

Independent Commission on UK Public Health Emergency Powers

Submission from Senedd Cymru to the Call for Evidence

1. We are pleased to have the opportunity to provide evidence on the use of public health emergency powers drawing on the recent experience of Senedd Cymru. The period of the Covid-19 pandemic has proved to be seminal for the Senedd as a parliamentary institution.
2. The pandemic meant the Senedd had to adapt quickly to new ways of working in order to continue to operate effectively and hold the Welsh Government to account during a time of significant restrictions of movement and contact.
3. The evident regulatory divergence between Wales and other parts of the UK firmly established the place, role and status of the Senedd and Welsh Government in the minds of the Welsh public. In a country where devolution has famously been described as “a process, not an event”, this has been an important moment in that journey.
4. In responding to this call for evidence, we have focussed on Topic 5 (Parliamentary scrutiny processes) and Topic 6 (the adaptation of parliamentary procedures). As the explanation of elements of the former topic relies on an understanding of the adaptations made by the Senedd, we have set out our response to Topic 6 first.

Topic 6: The adaptation of parliamentary procedures

5. The Senedd’s immediate response to the imposition of the first UK-wide lockdown in March 2020 was to seek ways to ensure that it was able to continue to operate effectively as a parliament. Mindful of the unprecedented executive powers which were available to the Welsh Ministers at that point, facilitating the parliamentary oversight of executive action was a priority.
6. There were two main themes here: innovation and prioritisation. Innovation (both technological and procedural) was necessary to move to a new model of working where Members were able to undertake scrutiny and take key decisions whilst operating within Covid-19 restrictions. Prioritisation was required to ensure that Senedd business time and the resources required to support that activity – both of which, already limited, were under greater pressure as a result of Covid-19 restrictions – were employed most effectively in addressing the pandemic and other matters.

7. Innovation was directed first at Plenary meetings and the operation of the Chamber. A timeline with links to relevant reports on procedural changes may be found in Annex 1.
8. The Senedd was fortunate that, unlike many other parliaments, statute and standing orders do not require it to meet in a particular place. Members are required to 'participate' rather than be 'present'. There are no constitutional or procedural barriers to meeting remotely, provided that proceedings can be bilingual (Welsh-English).
9. At the beginning of lockdown emergency standing orders were agreed providing for new recall provisions, a reduced quorum, flexibility around public access, and weighted voting. This allowed the first 'Emergency Senedd' to meet on 24 March: a physical meeting with reduced numbers of Members attending.
10. The Senedd held its first virtual plenary via Zoom on 1 April, the first parliamentary session to be held by video-conferencing in the UK. Although the number of Members who were able to attend were initially limited, by 1 June all Members who wished to do so were able to attend.
11. The last two scheduled plenary meetings before the summer recess, 8 and 15 July 2020, were held in a hybrid format. Groups agreed to a proportional share of the 20 Members who could be physically present in the chamber; one seat was allocated to independent Members. All other Members would be able to participate virtually via Zoom, displayed via the large screens already present in the chamber, with the chamber showing as a 'tile' on Zoom.
12. Remote electronic voting – which enabled Members to vote from anywhere – was used for the first time on 8 July 2020, replacing the weighted voting arrangement.
13. Plenary business had initially been limited to government statements on Covid-19 (with questions without notice) and consideration of Covid-19 regulations, with one plenary session per week.
14. Additional categories of plenary business were added over the summer term, so that by September 2020 a full range of business was being considered in two plenary sessions per week. This development was facilitated by the introduction of remote electronic voting and the move to hybrid meetings.
15. Whilst the hybrid meeting format has been the norm since September 2020, the option of holding a fully virtual meeting has continued to be available (for

example for recall meetings during recess, or meetings during the November 2020 “firebreak” restrictions).

