



Our ref: ATISN 15370  
Date: 23 August 2021

Dear \_\_\_\_\_,

### **ATISN 15370**

#### **Information requested**

Thank you for your request which I received on 30 July 2021. Your request will be considered under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

I have set out at Annex 1, the questions you submitted.

#### **Our response**

##### *Environmental Information Regulations 2004*

I have decided that information regarding the following Bills is environmental information and its release has been considered under the above Regulations

Agricultural Sector (Wales) Bill

*A Bill which among other things included provision to assist the foundation for a resilient, sustainable and well-trained agricultural sector in Wales and promote upskilling in the agricultural sector delivering well-trained workers and professionally run farm businesses in Wales.*

Environment (Wales) Bill

*A Bill which made provision to help plan and manage Wales' natural resources at a national and local level, sets emission reduction targets and carbon budgeting, to manage management and clarify existing environmental regulatory regimes.*

Historic Environment (Wales) Bill

*A Bill to make improvements to the systems for the protection and sustainable management of the Welsh*



*historic environment.*

Housing (Wales) Bill

*A Bill which among other things included powers to increase rates of council tax to tackle the problem of empty homes and second homes, and their impact on housing supply in some areas and a duty on local authorities to provide sites for Gypsy and Traveller communities in response to identified need.*

Law Derived from the European Union (Wales) Bill

*A Bill to preserve EU law covering subjects devolved to Wales on the withdrawal of the UK from the EU and enable the Welsh Ministers to ensure that legislation covering these subjects works effectively after the UK left the EU.*

Planning (Wales) Bill

*A Bill to provide a modern legislative framework for the operation of the planning system.*

Recovery of Medical Costs for Asbestos Diseases (Wales) Bill  
[Member Bill]

*A Bill related to recovering the costs of medical treatment and care provided to patients in Wales who have sustained asbestos-related disease and have received compensation following a settlement, court judgment or agreement from an employer or other body, corporate or incorporate.*

A copy of the information I have decided to release under the Regulations is enclosed. I have decided that some of the information is excepted from disclosure under regulation 12(5)(b) of the Regulations and is therefore withheld. The reasons for applying this exception are set out in full at Annex 2 to this letter.

Copies of correspondence between Welsh Ministers and Welsh Government officials with the Queen's lawyers relating to the Environment (Wales) Bill have been released in response to a previous information request and are publicly available on the Welsh Government website at <https://gov.wales/atisn13320> [documents 1, 5 and 8].

Please note that contrary to information previously provided to you, whilst the Agricultural Sector (Wales) Bill was submitted for consent, as shown in the attached correspondence it was subsequently determined that consent was **not** required. My apologies for this confusion.

We do not hold any information regarding any changes made to the Bills as a result of this process.

### *Freedom of Information Act 2000*

I have concluded that information regarding the following Bills is not environmental information and its release has been considered under the Freedom of Information Act 2000.

Public Audit (Wales) Bill

*A Bill to strengthen and improve the accountability and governance arrangements relating to the Auditor General for Wales.*

Public Health (Minimum Price for Alcohol) (Wales) Bill	<i>A Bill which provides for a minimum price for the sale and supply of alcohol in Wales to address health concerns around the effect of excess alcohol consumption in Wales.</i>
Renting Homes (Fees etc.) (Wales) Bill	<i>A Bill which prohibits certain payments made in connection with the granting, renewal or continuance of standard occupation contracts and makes provision in respect of the treatment of holding deposits.</i>
Renting Homes (Wales) Bill	<i>Bills which relate to the legal relationship for renting a home from a private landlord or community landlord.</i>
Renting Homes (Amendment) (Wales) Bill	
Wild Animals and Circuses (Wales) Bill	<i>A Bill to make it an offence for a wild animal to perform or be exhibited in a travelling circus.</i>

I have decided that communications in respect of the sovereign are exempt from release under Section 37(1)(a) of the Freedom of Information Act 2000. Section 37(1)(a) is an absolute exemption and is not subject to the public interest test.

We do not hold any information regarding any changes made to these Bills as a result of this process.

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at:

Information Rights Unit,  
Welsh Government,  
Cathays Park,  
Cardiff,  
CF10 3NQ

or Email: [Freedom.ofinformation@gov.wales](mailto:Freedom.ofinformation@gov.wales)

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at: Information Commissioner's Office,  
Wycliffe House,  
Water Lane,  
Wilmslow,  
Cheshire,  
SK9 5AF.

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely

## Annex 1

Have the Queen's lawyers or anybody acting on her behalf contacted Welsh ministers seeking to secure changes/amendments to any of these bills?

Were any changes made to the bills as a result of this?

Copies of all correspondence between Welsh ministers and Welsh Government officials with the Queen's lawyers relating to the bills below.

