

Report on the Legislation (Procedure, Publication and Repeals) (Wales) Bill

February 2025



The Welsh Parliament is the democratically elected body that represents the interests of Wales and its people. Commonly known as the Senedd, it makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

An electronic copy of this document can be found on the Senedd website:
www.senedd.wales/SeneddLJC

Copies of this document can also be obtained in accessible formats including Braille, large print, audio or hard copy from:

**Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
CF99 1SN**

Tel: **0300 200 6565**
Email: **SeneddLJC@senedd.wales**
X: **@SeneddLJC**

© **Senedd Commission Copyright 2025**

The text of this document may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading or derogatory context. The material must be acknowledged as copyright of the Senedd Commission and the title of the document specified.

Cover image contains content available under the Open Government Licence v3.0: **www.nationalarchives.gov.uk/doc/open-government-licence/version/3/**

Report on the Legislation (Procedure, Publication and Repeals) (Wales) Bill

February 2025



About the Committee

The Committee was established on 26 May 2021. Its remit can be found at www.senedd.wales/SeneddLJC

Current Committee membership:



Committee Chair:
Mike Hedges MS
Welsh Labour



Alun Davies MS
Welsh Labour

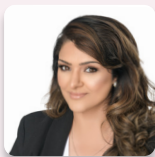


Laura Anne Jones MS
Welsh Conservatives



Adam Price MS
Plaid Cymru

The following Member was also a member of the Committee during the scrutiny of the Bill:



Natasha Asghar MS
Welsh Conservatives

Contents

1. Introduction	5
The Bill	5
Our approach to consideration	5
Finance Committee consideration	6
2. Legislative competence	8
Human rights implications	9
Our view	10
3. General principles of the Bill and the need for legislation	11
Background	11
The procedural arrangements for making Welsh subordinate legislation	11
The requirements for publishing Acts of Senedd Cymru and Welsh statutory instruments, and other subordinate legislation that is not made by statutory instrument	12
The accessibility of Welsh law	14
General principles of the Bill	16
Need for the Bill	20
Development of the Bill and consultation	23
Delegated powers and the balance between what is on the face of the Bill and what is left to subordinate legislation	26
Post-legislative review	27
Our view	28
4. Procedure for making Welsh subordinate legislation	31
Senedd scrutiny procedures	31

The opportunities the Bill may provide to codify other scrutiny procedures, or to provide for new scrutiny procedures	37
Road traffic orders not required to be made by Welsh statutory instrument.....	42
Our view	44
5. Publication of Welsh legislation	48
King’s Printer for Wales.....	48
Financial implications.....	54
Dual-column printed format for statutory instruments.....	55
Our view	56
6. Repeals of Welsh legislation.....	59
Repeals and amendment of provisions in planning law	59
Repeal of the Domestic Fire Safety (Wales) Measure 2011.....	60
Proposed repeals not brought forward by the Bill as introduced.....	63
Sections 53 to 56 of the Countryside and Rights of Way Act 2000	63
Section 28 of the Commons Act 1876.....	66
Our view	67
Annex 1: List of oral evidence sessions.....	69
Annex 2: List of written evidence	70

1. Introduction

The Bill

1. On 21 October 2024, the Counsel General and Minister for Delivery, Julie James MS (the Member in charge), introduced the Legislation (Procedure, Publication and Repeals) (Wales) Bill (the Bill) to the Senedd.¹
2. On the same day, the Member in charge laid an accompanying Explanatory Memorandum (the EM), incorporating the regulatory impact assessment and Explanatory Notes², and issued a written statement³. On 22 October 2024, she also made an oral statement in respect of the Bill.⁴
3. In accordance with Standing Order 26.9, the Business Committee referred the Bill to the Legislation, Justice and Constitution Committee (the Committee) to consider and report on its general principles, by the deadline of 14 February 2025.⁵

Our approach to consideration

4. On 21 October 2024⁶, we agreed to consider:
 - the general principles of the Bill and whether there is a need for legislation to deliver its stated policy objectives;
 - any potential barriers to the implementation of the Bill's provisions, and whether the Bill and accompanying Explanatory Memorandum and regulatory impact assessment take adequate account of them;
 - whether there are any unintended consequences arising from the Bill;
 - the Welsh Government's assessment of the financial and other impacts of the Bill;

¹ The [Bill, as introduced](#), and information about its passage through the Senedd is available on the [Bill's webpage](#).

² Welsh Government, [Legislation \(Procedure, Publication and Repeals\) \(Wales\) Bill: Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Notes](#), October 2024

³ Welsh Government, [Written statement: Legislation \(Procedure, Publication and Repeals\) \(Wales\) Bill](#), 21 October 2024

⁴ Plenary, [22 October 2024, Record of Proceedings \(RoP\)](#), [131] to [176]

⁵ Business Committee: [Timetable for consideration: The Legislation \(Procedure, Publication and Repeals\) \(Wales\) Bill](#), October 2024

⁶ Legislation, Justice and Constitution (LJC) Committee, [21 October 2024, Minutes](#), item 12

- the appropriateness of the powers in the Bill for the Welsh Ministers to make subordinate legislation;
- matters relating to the competence of the Senedd including compatibility of the Bill's provisions with the European Convention on Human Rights;
- the balance between the information contained on the face of the Bill and what is left to subordinate legislation;
- any matter related to the quality of the legislation; and
- any other matter related to the constitutional or other implications of the Bill.⁷

5. On 25 October 2024 we launched a consultation to help inform our consideration, which closed on 6 December 2024. The four responses which we received were considered at our meeting of 13 January 2025.⁸

6. We took oral evidence from the Member in charge on 4 November 2024⁹ and 13 January 2025¹⁰.

7. We also received oral evidence from: Saul Nassé, Chief Executive and Keeper of the National Archives and King's Printer of Acts of Parliament on 18 November 2024¹¹; and from Dr Ruth Fox from the Hansard Society and Dr Adam Tucker from the University of Liverpool on 6 January 2025¹².

8. Following our request for further information in respect of the Bill¹³, we also received correspondence from the Member in charge on 29 November 2024.¹⁴

Finance Committee consideration

9. The Finance Committee considered the financial implications of the Bill on 23 October 2024¹⁵ and subsequently sought further information from the Member

⁷ Some of these matters are those which the Committee would have otherwise taken into account had the Bill not been referred to it for scrutiny of its general principles.

⁸ Annex 2 provides a list of those who provided written evidence to the [consultation](#).

⁹ LJC Committee, [4 November 2024, Record of Proceedings](#)

¹⁰ LJC Committee, [13 January 2025, Record of Proceedings](#)

¹¹ LJC Committee, [18 November 2024, Record of Proceedings](#)

¹² LJC Committee, [6 January 2025, Record of Proceedings](#)

¹³ [Letter to the Counsel General and Minister for Delivery, 15 November 2024](#)

¹⁴ [Letter from the Counsel General and Minister for Delivery, 29 November 2024](#)

¹⁵ Finance Committee, [23 October 2024, Minutes](#), item 7

in charge on the costs provided in the regulatory impact assessment.¹⁶ On 27 November 2024, the Finance Committee considered the Member in charge's response, dated 19 November 2024¹⁷, and agreed to take no further action.¹⁸

¹⁶ [Letter from the Chair of the Finance Committee to the Counsel General and Minister for Delivery, 5 November 2024](#)

¹⁷ [Letter from the Counsel General and Minister for Delivery, 19 November 2024](#)

¹⁸ Finance Committee, [27 November 2024, Minutes](#), item 8

2. Legislative competence

10. For a Bill – if passed as an Act of Senedd Cymru – to be within the Senedd’s legislative competence, it must not contain provision which fails to meet any of the tests set out in section 108A of the *Government of Wales Act 2006* (the 2006 Act).

11. One of these tests is that a provision must not breach any of the restrictions in Schedule 7B to 2006 Act.¹⁹ One such restriction is that a provision cannot confer or impose a function on a Minister of the Crown or a UK Government department, or modify or remove one of their functions, unless the appropriate Secretary of State consents to the provision.²⁰

12. The Member in charge states in the EM that, in her view, the provisions in the Bill as introduced would be within the legislative competence of the Senedd.²¹ However, she also states that Secretary of State consent is required in relation to the Bill’s provisions that impact upon the King’s Printer of Acts of Parliament.²²

13. In the Llywydd’s view, most of the provisions of the Bill would be within the legislative competence of the Senedd. The Llywydd further states as follows:

“Section 3 of the Bill, which confers functions on the King’s Printer of Acts of Parliament, would not be within legislative competence. This is because consent is required from the UK Government to bring it within legislative competence and this necessary consent has not been obtained at this time.

Paragraph 1 of Schedule 3 to the Bill, which modifies functions of the Secretary of State under the Statutory Instrument Act 1946, would not be within legislative competence. This is because consent is required from the UK Government to bring it within legislative competence and this necessary consent has not been obtained at this time.”²³

¹⁹ See section 108A(2)(d) of the 2006 Act.

²⁰ See paragraph 11 of Schedule 7B to the 2006 Act.

²¹ EM, page 5

²² EM, paragraph 47

²³ Senedd Cymru, Presiding Officer’s Statement on Legislative Competence: Legislation (Procedure, Publication and Repeals) (Wales) Bill, 21 October 2024

14. The Member in charge told us in November 2024 that the Welsh Government had sought the relevant consents, and although those consents were outstanding, she did not anticipate the UK Government raising any issues.²⁴

15. On 13 January 2025, the Member in charge told us that that these consents continued to be outstanding, although the Welsh Government was expecting to receive them before the end of Stage 1 of the Bill's passage through the Senedd.²⁵

Human rights implications

16. Another of the tests set out in section 108A of the 2006 Act is that a provision must not be incompatible with the rights protected by the European Convention on Human Rights (the Convention rights).²⁶

17. The EM does not make reference to the Bill's impact on human rights. We therefore asked the Member in charge, in correspondence, to set out the Welsh Government's assessment of the Bill's human rights implications, with particular regard to the provisions in section 2²⁷ of the Bill. She wrote to us in response as follows:

"The Government has undertaken an assessment of the human rights implications of the Bill, and I am satisfied that its provisions are compatible with the Convention rights. Furthermore, I consider that the Bill has a positive impact on both human rights and the rule of law, because it puts the arrangements for the scrutiny and publication of legislation on a clearer legal basis and removes unnecessary clutter from the law of Wales.

The Government does not consider that section 2 gives rise to any issues about compatibility with the Convention rights. In any case where a road traffic order engages Convention rights, the Welsh Ministers will be required to act compatibly with those rights in making and enforcing the order. There are also statutory procedures for making and publicising road traffic orders, for example in SI 1990/1656 and SI 1992/1251 made under the Road Traffic Regulation Act 1984; and new section

²⁴ LJC Committee, 4 November 2024, RoP [178]

²⁵ LJC Committee, 13 January 2025, RoP [8]

²⁶ See section 108A(2)(e) of the 2006 Act.

²⁷ Section 2 amends the *Highways Act 1980* and the *Road Traffic Regulation Act 1984* to no longer require certain road traffic orders to be made by Welsh statutory instrument (or statutory instrument).

37Z of the 2019 Act (inserted by section 3 of the Bill) will require the Welsh Ministers to publish all Welsh subordinate instruments they make that are not required to be made by Welsh statutory instrument.”²⁸

Our view

18. We note the view of the Member in charge – and the view of the Llywydd – that the Bill’s provisions are within the legislative competence of the Senedd, except for those provisions in section 3 and paragraph 1 of Schedule 3 which require the consent of a Minister of the Crown.

19. We also note, and bring to the Senedd’s attention, that as of 13 January 2025 those consents were yet to be received, although the Member in charge has stated that the Welsh Government anticipates to receive them before the end of Stage 1 of the Bill’s passage.

20. We acknowledge the information we received from the Member in charge in respect of the Welsh Government’s assessment of the Bill’s impact on human rights; information which we found helpful to inform our consideration. However, we believe it would have been more helpful for such information to have been included within the Explanatory Memorandum, and further believe – as we have stated previously – that this is an approach which should be adopted for all Bills introduced into the Senedd.

Conclusion 1. As a matter of good practice, a Bill’s accompanying Explanatory Memorandum should always include a commentary of the consideration given to the engagement of its provisions with human rights.

²⁸ Letter from the Counsel General and Minister for Delivery, 29 November 2024, response to question 2

3. General principles of the Bill and the need for legislation

21. As stated in its EM, the purpose of the Bill is to:

- bring together and formalise:
 - the procedural arrangements for making Welsh subordinate legislation (as provided by Part 1 of the Bill); and
 - the requirements for publishing Acts of Senedd Cymru and Welsh statutory instruments, and other subordinate legislation that is not made by statutory instrument (as provided by Part 2).
- improve the accessibility of Welsh law by:
 - repealing, amending and otherwise disapplying in relation to Wales provisions and enactments that are no longer of practical utility or benefit (as provided by Part 3); and
 - making minor amendments to the *Legislation (Wales) Act 2019*²⁹ (the 2019 Act) (as provided by Part 4).

Background

The procedural arrangements for making Welsh subordinate legislation

22. Subordinate legislation is law, usually made by Ministers, under powers given (or “conferred”) to them by primary legislation. In Wales, the Welsh Ministers make subordinate legislation using powers given to them in primary legislation such as Acts of Senedd Cymru, Assembly Measures³⁰ and Acts of the UK Parliament.

23. The requirements relating to the scrutiny and publication of statutory instruments made by the Welsh Ministers are set out in the *Statutory Instruments Act 1946*³¹ (the 1946 Act) and the associated Statutory Instruments Regulations

²⁹ Available at: www.legislation.gov.uk/anaw/2019/4/contents

³⁰ Between 2007 and 2011, under [Part 3 of the 2006 Act](#), the National Assembly for Wales (as it was known the time) could only pass Measures.

³¹ Available at: www.legislation.gov.uk/ukpga/Geo6/9-10/36/contents

1947³². The 1946 Act applies to the Welsh Ministers, and instruments made by them, by virtue of section 11A of that Act as inserted by the 2006 Act.³³

24. The development of custom and practice since the 1946 Act has meant there are now – as stated in the EM – four main procedures used to make statutory instruments. These procedures are provided in detail by the enactments which confer the powers to make such instruments, and are often known informally as:

- the “made negative procedure”;
- the “draft affirmative procedure”;
- the “made affirmative procedure”; and
- where there is no set scrutiny procedure, the “no procedure”.³⁴

25. The Welsh Ministers on occasion also exercise their subordinate legislation-making powers jointly or compositely with other Ministers in other governments in the United Kingdom, and some subordinate legislation which applies in relation to Wales is made by His Majesty through an Order in Council.

