

# Report on the Legislative Consent Memorandum for the UK Environment Bill

July 2020

## Overall recommendation

**Recommendation 1.** We recommend to the Senedd that it gives consent to the provisions in the UK Environment Bill, subject to it being satisfied by the Minister's response to each of the recommendations in this report.



## Introduction

- 1.** The Minister for Environment, Energy and Rural Affairs ('the Minister') laid a Legislative Consent Memorandum for the UK Environment Bill 2020 ('the LCM') on 26 February 2020.
- 2.** The Business Committee referred the LCM to this Committee and to the Legislation, Justice and Constitution Committee to consider, with a reporting deadline of 1 May 2020. The deadline was subsequently extended to 2 July 2020.

### Our approach

- 3.** The LCM was referred to us shortly before the coronavirus Covid-19 pandemic and the subsequent temporary suspension of non-time-critical Senedd committee business. This resulted in the cancellation of oral evidence sessions in relation to the LCM. We sought written evidence from the Minister and the Deputy Minister for Housing and Local Government. Their submission, and details of stakeholders' written submissions, can be found at the end of this report.
- 4.** We would like to thank all those who contributed to our work.

# 1. The UK Environment Bill 2020 and the Legislative Consent Memorandum

## The UK Environment Bill 2020

**5.** The UK Government’s Environment Bill 2020 (‘the Bill’) was introduced in Parliament on 30 January 2020. According to the Explanatory Notes (‘the EN’):

“[The Bill] comprises two thematic halves. The first provides a legal framework for environmental governance. The second makes provision for specific improvement of the environment, including measures on waste and resource efficiency, air quality and environmental recall, water, nature and biodiversity, and conservation covenants.”

## The Legislative Consent Memorandum (“LCM”)

### Provisions for which consent is sought

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**6.** The LCM summarises provisions for which the Welsh Government consider the Senedd’s consent is required (paragraphs 7 to 75). Around half of the provisions extend and apply to Wales.

**7.** According to the LCM, the Welsh Government is “generally supportive of the Bill as drafted”. However, it sets out “three outstanding issues of concern” relating to:

- the impact of Clause 19 (non-regression of environmental protection standards) on devolved competence;
- the duty on the Office of Environmental Protection to consult devolved environmental governance bodies Clause 24(4)); and
- the requirement for a carve-out of paragraph 11, Schedule 7B of the Government of Wales Act 2006 in respect of concurrent powers in relation to extended producer responsibility, water quality and REACH.

### Reasons for making provisions for Wales in the Environment Bill

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**8.** The LCM sets out the Welsh Government’s reasons for making provisions for Wales in the Bill, which include a lack of time within the Senedd’s timetable to bring forward an Environment Bill.

**9.** The LCM states:

“For powers relating to extended producer responsibility, waste management, water plans and proposals, regulation of water and sewerage undertakers and the REACH regulations, the interconnected nature of the relevant Welsh and English administrative systems mean it is the most effective and appropriate approach for provisions to be taken forward at the same time in the same legislative instrument.”

**10.** In reference to extended producer responsibility, waste management, and single-use plastics, the LCM states that the Bill “provides a timely opportunity to progress key features of the circular economy strategy”. It also highlights that, for extended producer responsibility and waste management, “developing a regulatory approach which allows for a consistent scheme to operate between Wales, England and Northern Ireland is important for market reasons and reflects the cross border nature of many business operating in the sector”.

### Evidence from the Minister

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**11.** The Minister explained that the UK Bill “supports the UK’s collective obligation to transpose the EU’s Circular Economy Package (CEP)” and “will also support Wales’s ambition to move to a more Circular Economy”.

**12.** The Minister said that some of the provisions reflect current Welsh Government policy and the Bill, therefore, “enables future Welsh policy to be delivered”. The Bill provides an “appropriate legislative vehicle” which:

- “enables continued accessibility for users by continuing an England and Wales legislative approach;
- relates to a UK-wide system as in the case of the REACH provisions;
- allows for quicker delivery of Welsh policy, given the limitation on the capacity of the Senedd as we near the end of the current term; and
- enables implementation of EU requirements.”

### Our view

In our many reports on the LCMs relating to the UK Agriculture and Fisheries Bills, we have expressed concern about the Welsh Government’s failure to provide adequate justification for seeking extensive regulation making and executive powers via UK Bills.

When seeking powers, the Welsh Government must be able to explain the purpose of the powers and how they intend to use them. We would have

expected the Welsh Government to have taken on board concerns raised in our previous reports and to have provided a more comprehensive explanation of its policy intentions. Regrettably, this is not the case again.

The Minister has provided some useful information about why certain provisions need to be included in the Bill, for example those in relation to REACH. However, there remains a lack of clarity about the need for other provisions, particularly as they do not appear to be time-critical. Furthermore, it appears that the Welsh Government has no firm plans to use some of the powers being sought. This is not a good model of how to legislate.

