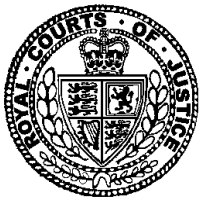

Neutral Citation Number: [2021] EWHC 950 (Admin)

Case No: CO/188/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT IN WALES
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/04/2021

Before :

THE RIGHT HONOURABLE LORD JUSTICE LEWIS and
THE HONOURABLE MRS JUSTICE STEYN DBE

- -

Between :

THE QUEEN (on the application of THE COUNSEL GENERAL FOR WALES)	**Claimant**
- and -	
THE SECRETARY OF STATE FOR BUSINESS ENERGY AND INDUSTRIAL STRATEGY	**Defendant**
-and-	
(1) THE LORD ADVOCATE **(2) THE ATTORNEY GENERAL FOR NORTHERN IRELAND**	**Interested Parties**

- -
- -

Helen Mountfield Q.C., Christian Howells and Mark Greaves (instructed by **Director of Legal Services, Welsh Government**) for the **claimant.**
Sir James Eadie Q.C. and Christopher Knight (instructed by **Government Legal Department**) for the **defendant.**
The interested parties did not appear and were not represented.

Hearing date: 16 April 2021

- -

APPROVED JUDGMENT (SUBJECT TO EDITORIAL CORRECTIONS)

Permission granted for this judgment to be cited in legal proceedings in court

Covid-19 Protocol: This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 19 April 2021 at 10:30

Lord Justice Lewis:

Introduction

1. This is the judgment of the court.

2. This is an application for permission to apply for judicial review brought by the Counsel General for Wales in connection with the interpretation of provisions of the United Kingdom Internal Market Act 2020 ("the 2020 Act") and their effect on legislation of the Senedd enacted in accordance with the provisions of the Government of Wales Act 2006 as amended ("GOWA").

3. In brief, the claimant seeks declarations in relation to two matters. First, in substance, he seeks a declaration that the provisions of the 2020 Act do not have the effect of impliedly limiting the legislative competence of the Senedd to enact legislation which is inconsistent with the mutual recognition principle contained in section 2 of the 2020 Act. That principle provides that goods which can be sold in one part of the United Kingdom may be sold in all other parts. Secondly, he seeks a declaration that the power conferred on the defendant by certain provisions of the 2020 Act to make regulations amending provisions of that Act cannot be exercised in a way which would substantively limit the legislative competence of the Senedd.

4. The role of the courts in judicial review is a limited one. The courts are concerned with resolving questions of law. It is not for the courts to determine the appropriate allocation of powers as between the devolved legislatures and the United Kingdom Parliament. That is a subject of legitimate public interest but it is not a matter for the courts to determine. Rather, the courts are concerned with interpreting and applying the legislation governing the allocation of powers.

5. Judicial review is a two stage process. The claimant must first obtain permission to apply for judicial review then, if permission is granted, there will be a full hearing to determine the issues. Permission to apply for judicial review should be granted if a claimant shows that one or more of the grounds gives rise to an arguable case that a reviewable error exists and there is no discretionary or other bar to bringing the claim: see *Sharma v Brown-Antoine* [2007] 1 W.L.R. 780 at paragraph 14(4) and *Simone v Chancellor of the Exchequer and the Secretary of State for Education* [2019] EWHC 2609 (Admin) at paragraph 112.

6. In the present case, the Senedd has not yet enacted any legislation giving rise to issues involving the 2020 Act. Similarly, the defendant has not yet exercised any power to make regulations under the 2020 Act. One issue is whether it is appropriate to consider the issues that are said to arise in this case in the absence of specific circumstances giving rise to those issues or whether the claim for judicial review is premature and so permission should be refused. If the claim is not premature, the question then is whether the claimant has established an arguable ground of judicial review which merits full investigation at a full hearing.

7. The question of permission is usually considered, initially, by a judge considering the papers alone. In appropriate cases, an application for permission can be referred to an oral hearing in order to enable the court to hear legal argument on behalf of the parties on whether or not permission to apply for judicial review should be granted. Given

that the claim is said to raise issues of constitutional importance, the matter has been referred to an oral hearing before a Divisional Court. The claim has been issued and managed by the Administrative Court in Wales. Given the urgency, and the constraints of the global pandemic, the judges (Lewis LJ and Steyn J, the liaison judge for the Administrative Court in Wales) and counsel for the claimant and the defendant were physically present in court in London for a hearing on Friday, April 16 2021. The legal teams and others participated remotely by video link from Cardiff and other locations. We are grateful to counsel for their submissions and to the legal teams for the efficient way in which the case was prepared and presented, enabling the court to deal with the issues that arose. By reason of the importance of the issues that were said to be involved, we did not give judgment at the hearing but reserved judgment. This is our judgment.

