

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
Hannah Blythyn AM
Deputy Minister for Housing and Local Government

9 April 2020

Dear Lesley and Hannah,

Legislative Consent Memorandum for the UK Environment Bill

May I start by saying I hope you are both well.

I would like to thank you for accepting our invitation to attend the meeting of the Legislation, Justice and Constitution Committee on 20 April 2020 for the purpose of scrutiny of the Welsh Government's **Legislative Consent Memorandum (LCM) for the UK Environment Bill**.

During these ongoing difficult circumstances caused by the Coronavirus Covid-19 pandemic, and as a result of the Business Committee formally agreeing to designate a recess from 9 April to 21 April 2020, it will now not be possible for our evidence session to go ahead as planned.

At present, the Business Committee has set us a reporting deadline for this LCM of 1 May 2020. I appreciate that the delay to the Bill's progress in the UK Parliament and the Welsh Government's immediate capacity to respond to developments around the Bill may mean that, in time, the Business Committee may be asked to review this date. I am also mindful that the Assembly committees are not currently meeting as normal, and so we will need to consider how we may be able to produce a report on the LCM for the Assembly's consideration. However, with the end task in mind, I would be grateful to receive your response to the questions set out below, by 28 April 2020.

General

1. Do you consider that the Bill, and all of the provisions contained within it, are necessary? If so, could you explain why.



Cynulliad Cenedlaethol Cymru
Bae Caerdydd, Caerdydd, CF99 1NA

✉ SeneddDCC@cynulliad.cymru
☎ 0300 200 6565

National Assembly for Wales
Cardiff Bay, Cardiff, CF99 1NA

✉ SeneddLJC@assembly.wales
☎ 0300 200 6565

2. Does the Bill equate to a Common Legislative Framework? Which provisions are necessary to achieve the Common Legislative Framework?
3. What discussions have you had with the UK Government about the Bill? How often have those discussions been happening and what have the outcomes of the discussions been?
4. Did you provide the UK Government with specific instructions as to what provision the Welsh Ministers would need for Wales in this Bill? Were you and Welsh Government legislative counsel involved in the drafting of the provisions? If not, how did you proceed?
5. Are you aware of any amendments which the UK Government is seeking to make to the Bill? If so, have you had an opportunity to consider the drafting of those amendments, to ensure that they meet the needs of Wales? If additional amendments are made to the Bill, which require the Assembly's consent, will you lay a further Supplementary LCM in respect of the Bill?
6. The UK Government says that policy in the Bill has been informed by nine consultations with stakeholders. What consultations have you undertaken to inform policy in the Bill?
7. How does the Bill affect existing international obligations?

The Assembly's Legislative Competence

8. The UK Government's Explanatory Notes do not consider that clauses 19 and 43 of the Bill will require the Assembly's consent. In contrast, you state in your LCM that clause 19 and clause 43 (in so far as it relates to clause 19) do require the Assembly's consent. Could you please expand on the reasoning in the LCM as to why you consider that these clauses require the Assembly's consent? In particular, how can the National Assembly legislate to place a requirement on a Minister of the Crown to make certain statements during UK Parliament proceedings?
9. Can you provide an update on the discussions taking place with UK Government around clauses 19 and 43? What is the Welsh Government's position if agreement cannot be reached on these clauses?
10. What discussions have you had with UK Government around clause 24(4) of the Bill? Can you update us on the progress of those discussions? Will the UK Government be seeking to amend clause 24(4) to strengthen the co-operation duties of the Office of Environmental Protection with a future Wales governance body?
11. The UK Government's Explanatory Notes do not consider that the general provisions in Part 8 of the Bill will require the Assembly's consent. In contrast, in your LCM, you note that the general provisions of the Bill will require the Assembly's consent. Could you please specify which general provisions you consider require the Assembly's consent? Could you provide an update as to any discussions you have had with the UK Government on this issue and whether the UK Government now agrees that these clauses will require the Assembly's consent? What is the Welsh Government's position if agreement cannot be reached?