Given the lack of clarity about how, whether and when these extensive regulation-making powers will be used, it is no surprise that the Minister cannot provide the Committee with an accurate assessment of the costs arising from the Welsh provisions. It is unsatisfactory that the Senedd should be asked to give legislative consent without accurate financial information.

In addition, it appears that the implementation of the Welsh provisions could lead to an increase in Natural Resources Wales's ('NRW') regulatory and enforcement responsibilities. However, the Welsh Government continues to reduce the funding it allocates to that organisation. The Minister has not explained how she expects NRW to be able to deliver any new responsibilities effectively against a background of reduced funding.

**Recommendation 2.** The Welsh Government must commit to consulting on proposals and/or draft regulations before making regulations using the powers provided in the Bill.

**Recommendation 3.** The Welsh Government should give an undertaking that third party organisations, including Natural Resources Wales, will be properly resourced to deliver additional duties or responsibilities arising from the provisions in this Bill.

## 2. Part 1 – Environmental Governance

- 13.** Part 1 of the Bill aims to provide a new framework for environmental governance, mainly in England, on withdrawal from the EU and will place the UK Government’s 25 Year Environmental Plan on a statutory footing. It is based, in part, on the UK Government’s draft Environment (Principles and Governance) Bill, which was published in December 2018, to meet an obligation in the European Union (Withdrawal) Act 2018.
- 14.** Clauses 1 to 18, and Clause 20 do not apply in relation to Wales.
- 15.** Clause 19 requires that where a UK Bill introduced into either House of Parliament contains a provision that, if enacted, would constitute environmental law, as defined in Clause 43, the Minister in charge of the Bill must make a statement to the House. The statement must set out either that the Bill does not have the effect of reducing the level of protection provided by any existing environmental law, or that the Minister cannot make such a statement but wishes the Bill to proceed.
- 16.** The definition of ‘environmental law’ in Clause 43 includes ‘devolved legislative provision’ for the purpose of Clause 19. The LCM asserts that “the effect of this is the above requirements [non-regression statements] apply equally to UK Bills involving ‘environmental law’ applying in Wales, in the same way as England”. The Welsh Government, therefore, considers that Clause 19 and Clause 43 (insofar as it relates to Clause 19) require consent. The LCM explains that the UK Government does not share this view on the basis that this clause relates to Parliamentary processes, and the Parliament of the United Kingdom is a reserved matter.
- 17.** Clauses 21 to 40 make provision for a new environmental governance body, known as the Office for Environmental Protection (‘OEP’). The OEP would have scrutiny, advice and enforcement functions in relation to environmental protection and the natural environment. While these provisions apply across the whole of the UK, the OEP would only have jurisdiction in Wales in relation to non-devolved environmental law.
- 18.** Clause 24(4)) provides that the OEP must consult a “devolved environmental governance body” if the work it is undertaking would be of relevance to such a body. According to the Explanatory Notes accompanying the UK Bill, this could include instances where, during an investigation, the OEP becomes aware of a transboundary environmental issue that may have involved a breach of devolved

legislation outside of its remit, but that would be within the remit of the devolved environmental governance body.

## A Welsh environmental governance system

**19.** When the UK Government published its draft Environment (Principles and Governance) Bill (December 2018), as required by the EU (Withdrawal) Act 2018, the Welsh Government made clear that the proposed governance model for England was “not a workable approach for Wales”, and was incompatible with the devolution settlement and Wales’s existing legislation. Despite this, the Welsh Government maintained it was willing to discuss UK-wide approaches and work to co-design arrangements with other governments in the UK.

**20.** In March 2019, the Welsh Government published its consultation, Environmental Principles and Governance in Wales Post European Union Exit<sup>1</sup>. It sought views on:

- gaps in environmental principles and governance in Wales arising from the UK’s withdrawal from the EU; and
- how best to provide a governance framework that aligns with Wales’s Well-being of Future Generations and Environment Acts.

**21.** The Welsh Government has committed to legislate to address any post-Brexit gaps in Wales, although the timeline for a future Welsh Bill remains unclear.

## Evidence from stakeholders

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**22.** Much of the evidence received reiterated concerns raised with this Committee in its previous work on environmental principles and governance post-Brexit. These include a lack of clarity on which environmental principles will apply to UK Ministers and reserved bodies operating in Wales; that the OEP is not sufficiently independent from the UK Government; and that the proposed domestic governance structure would be weaker than arrangements under the UK’s membership of the EU.

**23.** Natural Resources Wales (‘NRW’) suggested that having separate governance bodies for England and Wales “may result in different processes, interpretations and functions either side of the border”, which “risks a ‘lack of level playing field’

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<sup>1</sup> A [summary of responses to the consultation](#) was published in September 2019.

for businesses and organisations”. It called for clarity on the regulatory floor and any regional variances.