16. The Senedd’s journey to a new way of working relied on a necessarily-quick initial response to the challenges of Covid-19 and lockdown, followed by an evolution of practice as Covid restrictions allowed and technological capacity and capability developed.
17. During this period concerns were raised by Members occasionally as the limitations of the evolving procedure became evident. Such concerns, which have been addressed by subsequent developments, have included:
 - The inability of backbenchers to vote (or not vote) as they wished via the weighted voting system;
 - The impact of the virtual format on the spontaneity of debates, and in particular the ability to intervene;
 - A restriction on more general scrutiny whilst Senedd business was focussed on Covid-19 related matters.

Senedd Powers

18. The Senedd was able to make necessary adaptations to continue oversight of the executive function during the period of Covid-19 restrictions by using powers available to it via the Government of Wales Acts and the introduction of emergency standing orders. The technological innovation which supported that adaptation has continued to benefit Senedd business more generally.
19. The Senedd has retained the hybrid format as the new norm. The ability of plenary and committees to meet in a variety of formats has helped to maximise opportunities for participation by Members and the geographic diversity of committee witnesses. It has also helped ensure business continuity and preparedness for future emergencies.

Topic 5: Parliamentary scrutiny processes

20. The use of emergency health powers during the Covid-19 pandemic held significant implications for the Senedd’s scrutiny processes in a number of areas: the work of committees; scrutiny of Covid-19 related secondary legislation; and the broader legislative programme.

Committees

21. Although Senedd committees had occasionally used video or teleconference technology prior to 2020, the move to wholly virtual meetings on 17 April

2020 brought significant challenges in terms of the arrangement of business and delivery of meetings.

22. On 17 March, the Business Committee took the view that 'for the foreseeable future committees should focus on essential business'. While committees are autonomous entities that decide their own work programmes, the view of the Business Committee, coupled with an awareness among committee chairs, Members and officials that Wales's public services' immediate focus would be on managing the pandemic, led the vast majority of committees to pause all non-COVID-19 related work.
23. Furthermore, Senedd committees are only able to meet in windows allocated to them by the Business Committee in the Senedd timetable, and, shortly after the beginning of lockdown, this timetable had been revised in response to the closure of the estate and need to prioritise technical resources to supporting plenary business. Until mid-June, technological and capacity constraints of remote working prevented more than one public meeting taking place at a time.
24. Most Senedd committees have a dual function, undertaking both policy and legislative scrutiny, and decisions relating to committee business during the pandemic affected both types of business.
25. Committees with responsibility for scrutinising health and education matters, and Covid-19 related secondary legislation, were given more frequent timetable slots to exercise those functions. The Business Committee considered the option of establishing a Covid-19 Committee, but decided not to do so.
26. The need to prioritise meeting time between plenary and committees, and among committees, was discussed with the Chairs' Forum. The Forum was also a useful mechanism for coordinating scrutiny across committees, in particular agreeing an approach to overarching scrutiny by the Committee for the Scrutiny of the First Minister of COVID-19 recovery plans, and the coordination of committee meetings held during the summer recess.
27. The majority of committees launched overarching COVID-19 inquiries to cover all issues in their remit, including rolling calls for written evidence and oral evidence from Ministers and relevant stakeholders. New approaches were also developed to briefing Members, witness participation and engagement with stakeholders.

28. Since April 2021 all committees have been able to meet in a hybrid format (although virtual and fully in-person options remain available), and a new committee timetable was introduced for the 2021 autumn term. The continuing development of the Senedd's technological capacity means that a full committee timetable could be supported should it become necessary to move to a wholly virtual format for meetings in future.

Scrutiny of Covid-19 related secondary legislation

29. The Welsh Ministers mainly used powers contained in the Public Health (Control of Disease) Act 1984 in order to make statutory instruments (SIs) to respond to COVID-19; powers available to the Welsh Ministers by virtue of the Coronavirus Act 2020 were used infrequently.

30. Scrutiny of Covid-19 related secondary legislation was handled within the Senedd's normal procedures; responsibility for leading such scrutiny is held by the Legislation, Justice and Constitution (LJC) Committee. A temporary process for the handling of SIs was put in place from 25 March 2020 until committees resumed meeting in a virtual format on 17 April 2020.