26. In addition, some enactments set out procedures for subordinate legislation which are adapted from the four main procedures listed above, for example to provide for additional time for Senedd scrutiny of an instrument, or to provide a duty to consult before an instrument can be laid. These types are often known informally as ‘super’ or ‘enhanced’ negative or affirmative procedures.

27. Except in rare circumstances where the conferring enactment provides otherwise³⁵, subordinate legislation cannot be amended or adapted by the legislature.

The requirements for publishing Acts of Senedd Cymru and Welsh statutory instruments, and other subordinate legislation that is not made by statutory instrument

28. Section 115 of the 2006 Act sets out the process through which Acts of Senedd Cymru receive Royal Assent. In particular, sections 115(5) to (5F) refer to the

³² Available at: www.legislation.gov.uk/uksi/1948/1/contents

³³ Available at: www.legislation.gov.uk/ukpga/Geo6/9-10/36/section/11A

³⁴ More information about Welsh subordinate legislation is available on the [Senedd’s website](#).

³⁵ Examples of such provision can be found within [section 27\(3\) of the Civil Contingencies Act 2004](#), and within [section 1\(2\) of the Census Act 1920](#).

“official print” version of an Act of the Senedd and a “certified copy” of the official print.

29. The Chief Executive and Keeper of the National Archives, in their capacity as King’s Printer of Acts of Parliament³⁶, is responsible for publishing Acts of the Senedd. However, they do not have a statutory duty to do so, unlike for Acts of the Scottish Parliament, as provided by section 92(1)(a) of the *Scotland Act 1998*³⁷ and section 39(2) of the *Interpretation and Legislative Reform (Scotland) Act 2010*³⁸ (the 2010 Scottish Act).

30. In its 2015 report, *Making Laws in Wales*, the Fourth Assembly Constitutional and Legislative Affairs Committee recommended that the Welsh Government should explore the establishment of a King’s Printer for Wales.³⁹

31. Under section 2 of the 1946 Act, the King’s Printer of Acts of Parliament is also responsible for the numbering, printing, publication and citation of statutory instruments.⁴⁰ Section 1 of the 1946 Act provides a definition of “statutory instrument” and section 1(1A) provides that such instruments made by the Welsh Ministers are also to be known as “statutory instruments”.

32. Unlike Scottish statutory instruments and Northern Irish statutory rules, “Welsh statutory instruments” are therefore not defined in law, and are simply “statutory instruments” which form part of what is known informally as the wider UK ‘series’ of statutory instruments.

33. Some types of subordinate legislation are not made by statutory instrument, such as statutory guidance, codes of practice and directions. Since these types of legislation are not statutory instruments, they are not published by the King’s Printer of Acts of Parliament. When legislation of these types are made by the Welsh Ministers, they are normally published on the Welsh Government’s website.⁴¹

³⁶ The Chief Executive and Keeper of the National Archives is appointed to this role by His Majesty via Letters Patent.

³⁷ Available at: www.legislation.gov.uk/ukpga/1998/46/section/92

³⁸ Available at: www.legislation.gov.uk/asp/2010/10/section/39

³⁹ National Assembly for Wales, Constitutional and Legislative Affairs Committee (Fourth Assembly), *Making Laws in Wales*, October 2015, recommendation 34

⁴⁰ Such instruments are published on the National Archives’ website, www.legislation.gov.uk.

⁴¹ Welsh Government, *Publications*

The accessibility of Welsh law

34. The *Law Commissions Act 1965*⁴² (the 1965 Act) established the Law Commission. One of its functions, as provided by section 3 of the 1965 Act, is to keep the law under review:

*“... with a view to its systematic development and reform, including in particular the codification of such law, the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law...”*⁴³

35. In accordance with sections 3C and 3D of the 1965 Act, as inserted by the *Wales Act 2014*⁴⁴, the Welsh Ministers must prepare a report each year on Law Commission proposals relating to devolved matters, and may agree a protocol⁴⁵ with the Law Commission about its work relating to such matters.

36. In 2015, the Law Commission undertook a project, proposed by the Welsh Government, to review the accessibility of Welsh law.⁴⁶ In its 2016 report, *Form and Accessibility of the Law Applicable in Wales*, it highlighted the importance of accessible law as follows:

“Accessibility is central to the rule of law. This is a constitutional principle within the United Kingdom that is also recognised more widely, for example as a fundamental principle of European Union law and in the jurisprudence of the European Court of Human Rights.

*Every person is subject to the law, regardless of whether they are aware of its requirements, and even of whether those requirements have been brought to their attention; an Act of Parliament takes legal effect “irrespective of publication”. This heightens the duty of government to ensure, in accordance with the rule of law, that citizens can access legislation as a matter of principle.”*⁴⁷

⁴² Available at: www.legislation.gov.uk/ukpga/1965/22

⁴³ Available at: www.legislation.gov.uk/ukpga/1965/22

⁴⁴ Available at: www.legislation.gov.uk/ukpga/2014/29/contents

⁴⁵ The most recent protocol, from 2015, is available on [the Law Commission’s website](http://www.lawcommission.gov.uk).

⁴⁶ Law Commission, *Project: The Form and Accessibility of the Law Applicable in Wales*

⁴⁷ Law Commission, *Form and Accessibility of the Law Applicable in Wales, 2016*, paragraphs 1.14 to 1.15

37. Its report highlighted concerns about the state of the accessibility of law in a general sense, and with particular regard to the law applicable in Wales it stated:

“... inaccessibility has been compounded by the nature and process of devolution. The devolution settlement has changed from the Government of Wales Act 1998, conferring executive powers only, to the first phase of operation of the Government of Wales Act 2006, under which the National Assembly for Wales could pass Measures, and then to the coming into effect of Part 4 of the Government of Wales Act 2006, giving the National Assembly for Wales the power to enact primary legislation in relation to subjects listed in schedule 7. ...

Laws applicable in Wales are made both by the United Kingdom Parliament and by the National Assembly for Wales. There have been successive textual and non-textual amendments to legislation made by both Parliament and the National Assembly.

The law on devolved subjects in the two countries increasingly diverges as their governments introduce new policies. In some cases, Parliament has changed the law in England but the National Assembly for Wales has not changed the same law in Wales. ...

Another problem is that powers given on the face of an Act of Parliament to the Secretary of State or another body have been variously transferred to the National Assembly for Wales as originally constituted, to the Welsh Ministers, and in some cases to other bodies. ...

For all of these reasons, the law applying in Wales is particularly difficult to ascertain.”⁴⁸

38. To address some of the recommendations made in the Law Commission’s report, the Welsh Government introduced the Legislation (Wales) Bill⁴⁹, which became the 2019 Act. The 2019 Act requires the Welsh Government’s Counsel General to keep the accessibility of Welsh law under review, and also requires the Welsh Ministers and the Counsel General to prepare a programme to improve the

⁴⁸ Law Commission, *Form and Accessibility of the Law Applicable in Wales*, 2016, paragraphs 1.26 to 1.32

⁴⁹ Information about the (then) National Assembly for Wales’s consideration of the Bill is available on [the Senedd’s webpages](#).

accessibility of Welsh law. The Welsh Government's programme for 2021 to 2026 was published in 2021⁵⁰ and a revised version was issued in January 2024⁵¹.

39. One of the Law Commission's functions, as set out in section 3(1) of the 1965 Act, is to "prepare from time to time at the request of the Minister comprehensive programmes of consolidation and statute law revision, and to undertake the preparation of draft Bills pursuant to any such programme approved by the Minister". Statute law revision includes removing legislation that is obsolete or which has lost any modern purpose, and in the past, the Law Commission has submitted proposals for such law repeals to the UK Government which have then been enacted as statute law (repeals) acts.⁵² However, as stated in its annual report for 2022-23:

*"In recent times, enthusiasm in Government for repeals work has reduced, which in turn makes it difficult for the Commission to allocate resource to this aspect of our work. Nevertheless, we remain committed to repeals work and will continue to consider ways in which we can focus our attention on those areas of law which have the potential to cause genuine confusion."*⁵³

General principles of the Bill

40. Within her oral statement on the Bill's introduction, the Member in charge stated:

"As the title of the Bill suggests, there are three main parts to the Bill. The first relates to the procedures for making Welsh subordinate legislation. The Bill seeks to rationalise and, essentially, codify procedures that have become overly complex. ...

The second Part of the Bill modernises the rules on publication of Welsh legislation. The legislative framework for publishing Welsh laws is fragmented and outdated. The current provisions are scattered across multiple enactments, some of which are very old and not fully adapted to the modern Welsh legislative

⁵⁰ Welsh Government, [The future of Welsh law: accessibility programme 2021 to 2026](#), September 2021

⁵¹ Welsh Government, [The future of Welsh law: revised accessibility programme 2021 to 2026](#), January 2024

⁵² Law Commission, [Statute law repeals](#)

⁵³ Law Commission, [Annual Report 2022-23](#), December 2023, page 68

context. This fragmentation leads to confusion and inefficiency. ... To address these issues, the Bill establishes a more coherent and bespoke system for the publication of Welsh legislation. ...

As part of our wider initiatives to make Welsh law more accessible, the Bill also reflects work that the Government has been undertaking for some time to identify provisions on the statute book that are no longer needed. Part 3 of the Bill, therefore, introduces a series of repeals of provisions that are no longer of practical utility or benefit.

... finally, the Bill will make some minor amendments to Part 2 of the Legislation (Wales) Act 2019. By modernising our legislative framework, we can enhance the clarity and accessibility of Welsh law, ultimately benefiting all who rely on it.”⁵⁴

41. In oral evidence to the Committee, the Member in charge set out the purpose of the Bill as follows:

“This is a technical and administrative Bill and it helps develop the elements that underpin Welsh law and help make it more accessible. The purpose is to amend the Legislation (Wales) Act 2019, which is about making and publishing Welsh legislation, and it brings forward a series of repeals to provisions that are no longer needed. The law on this is currently spread over a few enactments, some of which are around 80 years old, even, and there are gaps in the legislation, and they don’t fully reflect the arrangements that we’ve all become used to working in. Also, none of the legislation is currently bilingual.”⁵⁵

42. The Member in charge further stated:

“... it’s a tidying up provision, if you like. It’s about accessibility, it’s about allowing things to happen in Welsh law that I think some of us might be quite surprised don’t happen. I have to say that I was quite surprised to find that there was no such thing in law as a Welsh statutory instrument, for example. I think quite a few of us would find that surprising. So it allows us to tidy it up, to

⁵⁴ Plenary, 22 October 2024, RoP [132], [136], [138] and [139]

⁵⁵ Plenary, 22 October 2024, RoP [131] to [176]

have a series of Welsh statutory instruments that are numbered as such, and to allow accessibility more generally.

It also allows us to access the King's Printer as a King's Printer for Wales for the first time, and again, I think I can't be alone in having been quite surprised that that wasn't something we already had. So effectively I think it's putting the law into the state that many of us might have guessed it was already in."⁵⁶

43. With regard to the provisions in Part 3 of the Bill in respect of repeals of legislation, the Member in charge told us:

"... it's an issue for us, that we need to get into the habit of reviewing our own legislation and making sure that it's tidied up and repealed. So, I would hope that the Senedd would see a number of these [Bills including repeal provisions] coming forward with regular monotony ... we want to get into the habit, if you like, of that kind of tidying-up-type process. And this is all about ... making sure that jobbing lawyers, when they come in front of the court, can be clear that what they're looking at is the law ... that's in force and hasn't become obsolete because it's been repealed by the miscellaneous provisions Act 20,025 that you unfortunately didn't look up."⁵⁷

44. In correspondence, the Member in charge provided further information about the Welsh Government's processes surrounding the introduction of Bills which include the repeal of provisions, and future plans for their introduction:

"The process is managed within the Office of the Legislative Counsel who, following this current Bill, will collect and maintain lists of suggested matters for inclusion in future Bills. The timing of the next Bill will be a matter for the next Government.

I mentioned in my evidence that we need to consider how certain types of Bills are considered, and I would be keen to see a repeals Bill procedure developed. There are a number of examples from around the Commonwealth we could consider,

⁵⁶ LJC Committee, 4 November 2024, RoP [167] to [168]

⁵⁷ LJC Committee, 4 November 2024, RoP [216]

and certainly I think there could be an efficient and effective method put in place for such Bills to be dealt with.”⁵⁸

45. In oral evidence, the Chief Executive and Keeper of the National Archives, Saul Nassé, stated that the National Archives “very much welcome” the Bill, as it “puts Wales at the forefront of establishing good practice around legislation”.⁵⁹

46. In written evidence, Mr Nassé similarly stated:

“This Bill provides for pragmatic modernisation of the current law for publishing legislation. It crystallises clear and unambiguous duties on a King’s Printer for Wales, which are aligned with current practice, whilst also creating a bespoke numbering scheme for Welsh Statutory Instruments. The Bill makes sure the law is focused on what’s needed by the public, courts and legal profession in Wales, and creates space for us to continue to improve the service in the future, including the use of new technologies.”⁶⁰

47. One Voice Wales also expressed its support for the Bill in written evidence submitted to the Committee.⁶¹

48. The Hansard Society’s Dr Ruth Fox, however, expressed some concern about the Member in charge’s characterisation⁶² of the Bill as one which seeks to “rationalise and, essentially, codify procedures that have become overly complex.” Dr Fox told us as follows:

“... it seemed to me that she was overstating what is actually in the Bill, in that there isn’t much in the way of simplification of the procedures; it’s a restatement of procedures or custom and practice. What there is is useful, but a relabelling of terminology. Now, that’s not nothing, but it’s not, I think, a rationalisation and simplification, and, in fact, the complexity often in delegated legislation in relation to enhanced and superaffirmative procedures, for example, is not dealt with, really. So, my concern was more that something was being

⁵⁸ Letter from the Counsel General and Minister for Delivery, 29 November 2024, response to question 11

⁵⁹ LJC Committee, 18 November 2024, RoP [123]

⁶⁰ LJC Committee: Consultation: Legislation (Procedure, Publication and Repeals) (Wales) Bill, [L\(PPR\)01 – the National Archives](#), 12 November 2024

⁶¹ LJC Committee: Consultation: Legislation (Procedure, Publication and Repeals) (Wales) Bill, [L\(PPR\)02 – One Voice Wales](#), November 2024

⁶² Plenary, 22 October 2024, RoP [132]

asserted that was broader than what the Bill actually can sustain.”⁶³

49. When asked to respond to the views expressed by Dr Fox, the Member in charge stated that – although she understood the point being made – she stood by her previous statement. She also expanded as follows:

“I think we have, through schedules 1A, B and C, rationalised pre-existing procedures. Some of the procedures are hardly ever used, but they still sit there. Draft negative might not be used very often, for example. But in future, it will become one of the three procedures ... I think it is accurate to describe them as codified, because they’re all located in the one place in one Act, and previously they were spread about the place. And there won’t be a requirement to look through other provisions in order to find them; they will all just be in the one place.