The Legal Framework

The Legislative Competence of the Senedd

8. Section 1 of GOWA provides for a parliament for Wales known as the Senedd Cymru. The Senedd is "a permanent part of the United Kingdom's constitutional arrangements" (see section A1 of GOWA).

9. The Senedd has power to make laws for Wales, as does the Parliament of the United Kingdom. Section 107 of GOWA provides, so far as material that:

> "**Acts of the Senedd**
>
> 107(1) The Senedd may make laws, to be known as Acts of Senedd Cymru or Deddfau Senedd Cymru (referred to in this Act as *"Acts of the Senedd"*).
>
> (2) Proposed Acts of the Senedd are to be known as Bills; and a Bill becomes an Act of the Senedd when it has been passed by the Senedd and has received Royal Assent.
>
> …..
>
> (5) This Part does not affect the power of the Parliament of the United Kingdom to make laws for Wales.
>
> (6) But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Senedd."

10. The extent of the legislative competence of the Senedd is defined by section 108A of GOWA which provides, so far as material, that:

> "(1) An Act of the Senedd is not law so far as any provision of the Act is outside the Senedd's legislative competence.
>
> (2) A provision is outside that competence so far as any of the following paragraphs apply—
>
> (a) it extends otherwise than only to England and Wales;

> (b) it applies otherwise than in relation to Wales or confers, imposes, modifies or removes (or gives power to confer, impose, modify or remove) functions exercisable otherwise than in relation to Wales;
> (c) it relates to reserved matters (see Schedule 7A);
> (d) it breaches any of the restrictions in Part 1 of Schedule 7B, having regard to any exception in Part 2 of that Schedule from those restrictions;
> (e) it is incompatible with the Convention rights or in breach of the restriction in section 109A(1).
>
> …..
>
> (6) The question whether a provision of an Act of the Senedd relates to a reserved matter is determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances."

11. So far as the restriction in section 108A(2)(c) of GOWA is concerned, schedule 7A to GOWA sets out those matters that are reserved to the United Kingdom Parliament. The Senedd does not have competence to make laws in relation to those reserved matters. Part 1 of Schedule 7A sets out general reservations where the Senedd does not have legislative competence, such as certain matters to do with the constitution, the Civil Service or issues relating to courts and tribunals. Part 2 sets out specific reservations where certain matters are reserved to the United Kingdom Parliament but there are exceptions where the Senedd also has legislative competence. By way of example, in the area of consumer protection, the enforcement of certain consumer legislation and product labelling are both reserved matters but in each case there is an exception in relation to food and food products (see paragraphs 76 and 80 of Schedule 7A to GOWA).

12. So far as the restriction in section 108A(2)(d) is concerned, Schedule 7B provides that a provision of an Act of the Senedd cannot modify specified areas of law (such as private law) or specified enactments. "Modifications" include amendments, repeals and revocations (see section 158 of GOWA). The material paragraph is paragraph 5 which provides that:

> "5(1) A provision of an Act of the Senedd cannot make modifications of, or confer power by subordinate legislation to make modifications of, any of the provisions listed in the table below:
>
> | *Enactment* | *Provisions protected from modification* |
> |---|---|
> | Government of Wales Act 1998 | Section 144(7). |
> | Human Rights Act 1998 | The whole Act. |
> | Civil Contingencies Act 2004 | The whole Act. |
> | Energy Act 2008 | Section 100 and regulations under that section. |
> | The European Union (Withdrawal) Act 2018 | The whole Act other than any excluded provision |
> | The United Kingdom Internal Market Act 2020 | The whole Act. |

13. The reference to the 2020 Act was inserted in paragraph 5 by section 54(2) of the 2020 Act.

14. The person in charge of a Bill must state, on or before the introduction of the Bill, that in his or her view the provisions of the Bill would be within the Senedd's legislative competence. The Presiding Officer of the Senedd must also decide whether in the view of that officer the provisions of the Bill would be within the Senedd's legislative competence and state that decision. See section 110 of GOWA.

