislation Justice & Constitution Committee

15 November 2022

Dear Huw,

I am writing in relation to the draft Marine, Fisheries and Aquaculture (Financial Assistance) Scheme (Wales) Regulations 2022.

Further to the Committee's helpful report on the Regulations, the Government withdrew and committed to re-laying a revised set of Regulations, which took into account the Committee's comments. All the reporting points which required response have been addressed and the revised Regulations were laid on 15 November.

In order to be able to open the scheme before the end of this Senedd term, I would be grateful if the Committee would consider expediting their scrutiny of the revised Regulations to enable the Plenary debate to take place on 29 November. Legislative changes due to come into force in 2023 could require further revisions of the Regulations and cause further delay if we cannot open the scheme before the end of 2022.

The Committee's assistance in this matter would be greatly appreciated.

Yours sincerely,

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

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# Agenda Item 9

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

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



**Llywodraeth Cymru**  
**Welsh Government**

John Griffiths MS  
Chair - Local Government and Housing Committee  
Senedd Cymru  
Cardiff Bay  
Cardiff  
CF99 1SN  
SeneddHousing@senedd.wales

10 November 2022

Dear John,

Thank you for your letter of 31 October in relation to the Legislative Consent Memorandum (LCM), and supplementary Legislative Consent Memorandum on the UK Social Housing (Regulation) Bill ("the Bill").

The latest data from the Social Housing Regulator in England confirms there are 18 Registered Providers who own and manage approximately 530 homes/units in Wales which will be subject to the changes proposed in the Bill. These are, in the main, special needs provision with some general needs and shared ownership. The Social Housing Regulator advises it does not hold information on the locations of the homes/units.

By way of additional information, which the Committee may find useful, the 2021 Financial Statements of Welsh Housing Associations confirms that Welsh Registered Social Landlords own and manage 169,337 homes in Wales. Additionally, two Welsh RSLs own/manage approximately 116 bedspaces/homes (as at Dec 2021) in England, again these are primarily specialist provision such as supported housing.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee, Huw Irranca-Davies MS.

Yours sincerely

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

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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.

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Julie James MS  
Minister for Climate Change  
Welsh Government

31 October 2022

Dear Julie

**Legislative Consent Memorandum (LCM) and Supplementary LCM on the Social Housing (Regulation) Bill**

You will be aware that the LCM and SLCM(2) on the Social Housing (Regulation) Bill have been remitted to our Committee for scrutiny; we considered these at our meeting on 27 October.

We note that the SLCM states:

"there are relatively few properties in Wales which are owned and/or managed by an English RP, who will be subject to the changes in regulatory environment described by the Bill."

It would assist our consideration of the LCM and SLCM if you could provide further details on the number of properties in Wales which fall into this category and, if possible, their location. We would be grateful for a response by 10 November to enable us to give further consideration to this at our meeting the following week.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely



John Griffiths MS

Chair, Local Government and Housing Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



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# Agenda Item 12

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