So, it brings them together; it simplifies them to core procedures; it reflects Welsh devolution and the existence of the Senedd and the Welsh Ministers; it uses modern drafting techniques and language ... And, of course, absolutely, primarily, they’re set out in both languages with equivalence, so they absolutely improve accessibility.”⁶⁴

Need for the Bill

50. The EM states that, without legislative reform, it would not be possible to achieve the Welsh Government’s objective of bringing together and formalising the arrangements for making and publishing Welsh legislation. Otherwise, it states:

“... the only alternate would be to continue with things as they stand. The Government and Senedd could continue to operate with the existing procedures for making legislation, and for the Government this would also include publication of subordinate legislation made other than by statutory instrument. However, this would leave the law failing to fully and correctly reflect the

⁶³ LJC Committee, 6 January 2025, RoP [9]

⁶⁴ LJC Committee, 13 January 2025, RoP [28] to [30]

arrangements for publication of legislation and would leave the law made in English only.”⁶⁵

51. On the question of whether there is a need for the Bill’s provisions which repeal legislation, the EM states:

“... it may be the case that primary legislation is needed to remove provisions that are no longer required in Acts of the Senedd or UK Parliament. This can be done when a law reform Bill is brought forward dealing with a particular topic, but there is no guarantee of a suitable vehicle being available at a suitable time. Inclusion of a proposed repeal may also have implications for the scope and handling of the Bill in question, if it is not directly related to area of law where the issue lies.

Redundant provisions may therefore sit on the statute book for many years waiting to be picked up by a suitable Bill. The Welsh Government could continue to operate in this way, but that would not support the overall policy objective of improving the accessibility of Welsh law.”⁶⁶

52. In oral evidence, the Member in charge told us why she believed the Bill to be necessary:

“This is a Bill that’s been worked on I think it’s fair to say, and without wanting to be pejorative, around the edges of the rest of the programme, because it’s a Bill that’s technically needed but it’s not politically needed. So, it’s a Bill that people have worked on, if you like, because they think it’s technically needed but it hasn’t been prioritised by the Government. We’ve now got an opportunity to bring it forward as part of the legislative programme, but it could quite easily have dropped away if we’d had a Bill with more political priority ready at the right point in time.”⁶⁷

53. With regard to the priority being attached to this Bill, the Member in charge further stated in correspondence:

“I do not view this Bill today as being more important than another one. Instead it is just part of the work we have been

⁶⁵ EM, paragraph 49

⁶⁶ EM, paragraph 50

⁶⁷ LJC Committee, 4 November 2024, RoP [170]

doing for some time: quietly and persistently working to improve the accessibility of Welsh law.”⁶⁸

54. The Hansard Society’s Dr Ruth Fox expressed the Society’s views on the need for the Bill as follows:

“I think there’s always an argument that can be made that this kind of, if you can call it a sort of legislative clarification, legislative tidying-up exercise, shouldn’t, in a legislative programme, have the priority over something, perhaps, of a socioeconomic nature, a Bill to tackle one of the priorities of citizens, but, at the end of the day, it is important to have clarification about the status of the statute book. Decluttering exercises are important. There’s never a good time for it. You can always argue for another priority, but the problem is, if you do that, you get, I’m afraid, legislative barnacles on the boat that build up over time, and the problem becomes more difficult over time. So, I think it’s a useful exercise. I wish Westminster, wish the UK Government, were contemplating something similar. I think, probably, it is a useful exercise, and particularly trying to clarify some of the language around delegated legislation, which is of particular interest to us at the Hansard Society, I think, is useful.”⁶⁹

55. Dr Adam Tucker echoed the views expressed by Dr Fox, stating:

“... necessity is always a really high bar, but I would say it’s a good and coherent way of pursuing a sensible policy, even it’s a meta/constitutional policy. And on Ruth’s point that there’s always the argument that now is not the time, I would say that, by the time we’ve got to this stage, the legislation’s drafted, the Government’s supporting it, it’s introduced, then that makes it the time. Now that it’s got to this stage, it becomes the time to do it. So, I’m uncomfortable talking about necessity, but I think the policy aims here, which are rule-of-law policy aims, are good constitutional aims, and the fact it’s got this far makes it the time to do it.”⁷⁰

⁶⁸ Letter from the Counsel General and Minister for Delivery, 29 November 2024, response to question 1

⁶⁹ LJC Committee, 6 January 2025, RoP [5]

⁷⁰ LJC Committee, 6 January 2025, RoP [7]

Development of the Bill and consultation

56. In October 2022 the Welsh Government shared a draft Statute Law (Repeals) (Wales) Bill for public consultation.⁷¹ The consultation closed in January 2023, after which the Welsh Government published a summary of responses⁷², and confirmed that a Bill would be introduced to the Senedd in due course⁷³.

57. In November 2023, the Welsh Government confirmed that work on that Bill had progressed during that year⁷⁴, and also stated as follows:

“Further consideration is being given to the short title of the proposed legislation, in order to express in a more modern way the intention of what the Bill will achieve. It is intended the Bill will be introduced when time permits in Year 3 of the government’s legislative programme (most likely in the first half of 2024).”⁷⁵

58. Table 1 of the EM sets out a summary of the changes made to the Bill following the Welsh Government’s consideration of the responses to its consultation, and as a result of the development of the Bill’s provisions.

59. The Member in charge acknowledges in the EM that the Bill’s provisions in respect of the arrangements for making and publishing Welsh legislation have not been formally consulted upon, although “brief reference” was made to such provision in a 2018 consultation on a draft version of the Bill⁷⁶ which eventually became the 2019 Act.⁷⁷

60. In this context, the Member in charge further states in the EM:

“Although all users of legislation clearly have an interest in the accessibility of the legislation, there has been little to no interest expressed to date by external stakeholders to the Government in the law that underpins the general arrangements for the scrutiny and publication of legislation. This is understandable

⁷¹ Welsh Government, Consultation: Statute Law (Repeals) (Wales) Bill

⁷² Welsh Government, [Statute Law \(Repeals\) \(Wales\) Bill, Consultation summary report](#), March 2024

⁷³ Welsh Government, Statute Law (Repeals) (Wales) Bill, Consultation summary report, March 2024, paragraph 62

⁷⁴ Welsh Government, [The future of Welsh law: A programme for 2021 to 2026 – annual report 2022 to 2023](#), November 2023, paragraph 22

⁷⁵ Welsh Government, The future of Welsh law: A programme for 2021 to 2026 – annual report 2022 to 2023, November 2023, paragraph 23

⁷⁶ See paragraphs 218 to 219 of the Welsh Government’s [consultation document on a Draft Legislation \(Wales\) Bill](#), dated March 2018.

⁷⁷ EM, paragraph 62

as the three bodies with a direct interest in the proposals are the Senedd (where decisions on the form and detail of the scrutiny process for Welsh Statutory Instruments lies), the Government (which is concerned with the efficiency of Senedd processes for handling its programme of subordinate legislation) and the King's Printer/The National Archives (who are responsible for publication of most legislation).

The Government has engaged regularly with The National Archives on the proposed arrangements for Welsh Statutory Instruments (both recently and over the past 15 years or so). Their experience of the operation of the 1946 Act and associated regulations has helped shape the proposals in the Bill. Scrutiny of subordinate legislation is a significant part of the work undertaken by (primarily) the Legislation, Justice and Constitution Committee of the Senedd, and the Business Committee has determined they will be the responsible Committee for the scrutiny of this Bill. The Government has therefore not published these proposals as a draft Bill.

Similarly, because the provisions regarding the publication of Acts of the Senedd are restated from the Government of Wales Act 2006, and no fundamental changes are proposed, no consultation has been undertaken on this aspect of the Bill.”⁷⁸

61. The EM also provides an overview of provisions which repeal legislation which were not part of the 2022 consultation but are now included within the Bill, and the reasons for their inclusion.⁷⁹ It also states that no consultation has been undertaken in respect of the Bill's provisions which make minor amendments to the 2019 Act.⁸⁰

62. In oral evidence, an official accompanying the Member in charge explained why no public consultation had been undertaken by the Welsh Government in respect of Parts 1, 2 and 4 of the Bill:

“Part 4 ... comes from the review of the 2019 Act. It's very much a Government-operation part of that 2019 Act; it's about how the legislation can be interpreted and operates. So, we did work internally with lawyers who draft legislation to check what we

⁷⁸ EM, paragraphs 63 to 65

⁷⁹ EM, paragraphs 66 to 75

⁸⁰ EM, paragraph 76

were proposing would meet some of those tiny modifications that they were looking for. In relation to Parts 1 and 2, obviously, Part 1 particularly is of most interest to the Senedd and the Government, and obviously this committee's going to consider that, and in relation to Part 2, we've engaged very closely with the team in the National Archives ...".⁸¹

63. In oral evidence, the Chief Executive and Keeper of the National Archives, Saul Nassé, confirmed that the National Archives had been engaged during the development of the Bill. Its Head of Policy, Malcolm Todd, stated in addition that the level of engagement it had received had meant it did not receive “any surprises” when the Bill was introduced.⁸²

64. We asked the Member in charge whether – as of November 2024 – the Welsh Government had consulted the Business Committee and any other affected stakeholders about the dates by which Parts 1 and 2 of the Bill are expected to come into force. In response, she told us that while the Welsh Government was yet to consult with the Business Committee, it was “in the process of doing so”.⁸³ She also shared her expectation that the Senedd’s Standing Orders would require amendment should the Bill be passed.⁸⁴ In January 2025, the Member in charge told us that she had since written to the Llywydd⁸⁵, and also stated that the Future Senedd Committee⁸⁶ may have a role in ensuring that the procedures set out in the Bill align with those in the Senedd’s Standing Orders⁸⁷.

65. The Member in charge also noted that, as a Committee, we would be undertaking our own consultation in respect of the Bill, and that the Welsh Government had also consulted with “a range of other people”.⁸⁸

66. When asked whether the Law Commission had been consulted in respect of the provisions in Part 3 of the Bill, the Member in charge told us:

“We haven't thought it necessary to involve the Law Commission. They were invited to contribute to an earlier consultation on statute law repeals, but they didn't indicate that they wanted to contribute. They've brought forward a set of

⁸¹ LJC Committee, 4 November 2024, RoP [213]

⁸² LJC Committee, 18 November 2024, RoP [146] to [147]

⁸³ LJC Committee, 4 November 2024, RoP [201]

⁸⁴ LJC Committee, 4 November 2024, RoP [244]

⁸⁵ LJC Committee, 13 January 2025, RoP [10]

⁸⁶ The Future Senedd Committee, established on 16 October 2024, is responsible for considering the future operation of the Senedd in the seventh Senedd.

⁸⁷ LJC Committee, 13 January 2025, RoP [36]

⁸⁸ LJC Committee, 4 November 2024, RoP [201]

*statute law repeal proposals since their last report to the UK Government in 2015, and this is partly a resourcing issue for them, we understand ...”.*⁸⁹

67. We also asked the Member in charge to state whether the Welsh Government had engaged the UK Government in respect of the Bill, given that – should the Bill be passed – primary legislation introduced in the UK Parliament would need to refer to the procedures set out in Part 1 of the Bill when delegating powers to make subordinate legislation to the Welsh Ministers. An official accompanying the Member in charge stated that a conversation would be needed with the UK Government’s First Parliamentary Counsel⁹⁰ to ensure their office’s working practices reflect the procedures as set out in the Bill, although they did not anticipate encountering any issues.⁹¹

68. In written evidence, the Chief Executive and Clerk of the Senedd, Manon Antoniazzi, stated that she was content that the Bill’s provisions do not change the process or procedures that must be undertaken by the Clerk of the Senedd. However, she expressed to us her “disappointment”, given the “direct impact” on her functions, that she had received no prior engagement from the Welsh Government on the Bill’s provisions ahead of its introduction.⁹² When asked to address this matter, the Member in charge told us that – although it was not the intention to cause such disappointment – the Welsh Government did not believe it necessary to engage the Clerk of the Senedd. The reason provided for this was that, in the Welsh Government’s assessment, the Bill does not impact upon the Clerk’s functions.⁹³

Delegated powers and the balance between what is on the face of the Bill and what is left to subordinate legislation

69. The Bill contains 11 powers to make subordinate legislation, ten of which are powers which are to be inserted into the 2019 Act. These powers, as set out in Tables 2 and 3 of the EM, may be summarised as follows:

- six powers for the Welsh Ministers to make regulations or orders;
- two powers for the relevant responsible authority to make orders; and

⁸⁹ LJC Committee, 4 November 2024, RoP [215]

⁹⁰ The First Parliamentary Counsel is appointed by the Prime Minister to lead the Office of the Parliamentary Counsel, which is responsible for drafting all bills introduced by the UK Government.

⁹¹ LJC Committee, 4 November 2024, RoP [247]

⁹² LJC Committee: Consultation: Legislation (Procedure, Publication and Repeals) (Wales) Bill, L(PPR)04 – Chief Executive and Clerk of the Senedd, December 2024

⁹³ LJC Committee, 13 January 2025, RoP [53]

- three powers for His Majesty in Council to make orders.

70. The Bill, at section 37Z, also includes a duty for the Welsh Ministers to prepare and publish a determination on the arrangements for the numbering and classification of subordinate legislation.