15. There is provision for scrutiny of Bills by the Supreme Court before the giving of Royal Assent. Section 112(1) of GOWA provides that:

> "The Counsel General or the Attorney General may refer the question whether a Bill, or any provision of a Bill, would be within the Senedd's legislative competence to the Supreme Court for decision."

The 2020 Act

16. Section 1 of the 2020 sets out the purpose of Part 1 of the Act which is to promote the continued functioning of the internal market for goods in the United Kingdom by establishing what are described as market access principles. These are the principles of mutual recognition of goods and non-discrimination in relation to goods. Section 1(3) of the 2020 Act provides that:

> "Those principles have no direct legal effect except as provided by this Part."

17. Section 2 of the 2020 Act deals with the mutual recognition principle for goods. It provides, so far as material, that:

> "(1) The mutual recognition principle for goods is the principle that goods which—
>
> (a) have been produced in, or imported into, one part of the United Kingdom ("the originating part"), and
>
> (b) can be sold there without contravening any relevant requirements that would apply to their sale,
>
> should be able to be sold in any other part of the United Kingdom, free from any relevant requirements that would otherwise apply to the sale."

18. "Relevant requirements" are, broadly, statutory requirements, including those contained in Acts of the Senedd, adopted after the 2020 Act came into force, which prohibit the sale of goods and which fall within the mutual recognition principle. Such requirements will, broadly, fall within the scope of that principle if they relate to the characteristics, presentation, or production of the goods or certain other specified matters. A requirement will not fall within the principle if it relates to the manner of sale of goods (that is, the circumstances or manner in which the goods are sold such as where, when, by whom or to whom, or the price or terms on which it may be sold) unless, amongst other things, it appears to be designed artificially to avoid the operation of the mutual recognition principle. See, generally, sections 3 and 58 of the 2020 Act.

19. Section 2(3) of the 2020 Act deals with the effect of the mutual recognition principle and provides that:

> "Where the principle applies in relation to a sale of goods in a part of the United Kingdom because the conditions in subsection (1)(a) and (b) are met, any relevant requirements there do not apply in relation to the sale."

20. Section 5 of the 2020 Act deals with the non-discrimination principle for goods and provides at section 5(3) that a relevant requirement "is of no effect in the destination part if, and to the extent that, it directly or indirectly discriminates against the incoming goods". The concepts of direct, and indirect discrimination are further defined.

21. Sections 6(5), 8(7), 10(2), 18(2) and 21(8) of the 2020 Act provide power for the Secretary of State to make regulations amending various subsections of, or parts of schedules to, the 2020 Act.

The Issues

22. The two grounds of challenge in the claim form are as follows:

    (1) the inclusion of the 2020 Act in Schedule 7B to GOWA (so that provisions of the 2020 Act may not be modified by the Senedd) impliedly re-reserves to the United Kingdom Parliament powers previously falling within the scope of the Senedd's legislative competence; such a change cannot be done impliedly and therefore paragraph 5 of Schedule 7B to GOWA must be read down to avoid that result;

    (2) the regulation making powers conferred by the 2020 Act cannot be used to amend the scope of the mutual recognition and non-discrimination principles in ways that would involve substantively limiting the ambit of the legislative competence of the Senedd or other devolved legislatures and so must be interpreted as limited to making incidental and consequential amendments.

23. The issues that arise on this application for permission are, essentially, two-fold. They are:

    (1) Is the claim for judicial review premature, so that permission should be refused, given that (a) the Senedd has not yet proposed or passed any Bill which might be said to be inconsistent with the provisions of the 2020 Act and (b) the Secretary of State has not yet proposed or made any regulations amending any of the provisions of the 2020 Act?

    (2) If the claim is not premature, has the claimant established an arguable ground for seeking judicial review?

Submissions

24. Ms Mountfield Q.C., with Mr Howells and Mr Greaves, for the Counsel General for Wales, made the following submissions. In relation to prematurity, Ms Mountfield accepted that the Senedd has not yet proposed any legislation (nor has the Secretary of State proposed or made any regulations amending the provisions of the 2020 Act).