- Public Audit (Wales) Bill
- Recovery of Medical Costs for Asbestos Diseases (Wales) Bill [Member Bill]
- Agricultural Sector (Wales) Bill
- Housing (Wales) Bill
- Planning (Wales) Bill
- Renting Homes (Wales) Bill
- Historic Environment (Wales) Bill
- Environment (Wales) Bill
- Renting Homes (Fees etc.) (Wales) Bill
- Law Derived from the European Union (Wales) Bill
- Public Health (Minimum Price for Alcohol) (Wales) Bill
- Wild Animals and Circuses (Wales) Bill
- Renting Homes (Amendment) (Wales) Bill

## Annex 2

### Application of exceptions

The Environmental Information Regulations 2004 provide a right for anyone to ask a public authority to make requested information available to the wider public. As the release of requested information is to the world, not just the requester, public authorities need to consider the effects of making the information freely available to everybody. Any personal interest the requester has for accessing the information cannot override those wider considerations.

I have decided to withhold the following information under regulation 12(5)(b) of the Environmental Information Regulations 2004:

- Discussion between the Welsh Government and Her Majesty's solicitors regarding consent for the Housing (Wales) Bill

This Annex sets out the reasons for the engagement of this exception and our subsequent consideration of the Public Interest Test.

### Regulation 12(5)(b) - Course of justice, fair trial, criminal or disciplinary inquiry

Regulation 12(5)(b) provides an exception to the general duty to disclose environmental information where a disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature.

The course of justice is very wide in its coverage, and the other points may be viewed as subsets of that element. In *Rudd v the Information Commissioner & the Verderers of the New Forest* (EA/2008/0020, 29 September 2008), the Information Tribunal commented that 'the course of justice' does not refer to a specific course of action but is "a more generic concept somewhat akin to 'the smooth running of the wheels of justice'".

Advice subject to Legal Professional Privilege (LPP) falls within that general concept of the "course of justice" and, as such, may be exempt under regulation 12(5)(b), subject to the presumption in favour of disclosure and the public interest test.

In *Bellamy v the Information Commissioner and the Secretary of State for Trade and Industry* (EA/2005/0023, 4 April 2006) the Information Tribunal described LPP as: "a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, her or its lawyers, as well as exchanges which contain or refer to legal advice which might be imparted to the client." It also noted "there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest....it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case...".

The information under consideration consists of an exchange between the Welsh Government and Her Majesty's solicitors regarding consent for the Housing (Wales) Bill and refers to legal advice. We consider it to qualify as subject to LPP and thus the exception under regulation 12(5)(b) of the Environmental Information Regulations 2004 applies.

The Welsh Government is of the firm view that it is highly important to maintain LPP and that release would undermine the principle of LPP, would harm to the ability of the Welsh Government to obtain fulsome advice from its legal advisors, and adversely affect the open discussion and exchange of legal views between the legal advisors of the Welsh Government and Her Majesty.

These considerations indicate the information should be withheld under regulation 12(5)(b) of the Environmental Information Regulations 2004. However this decision is subject to the public interest test. This will consider the balance of the public interest in maintaining the exception over disclosing the information.

### **Public interest arguments in favour of disclosure**

We recognise that there is a general public interest in openness of information and transparency in the working of government.

In this case we also recognise there is an interest in the particular influence Her Majesty could have on the content of a Bill which affects her interests through the ability to grant or refuse consent to that Bill. This has been demonstrated in recent media coverage of the Queen's consent to Bills brought forward by other Governments in the UK.

### **Public interest arguments in favour of withholding**

There is a strong public interest in the protection of the principle of LPP which allows Government to consult their lawyers in confidence, to be able to share information fully and frankly and to seek and obtain advice with the knowledge that such advice is privileged. Government needs to take decisions in a fully informed legal context and it is necessary for its lawyers to be able to fully explore the relevant arguments both internally and with interested parties.

The public need to have trust that discussions they may have with their legal advisors can be properly protected. Any erosion, therefore, of the principle of confidentiality of LPP, whatever the status of the client involved, is not in the wider public interest.

In this particular case, as indicated in the letter above and disclosure, consent was granted without any changes related to consent being made to the Housing (Wales) Bill. This indicates there is no particular public interest argument in relation to this Bill, as Her Majesty had no special influence on its content.

### **Balance of public interest test**

The Upper Tribunal stated that an adverse effect upon the course of justice can result from the undermining of the general principles of LPP and of the administration of justice and that there would need to be special or unusual factors in play for this not to be the case (*DCLG v Information Commissioner & WR [2012] UKUT 103 (AAC) (28 March 2012)*).

While we acknowledge the public interest arguments in favour of disclosure as discussed above, we consider that there are no special or unusual factors here and the public interest balance in this case falls on the side of not disclosing information subject to the principle of LPP.