71. Paragraph 83 of the EM states that the Welsh Ministers may, “if they consider it necessary or expedient” for the purposes of making the law more accessible, by regulations amend enactments to make provision consequential on Schedules 1A, 1B and 1C of the 2019 Act, to be inserted by Part 1 of the Bill. When asked to explain the inclusion of the word “expedient”, the Member in charge stated that the EM would be amended, since the Bill does not include such terminology.⁹⁴

Post-legislative review

72. During the passage of the Bill which became the 2019 Act, the Welsh Government committed to undertake a review of the effectiveness of Part 1 of that Act at the midway point of the Sixth Senedd.⁹⁵

73. In 2023, the Welsh Government conducted this review and subsequently reported on its outcomes.⁹⁶ As stated in the EM, the review identified certain aspects of Part 2 of the 2019 Act that could – in the view of the Welsh Government – benefit from clarification, particularly in light of its experiences of drafting consolidation Bills that had taken place since the Bill was enacted.⁹⁷

74. However, in the case of the Bill under consideration, the EM states that there is “currently” no intention to undertake a post-legislative review of its operation, for the following reasons:

- *“The provisions regarding making and publishing Welsh legislation are essentially a modernisation and codification of existing arrangements under the Government of Wales Act 2006, the Statutory Instruments Act 1946 and related enactments.*
- *Once in force, the matters covered in Schedule 1 to the Bill will be repealed or amended and will have no further legal effect.*

⁹⁴ LJC Committee, 4 November 2024, RoP [197]

⁹⁵ Plenary (Fifth Assembly), 2 April 2019, RoP [369]

⁹⁶ Welsh Government, The future of Welsh law: A programme for 2021 to 2026 – annual report 2022 to 2023, November 2023, annex

⁹⁷ EM, paragraph 29

- *The minor amendments to the 2019 Act are being made (a) in response to the earlier review of the operation of the 2019 Act itself and (b) in relation to the proposals for making and publishing Welsh legislation.”⁹⁸*

75. In oral evidence, the Member in charge further explained why a similar approach had not been adopted in respect of this Bill:

“... because my predecessor went through quite a big deal with the committee about that post-legislative review, and we did all of the things that would allow that legislative review, but actually we’ve never received any feedback or questions from it, other than the review we undertook ourselves, and this is much more straightforward, so we just don’t think it’s a necessary thing to do.”⁹⁹

Our view

76. We welcome the proposals in the Bill and believe that its three main purposes will have a positive impact on the accessibility of Welsh law.

77. We believe that the Bill effectively brings together the main procedures which apply to subordinate legislation made by the Welsh Ministers and considered by the Senedd. It also sets out in law for the first time specific functions for what is to be known as the King’s Printer for Wales, and places on a legal footing the concept of a Welsh statutory instrument. These are welcome developments which are well overdue after 25 years of devolution. We also welcome the Welsh Government’s intention to bring forward further repeal Bills, which will help ensure the law which is in effect is clear and accessible to all.

78. We also consider that, through the Bill, the fact that the legislation which sets out the various arrangements for making and publishing legislation in Wales will be available in Welsh and English for the first time is also a very welcome development.

79. For these reasons, we believe that the Senedd should agree to the general principles of the Bill.

Recommendation 1. The Senedd should agree to the general principles of the Legislation (Procedure, Publication and Repeals) (Wales) Bill.

⁹⁸ EM, paragraph 133

⁹⁹ LJC Committee, 4 November 2024, RoP [195]

- 80.** As we heard during our consideration of the Bill, we acknowledge that there may never be a particularly good time – given other government priorities – to introduce a Bill of this nature. However, we believe there is a need for this Bill in the wider context of ensuring the accessibility of Welsh law, and, as we have stated above, many of the provisions introduced by the Bill are long overdue.
- 81.** We note the Welsh Government’s reasons for not issuing a public consultation on many of the Bill’s provisions; although we welcome its decision to share draft versions of provisions proposed for repeal by the Bill.
- 82.** We similarly note the reason for the Welsh Government’s decision to not consult the Clerk of the Senedd, given that the Bill restates the Clerk’s existing functions.
- 83.** Nevertheless, as a more general point, we believe that undertaking a limited consultation exercise in respect of the Bill may have helped raise the profile of the important issues within the Bill as a means of increasing their understanding and relevance to the accessibility of Welsh law.
- 84.** As stated by the Member in charge, the Senedd’s Standing Orders will require revision to align with the Bill’s provisions, and in this regard we note that the Member in charge has informed the Llywydd of this requirement. We also note that – as a result of the Bill – the approach to drafting Bills for introduction to the UK Parliament will need to be adapted when they include provisions to delegate powers to the Welsh Ministers.
- 85.** We are content with the balance between what is on the face of the Bill and what is left to subordinate legislation, and note the majority of the delegated powers will be inserted into the 2019 Act.
- 86.** Finally, we note the Welsh Government’s explanation for why it does not currently intend to undertake a post-legislative review of the operation of the Bill, if enacted. However, we believe that an assessment of the effectiveness and the implementation of primary legislation introduced into the Senedd should be conducted as a matter of course, and the outcomes of such an assessment should be subsequently reported to the Senedd in a timely manner. We believe this to be particularly important given our recent consideration of regulations to implement Part 4 of the *Public Health (Wales) Act 2017*.¹⁰⁰

¹⁰⁰ See our [letter to the Cabinet Secretary for Health and Social Care, dated 17 October 2024](#), which highlighted that it had taken over seven years for the relevant provisions to be implemented.

Conclusion 2. As a matter of good practice, all Bills should be subject to a post-implementation review, with the outcomes of such a review reported to the Senedd.

Recommendation 2. The Welsh Government should give further consideration to undertaking a post-legislative review of the Bill, if enacted, at the midpoint of the Seventh Senedd, and as a consequence, to consider tabling an amendment to the Bill to include provision requiring such a review to be held.

4. Procedure for making Welsh subordinate legislation

87. Part 1 of the Bill inserts a new Part 2A into the 2019 Act to make provision about Senedd procedures for making Welsh subordinate legislation. The EM states that this approach “avoids ‘stand-alone’ provision being made in a separate Act and instead ensures that these provisions form part of the Welsh Act that already deals with the accessibility, interpretation and operation of the legislation of Wales.”¹⁰¹

Senedd scrutiny procedures

88. New Part 2A of the 2019 Act places on a statutory basis the concept of a “Welsh statutory instrument”. It also sets out and gives a name (or label) to certain types of Senedd scrutiny procedures for Welsh subordinate legislation that is required to be made by statutory instrument. These procedures, and their names, are provided in the Bill as follows:

- Senedd approval procedure – subordinate legislation subject to this procedure can only be made if a draft of the Welsh statutory instrument has been laid before, and subsequently approved by, the Senedd. This procedure is currently known informally as the “affirmative procedure”.¹⁰²
- Senedd confirmation procedure – subordinate legislation subject to this procedure can be made by the Welsh Ministers, and subsequently laid before the Senedd, but cannot continue to have effect or come into force at a future point unless the Senedd subsequently confirms it through a resolution. This procedure is currently known informally as the “made affirmative procedure”.¹⁰³
- Senedd annulment procedure – subordinate legislation subject to this procedure can be made by the Welsh Ministers, and subsequently laid before the Senedd. However, if the Senedd decides, before the end of 40 days beginning with the date on which the subordinate legislation was laid before it, that the legislation should not continue in effect, the

¹⁰¹ EM, paragraph 31

¹⁰² See new section 37C of the 2019 Act, to be inserted by section 1 of the Bill.

¹⁰³ See new section 37D of the 2019 Act, to be inserted by section 1 of the Bill.

legislation no longer has effect. This procedure is currently known informally as the “negative procedure”.¹⁰⁴

89. New Part 2A of the 2019 Act also provides that any subordinate legislation made by Welsh statutory instrument that is not subject to one of the above procedures must be laid before the Senedd.¹⁰⁵

90. In addition, the new Part also makes provision in respect of combining subordinate legislation subject to different Senedd procedures and the application of the Part in different circumstances.

91. The EM states as follows in respect of the provisions in new Part 2A:

“Because Part 2A establishes sets out what each of the names means, future Acts of the Senedd can use these terms rather than setting out the requirements for each procedure in every Act (as happens presently). As with other aspects of the 2019 Act, this helps to shorten and simplify future legislation, and promote consistency in the language, form and operation of future legislation.

Part 2A also ensures that existing powers in Acts, exercisable by the Welsh Ministers or a devolved Welsh authority, to make subordinate legislation in the form of a statutory instrument will in future be exercised in the form of a Welsh statutory instrument. And the existing procedures that apply to the making of the subordinate legislation will be ‘converted’ into one of the codified Senedd procedures. This is done by the proposed new Schedule 1A.”¹⁰⁶

92. An official accompanying the Member in charge provided the following rationale for the drafting of this Part:

“... what we’re trying to do is to simplify the process. So, there are three labels and those labels can be used in every Bill in future. So, in the future, just so that the committee understands, what we intend to do is—. For example, the regulations under section 7, say, will be subject to the process where the Senedd has to

¹⁰⁴ See new section 37E of the 2019 Act, to be inserted by section 1 of the Bill.

¹⁰⁵ See new section 37F of the 2019 Act, to be inserted by section 1 of the Bill.

¹⁰⁶ EM, paragraphs 34 and 35

agree. So, we use that particular label, without any further explanation, because the further explanation is available here.

There are elements that are perhaps more technical in nature too, because what the Bill is trying to do is look to the future but also to tidy up what's been done in the past. So, there are Schedules that are repetitive and look a little complicated and tedious, but they're there so that we can filter through what's happened in the past, so that every instrument, whether the power existed before this Bill came into force—or Act came into force, hopefully—or any instrument that is made under legislation that is made in the future, all use the same terminology. But what we haven't done is gone through the entire statute book to change that retrospectively, so the Schedules filter that; there's a reference to the former terminology meaning this new terminology in the future in the Bill. So, there are more technical elements there, which lie behind this relatively simple idea, at heart, namely there are three processes, or an instrument is laid and we give them succinct labels once in every Bill in future.”¹⁰⁷

93. The Hansard Society's Dr Ruth Fox told us that she viewed the Bill's naming of procedures as helpful to improve accessibility¹⁰⁸, and Dr Adam Tucker was similarly supportive of the labels provided for the scrutiny procedures¹⁰⁹.

94. We asked the Member in charge whether she was of the view that the phrase “Senedd annulment procedure”, as set out within the Bill, was accessible and well understood. In response, she told us that this was the “least bad choice” of a range that was considered by the Welsh Government¹¹⁰, and an official accompanying the Member in charge explained further:

“I understand the point—it is a technical term—but, at the end of the day, the process is a technical one too. At the moment, we refer to the negative procedure, affirmative procedure, and things like that. There are different terms that we have been using. What we were trying to do was to get one word for the situation where the Senedd decided not to allow an instrument to be made—that is, to annul what has already been done by

¹⁰⁷ LJC Committee, 4 November 2024, RoP [228] and [229]

¹⁰⁸ LJC Committee, 6 January 2025, RoP [63]

¹⁰⁹ LJC Committee, 6 January 2025, RoP [65]

¹¹⁰ LJC Committee, 13 January 2025, RoP [23]

the Government or by a Minister, to confirm when an instrument has been made but the Senedd needs to agree that it will proceed, and then the situation where, of course, the Senedd has to agree in the first instance. So, we tried to select three words that convey that process best. The word ‘annulment’ perhaps sounds rather technical but, in our view, there was no better or simpler word that we could use.”¹¹¹

95. The official also stated that the Welsh Government would be content to listen to “any other suggestions” for an alternative name for this procedure.¹¹²

96. We also noted that the Bill does not include provision on the timescale for when subordinate legislation to revoke an annulled statutory instrument must be introduced. We therefore asked the Member in charge to share her view on the impacts of the absence of such provision on the accessibility of the law, and whether the Welsh Government would consider amending the Bill to provide for such provision. In response, she told us:

“I think that’s just a thing about practicalities and what the effect of it might be. There is isn’t a timescale at the moment, but we always endeavour to do just that. For example, it’s not always possible for us to say when the Privy Council is going to meet, so if we put an arbitrary time limit on it and then the Privy Council didn’t meet in that time period, presumably what would then have to happen is a Welsh Minister would have to come to the Senedd and explain why they hadn’t been able to do it in the time available. I’m not sure that serves any real purpose. If the committee feels strongly about it, we will certainly consider it, but I’m not sure what effect it would have. And obviously, we want to do it as fast as we can, because you’re trying to simplify the statute book and get access to the law. But I’m not sure, given who has to take part in it, that it’s entirely possible to say it would always be within whatever that time period might be.”¹¹³

97. Part 1 of the Bill also inserts three new Schedules into the 2019 Act, as follows:

- Schedule 1A applies the provisions of new Part 2A of the 2019 Act to Welsh subordinate legislation made by statutory instrument under “pre-

¹¹¹ LJC Committee, 13 January 2025, RoP [24]

¹¹² LJC Committee, 13 January 2025, RoP [26]

¹¹³ LJC Committee, 13 January 2025, RoP [59]

commencement enactments”, in other words enactments that were enacted or made before Part 2A comes into effect.

- Schedule 1B applies the provisions of new Part 2A to subordinate legislation made by the Welsh Ministers and another person (other than a devolved Welsh authority) by statutory instrument, for example, jointly or compositely with a Secretary of State.
- Schedule 1C applies the provisions of new Part 2A to subordinate legislation made as an Order in Council when the statutory instrument must be laid before the Senedd.

98. In oral evidence, an official accompanying the Member in charge provided the following explanation for the inclusion of these Schedules:

“The idea is that we’re just capturing everything so that the new terminology is used routinely. It’s had to be done in that way from a drafting perspective, because each of those three situations [as outlined respectively in the three Schedules] are a little bit different, so we decided to repeat the process in relation to each one. So, there’s quite a bit of repetition there, but in the end, we felt that it was still a bit clearer to do it like that.”¹¹⁴

99. The EM states that there is “no immediate intention” to use the powers in new section 37F(2)(c) and Schedule 1A, paragraph 6(3)(c), of the 2019 Act, although it is “prudent to ensure there is an appropriate mechanism available to enable specific enactments to be listed if the Senedd or the Welsh Ministers consider particular instruments need not be laid before the Senedd.”¹¹⁵ We asked the Member in charge, in correspondence, to provide further justification for the inclusion of these powers; she responded as follows:

“... the intention with new Parts 2A and 2B is to codify and modernise existing legislative arrangements to reflect both the realities of devolution and of current practice. Section 37F captures both existing arrangements and practices, as well as improving on the current position.