Nonetheless, the Counsel General had concerns as to whether the effect of the mutual recognition principle in the 2020 Act would amount to a removal of powers previously within the competence of the Senedd. She gave two possible examples: legislation relating to food products and environmental protection. In relation to the latter, the Welsh Government is considering whether to introduce a Bill to regulate the placing on the market of single use plastics. In those circumstances, Ms Mountfield submitted first, that there is a live issue relating to the interpretation of the 2020 Act. It is an important constitutional issue. There is uncertainty over the effect of section 2 of that Act on the legislative competence of the Senedd and it would be appropriate, and there are practical advantages, in seeking to resolve that uncertainty in advance of any proposed legislation being introduced into, or being passed by, the Senedd. Ms Mountfield relied principally upon cases such as *R (Jackson) v Attorney General* [2006] 1 AC 262, *R (Alconbury Developments Ltd. and others) v Secretary of State for the Environment, Transport and the Regions* [2003] 2 A.C. 295 and *R (Associated Newspapers) v Lord Justice Levenson* [2012] EWHC 57 (Admin) as examples where the courts engaged in such an exercise. No factual issues arose in the consideration of such issues. Further, dealing with the claim for judicial review now would avoid any issue as to whether the substance of the claim could or should be brought by way of a reference under section 112 of GOWA.

25. On arguability, Ms Mountfield submitted that amendments to constitutional statutes, of which GOWA was one, could not be made impliedly as that would be contrary to the principle of legality. In the present case, powers which were not reserved matters (e.g. food standards or environmental protection) could not be removed from the ambit of legislative competence save by express amendment of Schedule 7A of GOWA. Section 52(4) of the 2020 Act read literally might appear to limit the ability of the Senedd to enact legislation which had the effect of modifying section 2 of the 2020 Act. Consequently, Schedule 7B of GOWA had to be interpreted and read in a way that did not achieve that result. Ms Mountfield submitted that that could be done by reading into the words of paragraph 5 of Schedule 7B words such as "save in so far as this would prevent the Senedd legislating on devolved matters in a way which is inconsistent with the mutual recognition principle". Alternatively, Ms Mountfield submitted that words could be read into section 108A(2)(d) of GOWA to the effect "save that the amendment inserting the 2020 Act into Schedule 7B does not operate to prevent the Senedd from exercising its legislative competence in a way inconsistent with the mutual recognition principle". Further, Ms Mountfield submitted that it would not be necessary for the court to be able to formulate a declaration and it would be sufficient to say in a judgment that the provisions of GOWA are to be read in such a way, relying by analogy on the decision in *Wandsworth London Borough Council v Vining* [2018] ICR 499 at paragraph 74. Similar arguments applied in relation to the power to make regulations amending the provisions of the 2020 Act.

26. Sir James Eadie Q.C., with Mr Knight, for the Secretary of State, submitted that it was premature for the court to be dealing with a claim such as the present in advance of any legislation being proposed by the Senedd, or regulations being made by the Secretary of State. The basic approach was that courts did not determine abstract questions shorn of a factual and legal context. It was far better to deal with such an issue when the form and content of legislation was known, and the issues that arose had a proper context in which to assess such issues. That was the approach taken in cases such as *R (Yalland) v Secretary of State for Exiting the European Union* [2017]

EWHC 630 (Admin) and *Keatings v HM Advocate General for Scotland and the Lord Advocate* [2021] SLT 233.

27. On arguability, Sir James submitted that it was open to the United Kingdom Parliament to legislate in the way it considered appropriate. It was not required to amend Schedule 7A of GOWA if it wished to adopt limits upon the exercise of legislative competence. It could do so by providing, as did the 2020 Act, that legislative provisions would have no effect on a sale if they were inconsistent with the mutual recognition principle or that they were to have no effect if, and in so far as, they amounted to direct or indirect discrimination on goods. The United Kingdom could seek to deal with the possibility of devolved legislation modifying the 2020 Act by including it within paragraph 5 of Schedule 7B of GOWA. In the present case, there was no scope for contending that the 2020 Act was not intended to limit, or condition, the exercise of legislative powers by the devolved legislatures. The terms of the 2020 Act were clearly addressed to the very issue of how to ensure the continuing function of the internal market in the United Kingdom. The purpose of the 2020 Act and its terms were expressly addressed to the issue of regulating statutory requirements, including those imposed by the Senedd, which conflicted with the operation of the United Kingdom internal market. That conclusion was reinforced by the explanatory notes to the 2020 Act. The conditions, therefore, for suggesting that the principle of legality arose, and that the provisions of the 2020 Act should be read down in some way, did not arise.