31. The LJC Committee considered its first Covid-related piece of subordinate legislation on 28 April 2020. Between then and the dissolution of the Fifth Senedd in April 2021, the Committee reported on 144 items of subordinate legislation related to Covid-19 (including 74 subject to the negative procedure, 61 to the made affirmative, 4 to the draft affirmative, and 5 to no procedure). This resulted in 383 reporting points (61 technical and 322 merits).

32. In particular, merits reporting points drew attention to the accessibility of the legislation, the use and accuracy of Welsh Government guidance, and matters relating to compatibility with human rights. On this latter point, the Committee regularly reported on what it considered to be inadequacies in the Welsh Government's reporting of its assessment of the extent to which any interference with human rights caused by subordinate legislation is justified and proportionate in pursuit of the legitimate aim of protecting public health.

33. As part of the response to the Covid-19 pandemic, the LJC Committee also considered other COVID-19 related subordinate legislation, for example, subordinate legislation not laid before the Senedd in the form of a notice made under the Coronavirus Act 2020.

34. On 8 June 2020, the LJC Committee took evidence from the Minister for Health and Social Services, Vaughan Gething MS, about the Welsh Government's initial legislative approach to Covid-19, questioning him on matters relating to the rule of law, interference with human rights and the effectiveness and accessibility of Covid-related subordinate legislation.
35. These points were followed up in a scrutiny session with the Counsel General, Jeremy Miles MS, on 1 March 2021 during which the Welsh Government's overall approach to legislating in response to the Covid-19 pandemic was also discussed.
36. All SIs subject to the affirmative and made affirmative procedures were debated and voted on in plenary.
37. However, there was occasional tension created by the requirement to reconcile four sometimes competing factors: use of the made affirmative procedure; the desire of some Members to debate new measures as early as possible after introduction; the recognition of the importance of providing time for committee scrutiny; and the timetabling of debates. Frustration among some Members was particularly marked on occasions where regulations had been superseded before there had been an opportunity for them to be debated.
38. In these circumstances the Business Committee maintained its commitment to committee scrutiny, recognising the importance of additional safeguards where important legislation was being made quickly in complex areas.
39. Where possible, the Welsh Government committed to scheduling debates within two weeks of regulations being made, although this placed considerable pressure on the LJC Committee to consider SIs and report quickly.
40. In addition, for novel provisions (for example, the introduction of "firebreak" restrictions in November 2020) "in principle" debates were sometimes scheduled to provide an opportunity for early discussion. These debates were not binding, and there was still a requirement for formal debates to consider and approve the regulations to be held following committee scrutiny.

41. Further information about the work of the LJC Committee during the Fifth Senedd, including links to correspondence, reports and the Record of Proceedings, may be found in Annex 2.

Primary Legislation and Legislative Consent

42. With just a year remaining until the end of the Fifth Senedd's parliamentary session in March 2020, the introduction of the first UK lockdown required the Welsh Government to reconsider its legislative programme.

43. At that point there were four Welsh Government bills before the Senedd, and several more expected to be introduced before summer recess as part of the legislative programme. However, on 1 April, the government issued a written statement on its approach to legislation in the context of the pandemic, identifying two bills as priorities – the Local Government and Elections (Wales) Bill and the Curriculum and Assessment (Wales) Bill – and stated that the remaining bills were under review.

44. The demands of the Covid-19 pandemic created challenges even for the prioritised bills. Although the general principles and financial resolution of the Local Government and Elections (Wales) Bill were agreed in the second virtual plenary meeting on 8 April, Stage 2 scrutiny (committee amending stage) was suspended subsequently for a number of months at the request of the Welsh Government.

45. The Senedd's workload was also heavily shaped by the UK Government's legislative programme. The Sewel Convention, reflected in section 107(6) of the Government of Wales Act 2006, provides that the UK Parliament will not normally legislate with regard to devolved matters without the consent of the Senedd. The mechanism for the Senedd to make a decision on whether to grant consent is by means of a debate in plenary on a legislative consent motion. Such a debate is informed by the reports of a Senedd committee (or committees) on Legislative Consent Memoranda (LCMs) laid by the Welsh Government, which set out the Welsh Government's position on whether the Senedd should consent to provisions in a devolved area in the relevant UK Bill.