At present if an enactment does not provide that a statutory instrument must be laid before the Senedd (either as part of

¹¹⁴ LJC Committee, 4 November 2024, RoP [256]

¹¹⁵ EM, paragraph 82

the procedure for its making or otherwise), then the instrument would not be laid. New section 37F provides a 'default' such that Welsh statutory instruments not subject to a procedure under section 37C, 37D or 37F, must be laid. This will mainly affect commencement orders and certain other orders.

However, there are some exemptions from the default requirement: "local" instruments that are not currently required to be laid, and those subject to the special Senedd procedure (and which would therefore be laid under that procedure). Officials have undertaken an exercise to identify any other enactments where there is not currently a requirement to lay an instrument before the Senedd, the effect of which should be maintained. To date that work has not identified any relevant enactments, however we cannot be sure that such an existing enactment would not be uncovered at a future point. The powers at section 37F(2)(c) and paragraph 6(3)(c) of Schedule 1A therefore provide a mechanism for adding such enactments to the list of exemptions from the default requirement.

I trust the Committee will therefore understand that I do not agree with your characterisation of the Government's intentions in your correspondence. As set out in the Explanatory Memorandum there is no "immediate intention", which is not the same as no intention ever.

It remains open to the Senedd to decide that powers in a future Bill to make subordinate legislation as a Welsh statutory instrument need not be exercised subject to a procedure. And in those cases, it is also open to the Senedd to set out that section 37F would not apply. The Bill does not constrain the powers of the Senedd in this regard."¹¹⁶

100. The Member in charge confirmed to us in oral evidence that the Bill would not preclude the amendment of scrutiny procedures within Bills during their passage, often as a result of recommendations¹¹⁷ made by Senedd committees.

101. The Member in charge also confirmed to us in correspondence that the Bill does not contain a general power to change the scrutiny procedure attached to

¹¹⁶ Letter from the Counsel General and Minister for Delivery, 29 November 2024, response to question 3

¹¹⁷ LJC Committee, 4 November 2024, RoP [225]

existing powers, although new section 37G – as a restatement of existing section 40 of the 2019 Act – contains a power to combine subordinate legislation subject to different Senedd procedures.¹¹⁸

The opportunities the Bill may provide to codify other scrutiny procedures, or to provide for new scrutiny procedures

102. We asked the Member in charge to explain why the Bill does not include provision for what are often described as ‘enhanced’ or ‘superaffirmative’ procedures, such as duties to consult on draft statutory instruments or to lay instruments before the Senedd for a longer period before motions to approve them are scheduled for debate. In response, she told us:

“I think the use of the term ‘superaffirmative procedure’ has always been a little bit problematic. I think you and I and members of the committee have had a number of occasions on which we’ve debated exactly what it is that we’ve meant in the past by ‘the superaffirmative procedure’. It tends to differ. It involves putting additional requirements on, usually, the Welsh Ministers, but on the entity involved in the procedure that will make the instrument to consult on draft instruments for various periods or lay reports at specific times before the Senedd is asked to approve a final instrument. Just to say, there’s nothing in this Bill that prevents the Senedd, through an Act, from placing additional requirements on the entity responsible, which will almost always be the Welsh Ministers. There’s nothing to stop such additional requirements being imposed from the perspective of Senedd procedure in any draft that comes forward, but ultimately it comes down to the draft that’s being subject to approval.”¹¹⁹

103. We also asked the Member in charge whether the Welsh Government had identified any other possibilities, presented by the Bill, to improve the scrutiny procedures which currently exist. In response, she stated as follows:

“Well, it depends what you think the Bill is trying to do, I think. So, certainly, as part of a conversation that I’ve had with a number of Members and I’ve had myself, the issue about where statutory instruments are referred by the Business Committee—

¹¹⁸ Letter from the Counsel General and Minister for Delivery, 29 November 2024, response to question 6

¹¹⁹ LJC Committee, 13 January 2025, RoP [16]

so, they tend to be referred to this committee as a technical reporting matter, and I'm on record as saying that I think sometimes it would be more appropriate for them to go to a policy committee. There is an issue ... about what a statutory instrument is and who is the authority that's making it that slightly complicates that, but it's not something we've included in this Bill, because this Bill, apart from that one improvement about laying all of the statutory instruments in front of the Senedd, which I think was an omission, is not seeking to change anything, it's just seeking to make it more accessible and codified, if you like."¹²⁰

104. In addition, we asked the Member in charge whether the Welsh Government had considered including provision which would enable statutory instruments to be amended during their passage through the Senedd. In response, she told us that although she was “very interested” in discussing this matter:

“... we've very much tried to keep this as a codification and simplification Bill, and I think that takes it out of that into what might be very interesting innovative procedures, but is definitely not just simplifying. I think there are some issues that we would want to go into in how to do that. As you say, it's been the subject of much discussion in other Parliaments, that's for sure, and we would want to think through how that would work. And if we've got these much more straightforward procedures, how would it fit? ... a statutory instrument is something that's done under Executive authority, under a Bill, it's put forward, the Senedd can say 'yes' or 'no', it can't say 'maybe', or 'with this'. You might have a process where the committee—a policy committee now, not the technical committee—says, 'Well, why don't you think about including this, or excluding that from the policy?' and the Minister could agree to do that and so adopt the language, if you like. But then there'd be a process of having to re-lay the statutory instrument. So, we'd have to think through the process of how that would work, and I think this Bill isn't the place to do that, though I'm very interested in doing it."¹²¹

¹²⁰ LJC Committee, 4 November 2024, RoP [227]

¹²¹ LJC Committee, 4 November 2024, RoP [231]

105. On the question of whether the Bill should contain such provision, Dr Ruth Fox from the Hansard Society said:

“... in terms of delegated legislation specifically, we at the Hansard Society have been conducting a review of the Westminster procedures, and I think some of the provisions there would be helpful to the devolved legislatures as well. But, by and large, I wouldn't put them, in the main, in statute. Procedure of the legislature should, by and large, be kept to Standing Orders if at all possible. So, our approach is always that you put the minimum in statute and the bulk of procedural reform in Standing Orders.

Now, the problem of course is that the Statutory Instruments Act 1946 has got one key aspect of the procedures, the negative procedure, in that text. So, in effect, what's happening here with the Bill is a balancing-out, by putting the affirmative procedures in as well and renaming them. The kinds of things that we are advocating for through our delegated legislation review—for example, amendability of approval motions; not of the text of an instrument, but the amendability of the approval motions to give conditional approval to an instrument, subject to the government, whether that's Westminster or Wales, giving approval to it, subject to, perhaps, some changes being made to it—that doesn't need to be in the Bill. That can be done by the Standing Orders. So, the Bill merely references that the Senedd must reach a resolution on an instrument or must resolve to pass a motion to approve an instrument. It doesn't dictate how the Senedd reaches that resolution or approves that motion. So, that could be done by the Standing Orders. So, in general, I would say I would keep as little as possible on the face of a Bill.”¹²²

106. Dr Fox also told us that making provision to enable statutory instruments to be amended:

“... arguably undermines the principle of delegation, but I think there are practical issues. ... I do wonder, if changes were being made, particularly on instruments that involved the UK Government, whether it would lead to issues in terms of

¹²² LJC Committee, 6 January 2025, RoP [14] and [15]

reconciling agreement about whether or not to accept the proposed amendment that should be made—whether that was textual amendment of the motion, or whether that was actual textual amendment of the instrument itself.”¹²³

107. Dr Adam Tucker expressed similar reservations:

“What legislation can do, what legislation does do and what this Bill sets out to do is set out a menu of procedures that are available to be used, either prospectively as what we should do, or retrospectively—‘Here’s the kind of things we do do’—or case by case. But the thing that is never really legislated for is the intensity of that scrutiny, and that always is going to be a matter of political practice and of Standing Orders. So, the legislation can say, ‘This kind of statutory instrument needs this kind of approval’, but what attracts that kind of approval from a legislature is always, really, a question for the cultures and the Standing Orders of that legislature. And I think that division is fairly entrenched, certainly in our constitutional culture, but I don’t think we should be challenging it. It makes sense that if we give to a legislature the power to scrutinise delegated legislation, we don’t put in the legislation how it should carry out that task.

... I’m very sceptical of making secondary legislation amendable during the scrutiny process. ... My worry is that, on the one hand, in the problematic context of a lot of delegated legislation, where my view ... is that it’s not always adequately scrutinised, the risk of that one change against that wider backdrop is that it’s counterproductive in the sense that it enhances the apparent authority of delegated legislation by muddying the waters about who made that legislation—was it the legislature or was it the executive? And it kind of obfuscates the underlying constitutional facts that the authority being exercised and the person who should be accountable for that law making is the Minister making the rules—the new rules, not necessarily the legislation.”¹²⁴

¹²³ LJC Committee, 6 January 2025, RoP [31]

¹²⁴ LJC Committee, 6 January 2025, RoP [19] and [20]

108. Dr Fox went on to set out the Hansard Society's recommendations which call for a sifting committee to decide on the extent of scrutiny for individual statutory instruments, as follows:

“Central to our proposals for reform at Westminster is the abolition of the concept of negative and affirmative—actually getting rid of those procedural distinctions and saying if you are bringing forward an instrument under a power, the procedure by which you today as Members scrutinise it shouldn't be determined by a provision in a Bill that was passed by the Parliament or the Senedd 10, 15, 20—in Westminster's case, 40, 50, 60—years ago; it should be determined by dint of the text of the instrument in front of you, and there should be a sifting committee—at Westminster, of one or both houses—to determine what the scrutiny procedure should be. And then, through that sifting committee, there are routes for the instrument to take, depending upon the nature of it, depending upon the legal issues, depending upon the policy content, that may give rise to concerns that need to be explored, and a new committee structure.”¹²⁵

109. Dr Fox also contrasted between the potential for amendable statutory instruments against the Hansard Society's recommendation for amendable motions to approve them:

“... in our advisory group for the review, we had very extensive discussions about this quite vexed question of amendability and the best way to do it. ... I think it came down to political pragmatism. It is very hard to conceive of circumstances in which any Executive in the UK is going to concede and support the right to textual amendment of statutory instruments. Just as a matter of political practicality, I just can't see circumstances in which they would do it.

And unless you've got circumstances of coalition Government, where you might be able to get the numbers for that in certain circumstances, in most instances, it's therefore just not going to happen. But the prospect of an amendable motion that the Government may or may not agree with or accept and that nonetheless doesn't stop it implementing the instrument if it

¹²⁵ LJC Committee, 6 January 2025, RoP [26]

wants to, but with a political cost of having to marshal its majority in the Chamber to vote against something that Members have already indicated that they want—. There's a political cost to that."¹²⁶

110. We asked Dr Fox whether the Bill could provide a mechanism to ensure that statutory instruments which correct defective legislation are brought forward by the Welsh Ministers in a timely manner. In response, Dr Fox stated:

*"You could have a provision that, where something has been identified and the Government's acknowledged that there is a flaw that can't be dealt with by a correction slip, then the instrument has to be introduced and dealt with within, I don't know, define a reasonable time frame, but 28, 40 days, whatever it may be—certainly that. Also one thing, in terms of the actual Bill as it is, if an instrument were to be rejected or annulled, there is no provision in the Bill about when the statutory instrument revoking that provision would have to be introduced. There is a provision that a statutory instrument would have to revoke the original instrument, but it doesn't specify within any timescale. And it seems to me, in the principles of the Bill—transparency, accessibility, decluttering—that requiring clarity on that as well would be helpful, because, again, it would no longer be enforced, but it would still sit there on the statute book essentially. So, I think those two things would go together."*¹²⁷

Road traffic orders not required to be made by Welsh statutory instrument

111. Section 2 of the Bill amends the *Highways Act 1980* and the *Road Traffic Regulations Act 1984* to no longer require certain road traffic orders to be made by Welsh statutory instrument.

112. The Bill's Explanatory Notes state in respect of this section:

"These orders are localised in nature, in other words they apply to a particular road, or part thereof, for a particular purpose and for a specified duration. They are not of wider application or interest. They may, for example, be used to close a road to

¹²⁶ LJC Committee, 6 January 2025, RoP [50] and [51]

¹²⁷ LJC Committee, 6 January 2025, RoP [67]

enable an event to be held. By way of further example, such orders could also be used to temporarily reduce the maximum permitted speed limit on a particular road or roads whilst repair works are undertaken.

The Welsh Government currently publishes all such road traffic orders on its website (www.gov.wales), alongside other subordinate legislation that can be used for similar purposes but is already not required to be made as a statutory instrument.

These amendments to the Highways Act 1980 and the Road Traffic Regulation Act 1984 do not apply to orders and other subordinate legislation that are of general application and interest (or not temporary) – such subordinate legislation would, by virtue of new Part 2A of the 2019 Act, be made as a Welsh statutory instrument.”¹²⁸

113. The EM states that the current requirement on the Welsh Government to make certain temporary road orders as statutory instruments results in costs to be incurred by the Welsh Government. Furthermore, equivalent temporary road orders made in relation to England, by National Highways, are not made by statutory instrument.¹²⁹

114. We asked the Member in charge to set out what assessment the Welsh Government had made of the effect of this provision on the accessibility of the relevant road traffic orders. In response, she stated as follows:

“We currently publish copies of those on a dedicated part of our website alongside all the stopping-up orders and other temporary road notices that are not made as statutory instruments, and they’re also published as public notices through local newspapers. It’s arguable that there’s a more comprehensive set of arrangements than is provided by legislation.gov.uk or Westlaw UK, which only publish statutory instruments. So, it won’t change our practices of publishing all the road traffic legislation on the gov.wales site. In fact, if

¹²⁸ Explanatory Notes, paragraphs 69 to 71

¹²⁹ EM, paragraph 23

*anything, it strengthens it, because it says that we're going to publish them all in that way.*¹³⁰

Our view

115. We believe that the Bill appropriately sets out the three core scrutiny procedures that Welsh statutory instruments are currently subject to, and we believe that the labels provided for them – the Senedd approval, confirmation, and annulment procedures – strike an appropriate balance between providing an accurate description and making them easy to understand.

116. We also welcome the Bill's requirement that all subordinate legislation made by Welsh statutory instrument must be laid before the Senedd, and believe that this will improve the accessibility of Welsh law, and help enable more opportunities for the scrutiny of subordinate legislation.

117. We also note the Bill's amendment of existing legislation to no longer require certain road traffic orders to be made by Welsh statutory instrument, and acknowledge the Welsh Government's view that this approach will not have a negative impact on the accessibility of Welsh law.