Discussion and Decision

28. On a proper analysis, in relation to ground 1, the issue underlying this case will arise if and when the Senedd proposes legislation which is said to conflict with the provisions of the 2020 Act. Only then will the question arise as to the correct interpretation and effect of the 2020 Act on the provisions of that proposed legislation, and whether any of its provisions are outside the legislative competence of the Senedd. The effect of the 2020 Act on the proposed legislation may, as a minimum, be likely to be influenced or affected by the terms of the proposed legislation and the context in which it comes to be proposed. No legislation has yet been proposed, considered or passed by the Senedd. The issue of the effect of the 2020 Act on the provisions of such legislation has not yet arisen. Similarly, in relation to ground 2, the Secretary of State has not proposed, still less made, any regulations under the relevant powers conferred by the 2020 Act and the issue of their meaning and validity has not yet arisen.

29. As a general rule, the courts do not deal with claims for judicial review in such circumstances as the claim will be premature. The general position is set out in the judgment of the Divisional Court in *Yalland* at paragraphs 23 to 25:

> "23. As a general rule, the courts are concerned in judicial review with adjudicating on issues of law that have already arisen for decision and where the facts are established. The courts will not generally consider cases which are brought prematurely because, at the time the claim is made, the relevant legal or factual events to which the claim relates have not yet occurred.
>
> 24. The courts may have jurisdiction to grant what is sometimes referred to as advisory declarations. That is declarations on points of law of general importance

> where there are important reasons in the public interest for doing so. Even here, the courts proceed with caution.
>
> 25. It will rarely be appropriate to consider such issues when they may depend in part on factual matters or future events since until those factual matters are established or the events occur, the courts will not be in a position to know with sufficient certainty what issues do arise in a particular case. Similarly, when matters may depend upon or be affected by future legislation, it would generally not be appropriate to make rulings on questions of law until the precise terms of any legislation are known."

30. That is the position in the present case. This a case where the relevant legal events have not yet arisen. The answer to the question of whether, and to what extent, the provisions of any legislation made by the Senedd would conflict with section 2 (or any other provision) of the 2020 Act has not arisen. That issue, and the question of how, precisely, any such conflict is to be resolved may well depend on, or be influenced by, the content of such legislation. The same is true of any regulations made under the powers conferred by the 2020 Act.

31. Some examples were canvassed by way of example in oral argument. The claimant has indicated potential areas of concern in relation to food standards and environmental protection. Again, until legislation is proposed in relation to food standards, it will not be clear whether that proposed legislation, properly interpreted, falls within a reserved matter or an exception to it. Similarly, in relation to proposed environmental legislation, such as restrictions on the use of single use plastic, the issues that arise are likely to be influenced by the precise terms of the legislation and the context in which it is made. They will frame the issues that arise. Analysis of the relevant provisions of the legislation may determine whether they involve a restriction on the sale of goods or whether they involve a permitted restriction on the manner of sale. Furthermore, even if there were a conflict, the method of resolving that conflict may be more appropriately or properly addressed by means of a restrictive interpretation of relevant provisions of sections 2 or 3 of the 2020 rather than seeking to read words into Schedule 7B to GOWA. Furthermore, it may be that a particular proposed provision may not, on analysis, be one that was previously within the legislative competence of the Senedd (as it may, for example, have involved a breach of EU law prior to the end of 2020 and so would have been outside the legislative competence of the Senedd by reason of section 108A(2) of GOWA prior to its amendment). If so, that may be relevant to consideration of the claimant's argument that the operation of section 2 of the 2020 Act involves removing an area of the Senedd's legislative competence and in some way a re-reservation of matters to the United Kingdom Parliament. Similarly, the precise terms of any regulations made by the Secretary of State are likely to be relevant to the question of whether those regulations are ultra vires because they involve substantive modification of the provisions of the 2020 Act.

32. For that reason alone, it is better and more appropriate for the issues concerning the effect of the provisions of the 2020 Act on the legislative competence of the Senedd, and the appropriate means of resolving any conflict between the two, to be considered in the specific legal and factual context of particular provisions of proposed Senedd legislation rather than by making abstract rulings shorn of any legal or factual context. As has been observed in a very different context, one "danger is that the court will

enunciate propositions of principle without full appreciation of the implications that these will have in practice" (per Lord Phillips M.R. in *R (Burke) v General Medical Council* [2006] Q.B. 273 at paragraph 21). The same is true in relation to ground 2.