Delegated powers

12. The Bill provides a number of delegated powers to the Welsh Ministers. Can you outline why all of these powers are necessary? Did the Welsh Government request these powers?
13. Could you outline the policy you will seek to make in regulations, using the powers contained in the Bill? When do you envisage that such regulations would be laid?
14. Some of the delegated powers are powers to amend primary legislation. Two of these powers (clauses 66 and 76) are subject to the negative procedure. Do you think the negative procedure is appropriate in these cases? Why have you not asked for regulations made under these powers to follow the affirmative procedure?
15. Clause 75 amends the Water Industry Act 1991 to omit certain procedural requirements regarding the preparation and review of Water Resources Management Plans from the primary legislation. Instead, the Welsh Ministers will have a power to set the requirements out in regulations. Why is it appropriate to move this requirement from primary to secondary legislation?
16. Clause 75(3) omits sections 37B and 37C from the Water Industry Act 1991. Can you explain why these provisions are being removed? Will the Welsh Ministers be replacing these provisions through secondary legislation?
17. Clause 76 inserts sections 94B and 94D into the Water Industry Act 1991. Sections 94B and 94D provide that where the Assembly resolves that an instrument containing regulations made by the Welsh Ministers is annulled, "Her Majesty may by Order in Council revoke the instrument". Why is this different to the approach for regulations made by the Welsh Ministers set out in the Statutory Instruments Act 1946?
18. Clause 76 also inserts section 94C into the Water Industry Act 1991 which provides a power for the Welsh Ministers to make provision, by regulations, about the procedure for preparing and publishing a drainage and sewerage management plan. Those regulations can confer a power on the Welsh Ministers to make provisions by directions. Do you think the negative procedure is appropriate for regulations made under section 94C?
19. In relation to the Secretary of State's powers in clause 81 (Water quality) can you explain why the Secretary of State's powers are more limited in Scotland than in Wales? What discussions have you had with the UK Government about this matter?

Concurrent plus powers

20. The Bill includes a number of 'concurrent plus' powers (including in clauses 47 to 51, 81, and 125, and Schedules 4 to 8) which reduce the Assembly's legislative competence in the respective areas. Can you explain why you consider the concurrent plus powers are appropriate? What is the Ministerial commitment that is referred to in your LCM?
21. Will a section 109 Order be brought forward to deal with the carve-out in respect of paragraph 11 of Schedule 7B of GOWA? We are aware that a section 109 Order is being drafted and should be brought forward in the near future; will the issues raised



by this Bill be dealt with in this forthcoming section 109 Order? If not, why not and when will these matters be dealt with?

22. Are there any areas in which the Welsh Government intends to give consent for the UK Government to make secondary legislation on the Welsh Government's behalf? Will the Welsh Ministers formally notify the Assembly when consent has been given, as per the Standing Order 30C process?

Reasons for making provisions for Wales in the Environment Bill

23. Are the powers in the Bill intended to be temporary in nature (i.e. will they be replaced by powers in a future Welsh Environment Bill)? If not, why not? If so, why has a sunset clause not been included in the Bill?
24. You say, as one of the reasons for making these provisions for Wales in the Environment Bill, that there is currently "no time within the Assembly's timetable to bring forward an Environment Bill that could be used to take forward these provisions." The Government's legislative programme is a matter for it alone to decide upon. Why couldn't the Welsh Government include an Environment Bill in its legislative programme?
25. Whilst the environmental governance provisions in the Bill seem to directly relate to the UK's departure from the EU, not all provisions in the Bill seem to be 'Brexit' related. How many of the other provisions in the Bill need to be in place before the implementation period completion day? Are any provisions in the Bill "time critical", and if so why?
26. How and when will you review the effectiveness of the Bill for making environmental policy in Wales?

Accessibility

27. How will you ensure that the provisions in the Bill, and the subordinate legislation made under it, are accessible to stakeholders and to the wider public?
28. Are you concerned that having these provisions in UK legislation will have a negative impact on the accessibility of the law, at a time when the Welsh Government is seeking to make Welsh law more accessible?

Yours sincerely



Mick Antoniw AM

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