118. During our consideration of the Bill, we have identified matters which we consider would benefit from additional exploration. We discuss these below.

119. As part of our scrutiny, we considered whether there should be a mechanism and a requirement in legislation to ensure that statutory instruments which correct defective legislation are brought forward by the Welsh Ministers in a timely manner. As a Committee, we have expressed our dissatisfaction with the increasing number of items of subordinate legislation made by the Welsh Ministers which contain defects¹³¹, and separately with the increasing number of framework Bills and delegated powers within Bills¹³².

120. As a result, given the potential increase in the use of delegated powers by the Welsh Ministers in the future – and the fact that some items of defective legislation made by the Welsh Ministers remain on the statute book for an indeterminate length of time¹³³ – we believe that there is an increased imperative

¹³⁰ LJC Committee, 4 November 2024, RoP [259]

¹³¹ See, for example, paragraphs 10 to 20 and 94 to 96 of our [Annual Report 2023/24](#), laid in November 2024.

¹³² See, for example, paragraphs 27 to 35 and 97 to 101 of our [Annual Report 2023/24](#).

¹³³ See, for example, our [letter dated 24 September 2024 to the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs](#) in respect of the [Trade in Animals and Related Products \(Amendment and Legislative Functions\) and Animal Health \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) Regulations 2022](#).

to ensure the law that is in effect is functional, and, if it is not, is corrected in a timely manner.

121. We acknowledge that there may be limitations to any provision which may be inserted into this Bill to require the Welsh Ministers to make correcting statutory instruments within a set timescale. However, we believe that the Welsh Government should set out its view on whether legislative provision could be made to provide for such a requirement. We also believe that – as a minimum – the Welsh Government should lay a report before the Senedd at set intervals setting out the progress it is making towards correcting statutory instruments which it accepts to be defective.

Recommendation 3. The Welsh Government should consider how legislative provision could be made in order to require the Welsh Ministers to make instruments in a timely manner to correct statutory instruments which it accepts to be defective, and should in response to the Committee, set out the detail and outcome of that consideration.

Recommendation 4. The Welsh Government should, every 12 months, lay a report before the Senedd setting out the progress it is making towards correcting statutory instruments which it accepts to be defective.

122. We also believe there is merit in the Hansard Society's recommendation – which it made in respect of the UK Parliament – that all laid subordinate legislation should be first subject to consideration by a sifting committee which will be responsible for determining the appropriate level of scrutiny for that piece of legislation. We acknowledge that adopting this approach would override the scrutiny procedures set out in existing enabling Acts, and may result in a different procedure applying to the exercise of a delegated power than that passed by the relevant legislature. However, we believe that its advantage lies in its potential for strengthening the ability of the Senedd to hold the Welsh Government to account.

123. We believe that a proposal for a sifting committee should be subject to full and detailed consideration before a case can be made for legislative and procedural reform. As a matter that concerns Senedd procedure, responsibility for taking it forward would rest with the Business Committee. We recognise that there is considerable pressure on the Business Committee's work programme in light of the changes that will be needed given the increase in Members for the Seventh Senedd. Nevertheless, we think there would be benefits to considering this matter before the Sixth Senedd is dissolved.

Recommendation 5. The Business Committee should, prior to the dissolution of the Sixth Senedd, consider undertaking a review of the merits of introducing a procedure whereby an item of subordinate legislation laid before the Senedd is first subject to consideration by a sifting committee with responsibility for determining the appropriate level of scrutiny for that piece of legislation.

124. We also considered whether there would be merit in providing a mechanism by which statutory instruments are able to be amended during Senedd scrutiny, should that be the will of the Senedd.

125. As we state in paragraph 119, we have seen a proliferation in the number of framework Bills introduced by Welsh Government during this Senedd and the breadth of the delegated powers contained within them. Given the potential associated increase in the number of statutory instruments and the significant policy detail they may contain, we are concerned that the Senedd has only a binary choices: whether or not to approve, confirm or otherwise annul instruments that lie before it in their entirety. In addition, that choice has to be made following a limited time period for scrutiny.

126. We note the Member in charge's interest in the question of whether there should be a mechanism to enable the amendment of statutory instruments; however we also acknowledge her view that this Bill is not the right place to introduce such a mechanism.

127. We similarly acknowledge the evidence we have heard which indicated potential practical and legal implications, not least the concern that the amendment of a statutory instrument by the legislature would blur the lines around who is then accountable for that legislation. Furthermore, we are mindful that amending a statutory instrument would be contrary to a decision to delegate a power to the Welsh Ministers to make that instrument.

128. However, we believe that – given examples in other legislation¹³⁴ and also legislation from other jurisdictions, such as Australia¹³⁵ – further consideration should be given to enabling individual provisions in statutory instruments to be annulled following a resolution by the Senedd and more widely the merits or otherwise of enabling statutory instruments to be amended by the Senedd. We believe any such proposals for change should again be subject to full and detailed consideration before a case can be made for legislative and procedural reform.

¹³⁴ Section 27(3) of the *Civil Contingencies Act 2004*, and section 1(2) of the *Census Act 1920*

¹³⁵ **Section 42 of the Legislation Act 2003** provides a mechanism for a legislative instrument, or a provision of a legislative instrument to be disallowed and subsequently repealed.

129. We believe there is also merit in the alternative approach suggested to us – that motions to approve statutory instruments should instead be amendable to enable the Senedd to express its wish that one or more elements of an instrument be changed. Such a procedure has been described by the Hansard Society as ‘think again’ motions.¹³⁶

130. In our view, there would be merit in pursuing this option as soon as possible. This is another matter that concerns Senedd procedure, and, as such, responsibility for taking it forward would rest with the Business Committee. We have previously noted the considerable pressure on the Business Committee’s work programme; nevertheless, we think there would be merit in pursuing this matter before the Sixth Senedd is dissolved.

Recommendation 6. The Business Committee should consider introducing a procedure to allow for amendable ‘think again’ motions to statutory instruments prior to the dissolution of the Sixth Senedd.

¹³⁶ Hansard Society, *Proposals for a New System for Delegated Legislation: A Working Paper*, 6 February 2023

5. Publication of Welsh legislation

131. Part 2 of the Bill inserts new Part 2B into the 2019 Act, which makes provision in respect of the publication, preservation, numbering and classification of Acts of Senedd Cymru, Welsh statutory instruments and other subordinate legislation made by the Welsh Ministers.

King's Printer for Wales

132. New Part 2B confers functions on the King's Printer of Acts of Parliament in relation to these matters, but – as provided by new section 371 – when exercising these functions, the King's Printer is to be known as the King's Printer for Wales.

133. In contrast to provisions in the *Scotland Act 1998* and the 2010 Scottish Act, the Bill does not provide for the creation of the King's Printer for Wales as a separate role to that of the King's Printer for Acts of Parliament. When asked to explain this approach, an official accompanying the Member in charge stated as follows:

"It is perhaps something that should have been done in 1998, in the original Act, and certainly in 2006, but, for various reasons, it wasn't done. So, what this Bill does is it takes us on a very prudent path in terms of not creating an administration that we don't truly need. Because the reality is that, although there is a King's Printer for Scotland and a Government Printer for Northern Ireland—there is a different terminology for Northern Ireland, for reasons that we perhaps can all work out—these people are the same. So, the National Archives is responsible, and what we're doing through the Bill is giving a status to Welsh legislation and a status to the role of printing legislation in Wales ...".¹³⁷

134. The official also provided further details about why this approach is being adopted in the Bill:

"... the King's Printer for Scotland and so on are all the same person, so that's the starting point. There's a King's Printer for Scotland because there was a King's Printer provided for in the Scotland Act 1998, and then the Scots also have a piece of legislation from 2010 that is similar to what we have here. So,

¹³⁷ LJC Committee, 4 November 2024, RoP [183]

what we've sought to do in relation to Wales is, first of all, to say that the person who does this does so in the name of the King's Printer for Wales, and then it fills certain gaps that we had in relation to the King's Printer. So, there's the King's Printer of Acts of Parliament, who's the original, if you like, and some of the older legislation refers to the King's Printer and what the King's Printer has to do in relation to Wales. So, we've plugged some of those gaps—quite technical things.”¹³⁸

135. When asked if consideration had been given to the creation of a separate King's Printer for Wales, with its own distinct office, an official accompanying the Member in charge told us that it was not currently under consideration, and expanded as follows:

“... there is one statute book for the United Kingdom, to all intents and purposes. So, although we do have our own powers over here—and Scotland is different again—everything is combined in one place when it comes to UK legislation. So, there is one website where everything is published, and the National Archives is responsible for that. So, it would be disproportionate, I think, if we were to try to do these things for Wales alone.”¹³⁹

136. The Chief Executive and Keeper of the National Archives, and King's Printer of Acts of Parliament, Saul Nassé, told us in respect of the Bill:

“It both captures and consolidates what is our [the National Archives'] current practice but also gives an ability to move forward and modernise in the future. It puts clear lines of responsibility on me, as King's Printer, accountability for publishing Acts of the Senedd, setting up a discrete series of Welsh statutory instruments, and a duty on us—and this is the first time that it's been listed as a duty anywhere in the UK—to keep legislation up to date as well, and to be digital by default.

... The new Bill puts digital at the forefront of what we're doing, which is great, because that is what users want and what we deliver. It also gives us the flexibility as those behaviours move

¹³⁸ LJC Committee, 4 November 2024, RoP [263]

¹³⁹ LJC Committee, 4 November 2024, RoP [182]

*on to publish less in print in the future, which is probably the way that things will go.*¹⁴⁰

137. In respect of the matter of how the provisions in the Bill compare to those in the *Scotland Act 1998* and the 2010 Scottish Act, Mr Nassé told us:

*“The way this Bill works is that the responsibilities that I will have as King’s Printer for publishing Welsh legislation will be badged as the King’s Printer for Wales, but there won’t be a separate office set up in the same way [as for Scotland]. But the practicalities of how it lands for the user are the same; the law in both languages will land on the website and be available for users.”*¹⁴¹

138. When asked to explain, in practical terms, the extent to which the arrangements for Scotland and the arrangements as provided in the Bill differ, John Sheridan, Digital Director at the National Archives, said:

*“... the practicality is that this will make no difference, so legislation will be registered and numbered, Welsh statutory instruments in their own series, published with the imprint by the King’s Printer for Wales, and so there’s no practical difference in terms of what is happening and what the public sees under this Bill for Wales as to the practical arrangements for Scotland. The legal arrangements are different, because this Bill has a different construction, but the practical arrangements are equivalent.”*¹⁴²

139. New sections 37J to 37M of the 2019 Act, as inserted by the Bill, restate provisions in respect of the numbering of Acts of Senedd Cymru, the official prints and certified copies of those Acts, and their preservation and their publication; provisions which are currently set out in section 115 of the 2006 Act. Accordingly, paragraph 5 of Schedule 3 to the Bill repeals those provisions in the 2006 Act.

140. Section 37M, in particular, provides that the King’s Printer for Wales must publish the certified copy of the official print of an Act, and must also publish documents related to the Act if asked to do so by either the Clerk of the Senedd or the Welsh Ministers; an obligation which is not currently expressly provided for in legislation.

¹⁴⁰ LJC Committee, 18 November 2024, RoP [123] and [125]

¹⁴¹ LJC Committee, 18 November 2024, RoP [139]

¹⁴² LJC Committee, 18 November 2024, RoP [142]

141. New sections 37N to 37S of the 2019 Act, as inserted by the Bill, set out the requirements for numbering, classifying, publishing and preserving Welsh statutory instruments.¹⁴³

142. In particular, new section 37P requires the King’s Printer for Wales to number such statutory instruments consecutively, starting at the beginning of each calendar year, which follows the approach currently adopted for statutory instruments and other legislation.

143. The EM states that the Welsh Government intends to bring new Part 2A of the 2019 Act – which includes new section 37P – into force on 1 January 2026.¹⁴⁴ When asked to explain this choice of date, the Member in charge told us:

“... the date is just so the sequence of numbering starts for a calendar year, so you’ll be able to say that for the year 2026, that’s the first year in which there’s a Welsh statutory instrument with that number, so it’s just a really straightforward begin-at-the-beginning provision.”¹⁴⁵

144. An official accompanying the Member in charge also stated that, following consultation with the National Archives:

“... they were very clear that part way through commencement would be difficult because of the series, so ... that’s the main reason that the National Archives were quite clear that they wanted a 1 January start.”¹⁴⁶

145. In oral evidence, the Chief Executive and Keeper of the National Archives, Saul Nassé, confirmed that the National Archives did not anticipate the creation of a separate series for Welsh statutory instruments to cause any issues, and it was “on track” to deliver this change by 1 January 2026.¹⁴⁷

146. Section 37T makes provision about the publication of draft Welsh statutory instruments, and section 37U requires the King’s Printer for Wales to publish, online, tables showing the effects made to enactments by Acts of the Senedd or Welsh statutory instruments.

¹⁴³ As a result of Part 1 of this Bill, subordinate legislation made by a responsible authority, which includes the Welsh Ministers, will be made as a Welsh statutory instrument, rather than as a statutory instrument to which the 1946 Act applies.

¹⁴⁴ EM, Table 2

¹⁴⁵ LJC Committee, 4 November 2024, RoP [201]

¹⁴⁶ LJC Committee, 4 November 2024, RoP [203]

¹⁴⁷ LJC Committee, 18 November 2024, RoP [128]

147. Section 37V requires the King’s Printer for Wales to publish Welsh legislation online as it has been amended by any other enactment. It must also, so far as practicable, fulfil this duty from the time an amendment comes into force. An official accompanying the Member in charge stated that this provision “will be the first provision in the UK that actually requires somebody to publish legislation in an up-to-date form”, although such provision is “quite common” in other jurisdictions, such as Australia, New Zealand and Canada.¹⁴⁸

148. When asked whether the National Archives is able to fulfil the duty within section 37V, its Digital Director, John Sheridan, told us:

“... we’re really confident that we’ve got the capacity to meet that obligation. We know from our research with users that it’s the single-biggest user need. People really need to read the text of the legislation as it has been amended. We’ve had capacity to both bring primary and then secondary legislation increasingly up to date. We have more than enough capacity to keep up to date, and sufficient capacity to bring the remaining legislation that isn’t currently up to date that applies to Wales up to date ahead of that provision coming into force. So, we’re very confident. I wouldn’t underestimate the importance of that provision, ultimately, for the people of Wales, in terms of giving them a legal assurance that the form of the legislation that we know that they most need is going to be available to them.”¹⁴⁹

149. Section 37Z places a duty on the Welsh Ministers to number, classify and publish online all subordinate legislation made by them when it is not in the form of a Welsh statutory instrument. Section 37Z does not detail the arrangements for the numbering and classification of subordinate legislation, but instead subsection (2) requires the Welsh Ministers to prepare and publish a determination on these arrangements.