33. None of the arguments put forward by Ms Mountfield justify departing from that general approach in the present case. It may well be that the issues raised will prove to be ones of importance. But that does not justify seeking to deal with them in the abstract without a proper legal and factual context to assess the relevant issues. The fact that the Counsel General, and the Welsh Government, would wish to know the extent of the Senedd's legislative powers before the Senedd considers proposed legislation does not justify the granting of advisory declarations either generally or in this particular case. Legislatures, and governments, must inevitably form a view as to whether proposed legislation is, for example, compatible with the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). The courts may, ultimately, be asked to rule on whether or not a particular provision is compatible with a Convention right. That exercise occurs after the legislation has been enacted not before. Neither ministers, officials nor members of the legislature seek advisory declarations in advance as to what legislation may or may not be compatible with Convention rights. The same is true of Acts of the Senedd. The promoter of a Bill, and the Presiding Officer, will have to take a view as to whether proposed legislation is within legislative competence. The Counsel General may have to decide whether there is a question as to whether the provisions are within legislative competence and whether it is appropriate to refer a question to the Supreme Court. That has occurred on a number of occasions. However, neither the Counsel General, the Presiding Officer, nor members of the Senedd seek advisory declarations prior to the passing of Bills. The reason is that the role of the courts is to adjudicate on issues and determine questions of law which have arisen: not to give advisory declarations in the abstract.

34. Nor are the cases relied upon by the claimant as demonstrating situations where it is practically advantageous to deal with matters at an early stage truly analogous to the situation in the present case. *Alconbury* involved a situation where a minister had called in applications for planning permission so that he, not the relevant local planning authority, would determine them. The question was whether the system for dealing with applications that had been called in was compatible with Article 6 of the Convention. There had been no final decision on whether planning permission should be granted but the question of whether the system for dealing with the applications was compatible had arisen. It was in that context that Lord Clyde observed that there would be practical advantages in terms of time, effort and money in dealing with that issue rather than awaiting the decision on planning permission. That is very different from the present case where there is at present no relevant legal or factual context in which the meaning and effect of provisions of the 2020 Act on proposed legislation can properly be assessed. Similarly, in the *Associated Newspapers* case, the challenge related to an inquiry which was already underway and where the chairman had already decided in principle that he would be prepared to receive evidence anonymously albeit that the specific circumstances of each case would need to be assessed individually (see paragraph 32 of the judgment). That, again, is very different from the present case. The decision in *Jackson* involved an entirely different situation. There, the Hunting Act 2004 had already passed through the House of Commons and given Royal Assent using the procedure contained in the Parliament

Act 1911 as amended by the Parliament Act 1949. The question was whether it was valid legislation.

35. Ms Mountfield submitted that allowing the present claim to proceed now would avoid the issue of whether the appropriate route for dealing with proposed legislation and the 2020 Act was a reference to the Supreme Court under section 112 of GOWA or a claim for judicial review. We do not consider that this justifies permitting a claim which is premature from proceeding. Either the provisions of proposed legislation may be referred to the Supreme Court if the Counsel General or the Attorney General consider that a question of legislative competence arises. Or if that does not occur, a person with sufficient interest in the matter may seek judicial review in an appropriate case as to the meaning or effect of the provisions of the legislation when enacted. There is no procedural problem which would justify permitting a claim to proceed when it is not appropriate to do so because it is premature in the sense used in this judgment.

36. Finally, Ms Mountfield submitted that there was no factual issue here that needed to be identified. First, even if correct, that would not, of itself, justify entertaining the claim in the present case. The legal context, and the precise terms of any proposed Senedd legislation, would still be relevant, and likely to be influential, in determining the issues that arose and how they should be resolved. Secondly, in any event, there would be likely to be a factual context in which the proposed legislation was intended to operate and that may be relevant to an understanding of the proposed legislation and its relationship with the 2020 Act.

37. For all those reasons, individually and cumulatively, we consider that this claim for judicial review is premature. In accordance with the general position, a claim concerning the meaning or effect of provisions of Senedd legislation, or whether the legislation is properly within the Senedd's legislative competence, is better addressed in the context of specific legislative proposals. It is inappropriate to seek to address such issues in the absence of specific circumstances giving rise to the arguments raised by the claimant and a specific legislative context in which to test and assess those arguments. Similarly, it is inappropriate to seek to give general, abstract rulings on the circumstances in which the power to make regulations amending the 2020 Act may be exercised.

38. As the claim for judicial review is premature, it is unnecessary, and would be unwise, to express views on the arguability or otherwise of the arguments raised by the claimant. Permission to apply for judicial review is accordingly refused as the claim is premature.