46. Between March and August 2020, twelve LCMs were laid before the Senedd, including the LCM for the UK Government's then Coronavirus Bill, which received consent at the last physical plenary meeting on 24 March. Senedd Committees were also involved in scrutinising LCMs for the Agriculture Bill, the Fisheries Bill, and the Trade Bill – all contentious Brexit-related Bills.

47. Whilst the Welsh Government's primary legislative programme was disrupted during this period, the Senedd was able to undertake its scrutiny function in relation to Bills and legislative consent via its normal procedures.

Further Information

48. Should the Commission require further information on any points, we would be happy to provide it.

49. Links to a series of related articles and briefings prepared by the Senedd Research Service may be found in Annex 3.

Procedural Changes

1. [Amending Standing Orders: Assembly Business and Extraordinary Circumstances](#) – Introduced changes to Standing Orders aimed at helping facilitate the continuation of Assembly business during the pandemic.

These included: the ability for the (then) Assembly to elect a Temporary Presiding Officer and an Acting Chair of Plenary Meetings; and for Plenary meetings to be held without physical access for the public (but still broadcast where that was not impractical).

Agreed by the (then) National Assembly for Wales on 18 March 2020.

2. [Amending Standing Orders: Assembly Business and Emergency Procedures](#) (2) – Introduced a new Standing Order 34 (Emergency Procedures) containing the majority of (temporary) procedural changes and adaptations in place during the Covid-19 pandemic.

This incorporated the changes introduced on 18 March and also included: changes to voting in Plenary, including a reduced quorum where necessary and weighted voting by political group in order to facilitate smaller meetings which adhered to social distancing rules; adjustments to the requirements around regular business; adjustments to the requirements around reporting on Statutory Instruments (including the ability for this to be done by the Assembly as a whole rather than a responsible committee); and for committee meetings to be held without physical access for the public (but still broadcast where that was not impractical).

Agreed by the (then) National Assembly for Wales on 24 March 2020.

3. [Amending Standing Orders: Remote Voting](#) – Introduced changes to Standing Orders which enable Members to vote remotely by electronic means in Plenary.

Agreed by the (then) National Assembly for Wales on 24 June 2020.

4. [Amending Standing Orders: Suspension of proceedings before remote electronic votes](#) – Introduced minor changes to Standing Orders on remote electronic voting.

Agreed by the Senedd on 4 November 2020.

5. [Amending Standing Orders: Temporary Standing Orders](#) – Extended the provisions in Standing Order 34 (Emergency Procedures), which had been due to expire on the dissolution of the Senedd, into the next Senedd that would follow the election in May 2021. Established a new expiry date for those provisions of 1 August 2022 or sooner if the Senedd resolved to do so.

Agreed by the Senedd on 24 March 2021.

6. [Amending Standing Orders: Standing Order 34 and remote participation in Senedd proceedings](#) – Following a review by the Business Committee, proposed that temporary Standing Order 34 (Emergency Procedures), which was introduced in March 2020 in response to the COVID-19 pandemic, should be allowed to lapse as scheduled on 1 August 2022 and that Standing Orders 6, 12 and 17 be amended to give permanent effect to some of its provisions. The report also recommended that remote participation and voting in Plenary, and remote participation in committee meetings should be continued.

Agreed by the Senedd on 13 July 2022.

Fifth Senedd – Work of the Legislation, Justice and Constitution Committee

Subordinate legislation

In accordance with the [Senedd's Standing Orders](#) the [Legislation, Justice and Constitution Committee](#) scrutinised relevant [subordinate legislation](#) laid before the Senedd by the Welsh Government in the Fifth Senedd. The reports are available on the Senedd website as follows:

- subordinate legislation subject to the [made affirmative procedure](#) (for example, the principle Health Protection Coronavirus Restrictions regulations);
- subordinate legislation subject to the [affirmative procedure](#);
- subordinate legislation subject to the [negative procedure](#) (for example, the Health Protection Coronavirus International Travel regulations).