150. In correspondence, we asked the Member in charge to outline in more detail how section 37Z(2) would operate in practice. She wrote to us in response:

“In developing new Part 2B we sought to ensure that where certain aspects of publication affected both Acts and Welsh statutory instruments, we made comparable provision. For example, section 37J deals with the numbering of Acts and section 37P makes analogous arrangements for instruments.

¹⁴⁸ LJC Committee, 4 November 2024, RoP [264]

¹⁴⁹ LJC Committee, 18 November 2024, RoP [131]

Similarly, we have sought to ensure like for like arrangements exist for publication and preservation.

Because subordinate legislation made by the Welsh Ministers other than as a Welsh statutory instrument is not published by or on behalf of the King's Printer, we have not included the detailed arrangements for publication of this legislation in the Bill/Part 2B. Instead, as noted by your Committee, new section 37Z(2) requires the Welsh Ministers to prepare and publish a determination on such matters.

I expect the determination to set out the detailed requirements that officials will follow when arranging publication. As such it will need to outline the approach to be taken on numbering – for example, a new series to start each calendar year, where the number is to be located on different types of subordinate legislation, etc. It will also set out how such subordinate legislation is to be classified. For example, by subject and if so, whether a subject heading is recorded on the subordinate legislation or whether this forms part of a register of subordinate legislation.

The overall intention is that all subordinate legislation will be published when it is made. Where legislation has been superseded (for example, a Code of Practice has been updated), the current working assumption is that if the earlier version is replaced and is not on the Government's website a reference to it will be shown and it will be available on request. To support these publication ambitions it is necessary that a full record is made, and individual legislation is capable of identification (through numbering and classification).

The determination will serve as a clear point of reference to strengthen our approach to publishing subordinate legislation.”¹⁵⁰

151. New Part 2B of the 2019 Act also restates the functions of the Clerk of the Senedd which are currently set out in sections 115(5A) to 115(5E) of the 2006 Act. The 2006 Act, in particular section 26, expressly provides that the Clerk of the

¹⁵⁰ Letter from the Counsel General and Minister for Delivery, 29 November 2024, response to question 4

Senedd is to be known by either this title, or as “Clerc y Senedd”, or by other such title as the Senedd’s Standing Orders may provide.

152. As stated in paragraph 68, the Chief Executive and Clerk of the Senedd, Manon Antoniazzi, told us that she was content that the restating of these functions do not change the process or procedures that must be undertaken by the Clerk.

153. However, Manon Antoniazzi also noted that the provisions in new Part 2B refer to the “Clerk of Senedd Cymru”, which is not in line with the references in the 2006 Act. When asked about this matter the Member in charge told us that, because the Bill refers to Senedd Cymru, the wording “Clerk of Senedd Cymru” was used in order to follow this “pattern”. The Member in charge however stated that if the Clerk “feels strongly” about this matter, the Welsh Government would be willing to amend the Bill accordingly.¹⁵¹

Financial implications

154. Part 4 of the EM indicates that, in the Welsh Government’s assessment, there are no specific provisions in the Bill (either in Part 1 or 2 or as a whole) which charge expenditure on the Welsh Consolidated Fund.¹⁵²

155. However, the EM acknowledges that there will be transitional costs of £45,000 as a result of the Bill, which it states will be incurred by the National Archives. These costs relate to necessary changes to the National Archives’ publishing system and the legislation.gov.uk website to reflect Welsh statutory instruments.¹⁵³

156. The Chief Executive and Keeper of the National Archives, Saul Nassé, confirmed the accuracy of this figure, and confirmed that it would be a cost for the National Archives to bear.¹⁵⁴

157. The EM also notes that recurrent cost savings to the Welsh Government of £11,500 per annum will be achieved by the proposed changes to temporary road traffic orders.¹⁵⁵

¹⁵¹ LJC Committee, 13 January 2025, RoP [55]

¹⁵² EM, paragraph 86

¹⁵³ EM, Table 4

¹⁵⁴ LJC Committee, 18 November 2024, RoP [133] and [135]

¹⁵⁵ EM, Table 4

Dual-column printed format for statutory instruments

158. Within its accessibility of Welsh law programme, the Welsh Government has committed to “explore ways to move from a model of promulgating legislation based on 20th century printed versions to a modern, digital-based system.” It has stated that this approach “will include considering technological solutions for viewing and interpreting bilingual legislation and moving away from the dual column printed format of Statutory Instruments.”¹⁵⁶

159. The EM refers to this commitment, and states that one of the benefits of such a change is expected to be “a reduction in (if not possibly an end to) the costs of the typesetting charges that fall to the Welsh Government”.¹⁵⁷

160. We asked the Member in charge to explain why this approach was being taken. An official accompanying the Member in charge referred to the “practical problems” encountered by Welsh Government drafters when preparing legislation in the dual-column format¹⁵⁸, and another official provided further detail:

“The cost is an interesting point. To produce a Welsh statutory instrument costs the Welsh Government significantly more than an equivalent would cost for the Scottish Government, the Northern Ireland Executive or the UK Government. The standard cost is set out in the explanatory memorandum, but the standard cost per instrument is £320. But for a Welsh statutory instrument, we then pay on top of that £16.75 per page. So if you look at a 100-page instrument—which isn’t common, but it’s not so unusual—you’re looking at a significant cost to produce that instrument, whereas the same instrument doesn’t cost that money to the Scottish Government, for example; it would still cost them £320. It’s all to do with the process that the National Archives and the publication concessionaire have to go through to combine that instrument to a print. And then if you look at the number of sales of those instruments, the cost-benefit is not there at all.

So, we do want to move away from the dual-column format. The National Archives are equally keen to make to move away from the dual-column format and we want to find a format

¹⁵⁶ Welsh Government, [The future of Welsh law: revised accessibility programme 2021 to 2026](#), January 2024, paragraph 28c

¹⁵⁷ EM, paragraph 124

¹⁵⁸ LJC Committee, 4 November 2024, RoP [266]

that reflects, really, how people access legislation now. That's the engagement we're having, and the National Archives are going to do some user research, I think later this month [November 2024], that considers how users access legislation in both languages, how they can be certain what they're seeing is the correct version, and that's going to inform the next steps on moving away from the dual-column format."¹⁵⁹

161. Mr Nassé also stated in respect of this matter:

"One of the things that we want to look at there is how we evolve the presentation of English and Welsh language. We have had this kind of dual-column format, which very much derives from the print era, where you need to see the two things alongside each other. We think that users now would much prefer to be able to toggle between one and the other, but we won't make that decision without engaging with users and getting the insights that let us be sure that that's right."¹⁶⁰

Our view

162. As we state in Chapter 3, we welcome the provisions in the Bill in respect of the King's Printer for Wales, and also welcome the new functions which will be placed on that role, in particular the new duty in section 37V to publish Welsh legislation in an up-to-date form. We are pleased to note that the National Archives is confident that it will be able to fulfil this duty.

163. We do, however, have some reservations about the general approach to placing these responsibilities on the King's Printer for Acts of Parliament – an approach which differs to the approach taken in the *Scotland Act 1998* and the 2010 Scottish Act. We are reassured by the view of the National Archives that these different approaches will not lead to any practical differences around how these responsibilities will be discharged in Scotland and Wales. In that regard, it is unclear to us why the provisions in the Bill do not mirror those in the *Scotland Act 1998* and the 2010 Scottish Act: this approach would provide for the creation of a King's Printer for Wales as a separate role to that of the King's Printer for Acts of Parliament.

164. We believe that creating a separate role of a King's Printer for Wales – instead of imposing specific functions on the King's Printer for Acts of Parliament – would

¹⁵⁹ LJC Committee, 4 November 2024, RoP [267] to [268]

¹⁶⁰ LJC Committee, 18 November 2024, RoP [163]

ensure parity with legal arrangements elsewhere in the United Kingdom while enabling that role to still be undertaken by the King's Printer for Acts of Parliament, as provided for by the Bill. For these reasons, we believe that the Welsh Government should explain why an approach which mirrors the provisions in the *Scotland Act 1998* and the 2010 Scottish Act was discounted.

Recommendation 7. The Welsh Government should explain why the Bill's provisions in respect of the King's Printer for Wales do not mirror the arrangements set out in the *Scotland Act 1998* and the *Interpretation and Legislative Reform (Scotland) Act 2010*, whereby the King's Printer for Scotland exists as a separate role to that of the King's Printer for Acts of Parliament.

Recommendation 8. The Welsh Government should provide an assessment of any financial implications of mirroring the arrangements set out in the *Scotland Act 1998* and the *Interpretation and Legislative Reform (Scotland) Act 2010*, whereby the King's Printer for Scotland exists as a separate role to that of the King's Printer for Acts of Parliament.

165. We note that the Bill refers to the Clerk of Senedd Cymru instead of Clerk of the Senedd. We agree with the view expressed to us by the Clerk that these provisions are not in line with provision in the 2006 Act which expressly states that the office is "to be known as the Clerk of the Senedd, Clerc y Senedd or by such other title as the standing orders may provide." For these reasons, we believe that the Bill should be amended accordingly.

Recommendation 9. The Bill should be amended to replace its references to "Clerk of Senedd Cymru" with "Clerk of the Senedd", in accordance with section 26(2) of the *Government of Wales Act 2006*.

166. We note the financial implications of this Part of the Bill, as provided by the Welsh Government in the Explanatory Memorandum, and note that the National Archives has confirmed the accuracy of the figures provided in respect of the costs to be incurred by it.

167. Finally, we note the Welsh Government's commitment to explore ways to move from what is known as the dual-column format for statutory instruments, and the reasons for this. We also note the National Archives' support, in principle, for this proposal, subject to engagement with users of legislation.

168. Given the potential impact of any decision to move away from the dual-column format on the Welsh language, we believe the Welsh Government should set out its assessment of these possible impacts, and confirm whether it has consulted the Welsh Language Commissioner.

Recommendation 10. The Welsh Government should set out what assessment it has made of the impact of its proposed decision to move away from the dual-column format for Welsh statutory instruments on the Welsh language, and should confirm whether it has consulted the Welsh Language Commissioner on this proposal.

6. Repeals of Welsh legislation

169. Part 3 of the Bill introduces repeals and amendments of provisions no longer considered to be of practical utility or benefit. This Part – in particular section 4 – introduces Schedule 3 which contains these repeals and amendments.

Repeals and amendment of provisions in planning law

170. The Bill repeals and amends provisions relating to various matters in the area of planning law, including Rural Development Boards, enterprise zone areas and housing action trusts. The EM states in respect of these provisions:

“Particular consideration has been given to removing certain redundant provisions in existing legislation that relate to, or are connected with, the planning system. This is because one of the key projects in the Government’s programme to improve the accessibility of Welsh law is tackling the complexities and inefficiencies of planning law in Wales. The Government will, in this Senedd term, bring forward a consolidation Bill to simplify and modernise planning law in Wales. The need for that Bill is long standing and was clearly demonstrated when the Law Commission’s report on Planning Law in Wales¹⁶¹ concluded that it is an area of law needing urgent attention. Their report highlighted the detrimental impacts the inaccessibility, quality and complexity of the law are having on the operation of the planning system – findings that have been accepted by the Government.

Dealing with some of the redundant planning provisions in this Bill will allow some of the decluttering of the statute book in relation to planning to go ahead earlier than would otherwise happen, and will avoid having provisions relating to those repeals being included in the Planning Bill. The Government’s intention is for the Planning Bill to stand as the substantive statement on planning law in Wales, and provisions that are spent, unnecessary or obsolete will simply add to the length and complexity of that Bill.”¹⁶²

¹⁶¹ Law Commission, [Project: Planning Law in Wales](#)

¹⁶² EM, paragraphs 38 to 39

171. In oral evidence, the Member in charge told us that the approach being taken is “preparatory to the consolidation Act”, and the Bill is “taking the opportunity to get rid of some of the obsolete provisions prior to the consolidation.”¹⁶³ The Member in charge also confirmed to us that the consolidation Bill in question would be introduced by the Welsh Government in 2025.¹⁶⁴

Repeal of the Domestic Fire Safety (Wales) Measure 2011

172. The Bill, at paragraph 26 of Schedule 3, also repeals in its entirety the *Domestic Fire Safety (Wales) Measure 2011* (the Measure). The EM states as follows in respect of this repeal:

“The Domestic Fire Safety (Wales) Measure was introduced into the (then) National Assembly for Wales by Ann Jones AM following her campaign to improve fire safety and reduce the incidence of death and injury in residential settings. The Measure introduced new requirements for the inclusion of automatic fire suppression systems (usually referred to as sprinkler systems) into all new and converted residences in Wales. At the time the Measure was introduced, responsibility for building control, including the Building Regulations (the main way in which compliance with building standards are ensured) lay with the UK Government. The Measure was therefore considered the most effective legislative mechanism available to the National Assembly at the time to require fire sprinkler systems in new builds and conversions.

The Measure was passed by the National Assembly and a period of implementation was put in place to enable the building and housing sectors to prepare for this change of requirements. During that period responsibility for the system of building control was devolved to the Welsh Ministers. Following consultation on implementation of the 2011 Measure, and because the Welsh Ministers were now able to make amendments to the Building Regulations, only section 1 of the 2011 Measure was eventually brought into force. The use of the Building Regulations (and the associated Approved

¹⁶³ LJC Committee, 4 November 2024, RoP [272]

¹⁶⁴ LJC Committee, 4 November 2024, RoP [274]

Documents) to ensure automatic fire suppression systems are installed continues to the present day.”¹⁶⁵

173. The Member in charge also explained to us in oral evidence why the Bill provides for the repeal of the Measure:

“... the current building regulations completely supersede the Measure, really, and there was one last bit that was to do with sprinklers in care homes that has just gone through, so it basically now doesn't do anything. I have to pay tribute to Ann Jones, who fought tooth and nail to get this through, and it was very innovative at the time, but it's been superseded by the building regulations, which have basically caught up, if you like. So, it doesn't make any sense to have them in two separate places, and, again, if you're looking ... for enforcement and so on, you want it in one place.”¹⁶⁶

174. The EM also states that this repeal was not consulted upon as part of the 2022 consultation, however:

“... a separate consultation considered proposals to amend the Building Regulations to require automatic fire suppression measures in care homes for children. To the extent that any gaps could be left following the repeal of this Measure, those gaps would be filled by the proposed change to the Building Regulations. In light of that consultation amendments to the Building Regulations have been made by the Building (Amendment) (Wales) Regulations 2024 (SI 2024/742 (W. 103))¹⁹. As a result, rather than wait for a Bill dealing with this subject matter, it is appropriate to use this Bill to repeal the 2011 Measure, in full. Part 7 of Schedule 1 to the Bill repeals the 2011 Measure. Further consultation on repealing the 2011 Measure (over and above the two consultations to amend the Building Regulations) was not considered necessary.”¹⁶⁷

175. We asked the Member in charge, in correspondence, to provide an outline of any further consultation that had been undertaken in respect of this proposed repeal. She wrote to us in response:

¹⁶⁵ EM, paragraphs 70 and 71

¹⁶⁶ LJC Committee, 4 November 2024, RoP [289] and [291]

¹⁶⁷ EM, paragraph 72

“The requirements for installing fire suppression systems are set out in and, importantly, enforced through, the Building Regulations. This was not the case when the Measure was introduced. The most recent consultation regarding sprinklers in care homes was the last step in ensuring the Building Regulations reflect all aspects the Measure could have covered.

The Government did not consider it necessary therefore to undertake a separate consultation to establish whether any aspect of the Measure needed to remain, and it is now included in the Bill for repeal.”¹⁶⁸

176. We also asked the Member in charge to provide the Welsh Government’s assessment of the impacts of moving sprinkler system requirements from primary legislation to secondary legislation. She wrote to us in response as follows:

“The requirements for fire suppression systems are already in the Building Regulations, this Bill is not changing that position. When the Government included the requirements in those Regulations in 2013, this was seen as an important step forward. The Building Regulations help ensure that new buildings, conversions, renovation and extensions are safe, healthy and high-performing. They also provide arrangements for compliance and enforcement. They are supported by a suite of Approved Documents. Those involved in the construction and renovation of buildings are therefore looking in one place for the requirements that will apply. They do not need to go and find another piece of legislation to cover one discrete aspect. It is the same principle we are using for codification more generally.

Given that the sprinkler system requirements are already addressed by the Building Regulations, and it is the Regulations that are operative in practice, I do not consider there are any adverse impacts from now repealing the Measure. The repeal is removing primary legislation that is no longer of practical utility or benefit.”¹⁶⁹

¹⁶⁸ Letter from the Counsel General and Minister for Delivery, 29 November 2024, response to question 8, first bullet

¹⁶⁹ Letter from the Counsel General and Minister for Delivery, 29 November 2024, response to question 8, second bullet

177. The Member in charge also confirmed to us that – given the limited extent to which the Measure was commenced, and the recent amendment in relation to care homes for children – the Building Regulations now cover the same matters that, in practice, the Measure covered. She therefore told us that “no gaps will be created in practice” by the repeal of the Measure.¹⁷⁰

Proposed repeals not brought forward by the Bill as introduced

Sections 53 to 56 of the Countryside and Rights of Way Act 2000

178. The Welsh Government’s 2022 consultation proposed the amendment of sections 53 to 56 of the *Countryside and Rights of Way Act 2000* (the 2000 Act) to no longer apply those provisions to Wales. Within its consultation document, it stated that these provisions prescribe a cut-off date (initially 1 January 2026, but later extended to 1 January 2031¹⁷¹) for the recording on definitive maps of footpaths and bridleways created before 1949 (with certain exceptions). However, it also stated that these provisions had not been commenced.¹⁷²

179. The EM, however, states that the Bill does not include provisions to amend sections 53 to 56 of the 2000 Act, and sets out the Welsh Government’s rationale as follows:

“This was originally proposed as those sections had never been commenced (in England or in Wales), and at the time of the consultation the UK Government’s stated policy was to repeal those sections. The Welsh Government had the same policy.

In March 2023 the UK Government suddenly announced a change of its position and subsequently commenced sections 53 to 56 of the 2000 Act in relation to England. Whilst not affecting the Welsh Government’s position that those sections will not be commenced in relation to Wales, it affected the continuing inclusion of those sections in the Bill. This is because the criteria for inclusion of repeals (that they are no longer of practical utility or benefit) could no longer be demonstrated.”¹⁷³

¹⁷⁰ Letter from the Counsel General and Minister for Delivery, 29 November 2024, response to question 8, third bullet

¹⁷¹ See [regulation 2 of the Countryside and Rights of Way Act 2000 \(Substitution of Cut-off Date Relating to Rights of Way\) \(England\) Regulations 2023](#).

¹⁷² Welsh Government, Consultation: Statute Law (Repeals) (Wales) Bill, paragraphs 103 to 108

¹⁷³ EM, paragraphs 60 and 61

180. In correspondence, the Member in charge further explained the Welsh Government's decision to us:

"... the test we have used for including a repeal in the Bill is that the matter is suitable for inclusion because the provisions are no longer of practical utility or benefit. Something could fall into this category if it is:

(a) obsolete, spent or superseded;

(b) unlikely to be commenced, having remained un-commenced for a period of time over which the original context has changed; or

(c) otherwise unnecessary (for example, where the end is met by some other means).

So although sections 53 to 56 of the 2000 Act provisions have not been commenced, the opportunity to commence and bring in a cut-off date remains. There is therefore a policy choice about whether or not they are commenced. We consulted on the draft Bill on that basis.

The UK Government's decision means the provisions now appear to have some practical utility in relation to England. Further, for the time being at least, that they could not be repealed by a Repeals Bill operating in relation to England.

I reiterate the Welsh Government's position is that these sections should not be commenced in relation to Wales. But in the terms of the test we set ourselves for including matters in the Bill, there is no longer a strong argument that the provisions are obsolete, unlikely to be commenced as the original context is unchanged, or otherwise unnecessary.

Given our intention to maintain an ongoing programme of repeal Bills, and the nature of the consultation already undertaken on this matter, we felt it was important to stay within the parameters that we have set for ourselves. It is worth highlighting that these are the parameters that have governed the numerous repeals bills (prepared by the Law Commission) that have been taken through the UK Parliament in the past.

Adding “in England” is one method (used elsewhere in the Bill, as you say) to, in effect, “repeal” provisions in relation to Wales; it is used when the provisions in question need to be left in place in relation to England and therefore cannot be repealed by means of simply omitting them from the Act that contains them, or by repealing the entire Act. The reasons why we have not done this here are as set out above.”¹⁷⁴

181. The Open Spaces Society, which welcomed the Welsh Government’s initial proposals to repeal sections 53 to 56 of the 2000 Act¹⁷⁵, stated that it “strongly deprecates” the omission of this provision within the Bill, and found the omission “both inexplicable and alarming.”¹⁷⁶ In its view, it found the omission inexplicable because other provisions included in the Bill are “not necessarily spent” in relation to their application to England¹⁷⁷; and found it alarming because it was “suggestive that the Welsh Government now is contemplating a similar policy reversal to the UK Government”¹⁷⁸.

182. In December 2024, however, the UK Government announced its intention to repeal the 2031 cut-off date for these provisions in their entirety “when parliamentary time allows”.¹⁷⁹ In an amended version of its submission to the Committee, the Open Spaces Society stated that this announcement “removes any possible objection” to the repeal provision being reinserted into the Bill, and expressed their wish and expectation for that step to be taken.¹⁸⁰

183. When asked to address the points raised by the Open Spaces Society, the Member in charge stated as follows:

“This Bill has a number of repeals attached to it, and the repeals are being repealed because the statutory provision that is being repealed has no further use, basically. So, if you take

¹⁷⁴ Letter from the Counsel General and Minister for Delivery, 29 November 2024, response to question 9

¹⁷⁵ Welsh Government, Consultation: Statute Law (Repeals) (Wales) Bill, [Open Spaces Society](#), January 2023

¹⁷⁶ LJC Committee: Consultation: Legislation (Procedure, Publication and Repeals) (Wales) Bill, [L\(PPR\)03 – Open Spaces Society](#), issued December 2024, revised January 2025, paragraph 2.3

¹⁷⁷ LJC Committee: Consultation: Legislation (Procedure, Publication and Repeals) (Wales) Bill, [L\(PPR\)03 – Open Spaces Society](#), issued December 2024, revised January 2025, paragraph 2.4

¹⁷⁸ LJC Committee: Consultation: Legislation (Procedure, Publication and Repeals) (Wales) Bill, [L\(PPR\)03 – Open Spaces Society](#), issued December 2024, revised January 2025, paragraph 2.6

¹⁷⁹ UK Government, [Press release: Government steps in to save historic rights of way from being lost to the nation](#), 26 December 2024

¹⁸⁰ LJC Committee: Consultation: Legislation (Procedure, Publication and Repeals) (Wales) Bill, [L\(PPR\)03 – Open Spaces Society](#), issued December 2024, revised January 2025, paragraphs 2.10 and 2.11

the building regulations one, for example, the sprinkler one that Ann Jones took through, that has been entirely superseded by the new building control regulations, so there's no need for it. It has served its purpose ... The countryside access one is slightly different to that. It's a provision that has never been commenced in Wales, and it would put a date by which you had to claim historic footpath rights into law. That's never been commenced in Wales ...

For a long time, it wasn't implemented either in England or Wales. We have absolutely no intention of ever implementing it, but that's clearly a policy decision. It's the policy of this Government that that will never be implemented. In fact, the UK Government then did implement it and extended the provision out a bit, but then the current UK Government now intends to repeal it altogether, because it had been implemented. So, the dilemma for us is we have no intention of ever commencing it, but it's not strictly speaking redundant in the sense that it's not inconceivable that a future Government might want to implement it, though I'd be very keen from a policy point of view that that didn't happen. So, I guess we've set ourselves the test for repeals that the repeal put forward by these proposals should be because there is no point at all to the statutory provision, that it merely misleads or causes confusion, whereas that's not quite the case with this. However, having said all of that, if the committee doesn't object, I'm minded to put it back in again, because, actually we have no intention whatsoever of ever commencing it. But I would want the committee not to object to that, because strictly speaking it's not quite within the parameters that we set for ourselves.”¹⁸¹

Section 28 of the Commons Act 1876

184. The Open Spaces Society also referred us to a proposal it submitted to the Welsh Government's 2022 consultation, which called for the repeal section 28 of the *Commons Act 1876* in relation to Wales. Section 28 of the 1876 Act requires triennial to quinquennial reports from the managers of allotted recreation grounds, and – according to the Open Spaces Society – is a redundant provision. It told us in respect of its proposal:

¹⁸¹ LJC Committee, 13 January 2025, RoP [39] and [43]

“While the proposal is hardly pressing or important, it would fulfil the remit of the original Bill to remove ‘unnecessary provisions from the statute book [which] can help to “declutter” it [and] helps to bring clarity about what law is relevant to Wales.’

Moreover, as the original consultation expressly asked whether ‘there are any other provisions we should consider including in this or a future Bill’, and the OSS’s proposal was the only one put forward, it seems unreasonable that the proposal has been ignored. If the intention was to include it in a subsequent repeals Bill, the Welsh Government could have said so.”¹⁸²

185. We therefore asked the Member in charge to explain why this proposal was not taken forward by the Welsh Government in the Bill. She told us as follows:

“The truth is ... we haven’t had quite enough time to be absolutely certain that the provision is completely overtaken by subsequent legislation. ... We’d very much hope to include it in a future repeal Act, but we haven’t yet had the time to fully make sure that it fits into the category of ‘has absolutely no legislative use whatsoever because it’s superseded by other legislative purposes’.”¹⁸³

Our view

186. We note the tests which the Welsh Government has set itself for the inclusion of repeal provisions in this Bill: in that those provisions are either obsolete, spent or superseded; unlikely to be commenced, having remained un-commenced for a period of time over which the original context has changed; or otherwise unnecessary. We are satisfied that the provisions which are included in the Bill meet these tests.

187. We also note the Welsh Government’s decision to include the repeal of provisions on planning law within this Bill, rather than within either of the two anticipated Consolidation Bills on planning law.

¹⁸² LJC Committee: Consultation: Legislation (Procedure, Publication and Repeals) (Wales) Bill, L(PPR)03 – Open Spaces Society, issued December 2024, revised January 2025, paragraphs 3.2 to 3.3

¹⁸³ LJC Committee, 13 January 2025, RoP [50]

188. We similarly note the Welsh Government’s decision to repeal the 2011 Measure in its entirety, and the reasons for adopting this approach.

189. While we acknowledge the concerns raised by the Open Spaces Society in relation to the initially-proposed repeal of section 53 to 56 of the 2000 Act, we note that the Welsh Government now intends to amend the Bill to reinsert this repeal provision, in light of the UK Government’s decision to repeal the provision in England.

190. We similarly acknowledge the Open Spaces Society’s proposal for the repeal of section 28 of the 1876 Act within the Bill, and note the Welsh Government’s “hope” to include it in a future repeals Bill, subject to its further consideration of the provision and whether it meets its tests.

Annex 1: List of oral evidence sessions

The following witnesses provided oral evidence to the committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed on the [Bill's website](#).

Date	Name and Organisation
4 November 2024	<p>Julie James MS, Counsel General and Minister for Delivery Welsh Government</p> <p>Dylan Hughes Welsh Government</p> <p>Claire Fife Welsh Government</p>
18 November 2024	<p>Saul Nassé The National Archives</p> <p>John Sheridan The National Archives</p> <p>Malcolm Todd The National Archives</p>
6 January 2025	<p>Dr Ruth Fox Hansard Society</p> <p>Dr Adam Tucker University of Liverpool</p>
13 January 2025	<p>Julie James MS, Counsel General and Minister for Delivery Welsh Government</p> <p>Dylan Hughes Welsh Government</p> <p>Claire Fife Welsh Government</p>

Annex 2: List of written evidence

The following people and organisations provided written evidence to the Committee. All Consultation responses, correspondence and additional written information can be viewed on the [Bill's website](#).

Reference	Organisation
L(PPR)01	The National Archives
L(PPR)02	One Voice Wales
L(PPR)03	Open Spaces Society
L(PPR)04	Chief Executive and Clerk of the Senedd