Once a particular piece of subordinate legislation is located, if, for example, it is subject to the made affirmative or affirmative procedure, details of the plenary debate can be located from the 'Issue History' or 'Related Meetings' tabs. In addition transcripts of plenary sessions are also available from [The Record](#). The tabs can also be used to locate correspondence linked to individual pieces of subordinate legislation.

Correspondence

Correspondence on broad issues relating to [the making of primary and secondary legislation](#) can be found in one place, including:

- [Letter](#) to the Business Committee, 2 April 2020, and the [response](#)
- [Letter](#) to the Counsel General and Trefnydd regarding Breaches of the 21 day rule, and other matters concerning Covid-related legislation, 24 September 2020, and [response](#)
- [Letter](#) to the First Minister regarding The Health Protection (Coronavirus Restrictions) (No.2) (Wales) Regulations 2020, as amended, 5 October 2020, and [response](#)
- [Letter](#) from the Business Committee regarding Covid-19 regulations, 8 October 2020, and [response](#)
- [Letter](#) to the First Minister regarding The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 12) Regulations 2020, 22 October 2022, and [response](#)

- [Letter](#) to the Minister for Housing and Local Government regarding The Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020, 21 December 2020, and [response](#)
- [Letter](#) to the First Minister regarding The Health Protection (Coronavirus Restrictions) (School Premises and Further Education Institution Premises) (Wales) Regulations 2020, 21 December 2020

Evidence sessions with the Welsh Government Ministers

[Legislation, Justice and Constitution Committee, 8 June 2020](#) - The Health Protection (Coronavirus) Wales Regulations 2020 - Evidence session with the Minister for Health and Social Services

[Legislation, Justice and Constitution Committee, 1 March 2021](#) - End of the Fifth Senedd general scrutiny - Evidence session with the Counsel General

Reports on relevant primary legislation

Welsh Elections (Coronavirus) Bill

Legislation, Justice and Constitution Committee, [Report on the Welsh Elections \(Coronavirus\) Bill](#), February 2021 and the Welsh Government's [response](#) including an [Annex](#).

Fifth Senedd Legacy report

Legislation, Justice and Constitution Committee, [Fifth Senedd Legacy Report](#), March 2021, in particular paragraphs 12 to 13 and 88 to 94

Sixth Senedd – Work of the Legislation, Justice and Constitution Committee

In accordance with the Senedd's Standing Orders the Legislation, Justice and Constitution Committee has scrutinised relevant subordinate legislation laid before the Senedd by the Welsh Government in the Sixth Senedd. The reports are available on the [subordinate legislation page of the Senedd website](#), grouped by procedure (including made affirmative, affirmative and negative procedures).

Relevant articles and briefings by the Senedd Research Service

- [Coronavirus: help and information for people in Wales](#)
- [Coronavirus timeline: Welsh and UK governments' response](#)
- [Coronavirus: making fair decisions in times of emergency](#)
- [Coronavirus: domestic abuse](#)
- [Coronavirus: personal protective equipment](#)
- [Coronavirus: employment](#)
- [Coronavirus: shielding](#)
- [Coronavirus: housing](#)
- [Coronavirus: meeting family and friends](#)
- [Coronavirus: adult social care](#)
- [Coronavirus: statistics](#)
- [Less than a third of people are fully self-isolating during the coronavirus pandemic. What support is available to increase compliance?](#)
- [NHS Wales Test, Trace, Protect programme: how it works](#)
- [Coronavirus: how can Test, Trace, Protect be improved?](#)
- [Coronavirus: vaccine deployment update - Pace continues to increase](#)
- [Who's being left behind in the coronavirus vaccination rollout?](#)
- [Remote working - the new normal?](#)
- [Coronavirus: Long COVID – "it's a game of snakes and ladders"](#)
- [The COVID-19 pandemic: where are we?](#)
- [What's next? Key issues for the Sixth Senedd](#)
- [Hospital waiting times: a mountain to climb](#)
- [Welsh Government introduces emergency coronavirus elections Bill](#)
- [Coronavirus Bill summary](#)
- [Coronavirus: emergency regulations on social care and mental health](#)