**24.** According to NRW, it is “essential” that the OEP and the new Welsh governance body can work together closely and with any equivalent oversight bodies elsewhere in the UK. It noted that this will reduce the risk of regulatory divergence and encourage a more collaborative approach to cross-border issues. NRW suggested that collaborative arrangements should be set out in legislation or in Memorandums of Understanding.

**25.** WEL called for the consultation requirement in Clause 24 to be strengthened to ensure that the OEP works cooperatively with a devolved environmental governance body, for example, where a complaint may relate to reserved and devolved matters.

**26.** Some stakeholders raised concern about the pace at which proposals for a new environmental governance system in Wales were developing relative to those in England. The National Trust stated:

“Given the Brexit transition deadline at the end of this year, we are concerned that the environmental ‘governance gap’ is imminent. The UK Government’s intention is for the Office of Environmental Protection to be up and running by 2021. We need legislation in Wales within the same timeframe...Otherwise the people of Wales will face a lengthy delay, with only interim measures in place to uphold their rights around access to environmental justice, and a void in leadership around environmental law.”

**27.** A similar point was raised by WEL, which called on the Welsh Government to “urgently” bring forward legislation.

#### Evidence from the Welsh Government

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**28.** The Minister emphasised the need for the respective environmental governance bodies in England and Wales “to work closely together to identify and act on complaints which may be cross border in nature or touch on both reserved and devolved matters”. According to the Minister, the Bill does not adequately provide for this. She explained:

“[The duty to consult in Clause 24(4)] does not allow for early identification of where the bodies may need to work together and for the Welsh body to inform the determination of whether an investigation is of relevance to it. Moreover, it does not allow for joint



investigations to be undertaken and for the sharing of best practice and expertise between the bodies.”

**29.** The Minister was, therefore, seeking an amendment to the Bill “to enable cooperative arrangements”, and was awaiting the Secretary of State’s response.

**30.** The Minister provided an update on the Welsh Government’s proposals for new environmental governance arrangements in Wales. She explained that the Stakeholder Task Group had reported in April 2020. An analysis of the Group’s recommendations would be undertaken “as part of a wider options appraisal”. The Minister committed to providing a further update once this work had been completed.

**31.** The Minister reaffirmed the Welsh Government’s commitment “to legislate to place our approach to environmental principles and governance on a statutory footing”. However, given the “considerable pressure” on the legislative programme, the Welsh Government was unable “[to] provide any guarantees on any new Bills being introduced later this year”.

**32.** The Minister explained that work was ongoing “to develop and prepare interim measures for receiving complaints about environmental governance in Wales to take effect by the end of the transition period”.

## Our view

We have published two reports on environmental principles and governance in Wales after Brexit. These reports explored, among other things, the need for a successor environmental governance body to replace the governance functions currently carried out at an EU level.

We agree with stakeholders that it is vital that UK and Welsh governance bodies can work together, where appropriate, to ensure environmental protection across the UK. The UK Bill and any future Welsh Bill to establish a Wales-only governance body must make adequate provision for this. However, as currently drafted, the UK Bill fails to do this. We are pleased that the Minister recognises this and has made representations to the Secretary of State in this regard.

More generally, we are deeply frustrated about the lack of firm proposals from the Welsh Government for a new environmental governance system for Wales. We have consistently highlighted the need for this work to be progressed and for primary legislation to be brought forward at the first available opportunity.

Notwithstanding the recent pressure on the Welsh Government's current legislative programme, the Government has continually evaded our calls for greater clarity on the timeline for introducing a Welsh environmental principles and governance Bill. We recognise that the Covid-19 pandemic has had an impact on the legislative programme, but there was a concerning lack of progress long before the emergence of the virus. The Welsh Government is in control of its legislative programme. It could, and should have, prioritised Brexit-related Bills to ensure that Wales is fully equipped to meet the challenges arising from the UK's departure from the EU.

In our previous reports, we recognised the challenge of establishing a new system by the end of the transition period and called on the Welsh Government to put in place appropriate interim measures to avoid a governance gap. Two years on, there remains a lack of clarity about what these measures will and how they will work in practice.

We note that the Minister tasked a stakeholder group with developing proposals for new environmental governance arrangements in Wales and that it had reported in April 2020. The Minister told us that an analysis of the Group's recommendations would be undertaken "as part of a wider options appraisal". It is unclear why the group's report has not been published or responses provided to its recommendations.

We believe the Minister should publish the group's report and the Welsh Government's response to it.

**Recommendation 4.** The Minister must update the Senedd in advance of the debate on the LCM, on progress in securing an amendment to Clause 24 to make provision for cooperative working between the OEP and any equivalent Welsh governance body. If an amendment to Clause 24 cannot be achieved, the Minister must set out what measures will be introduced to ensure cooperative working between Welsh and English/UK bodies.

**Recommendation 5.** The Minister should set out a timetable for the establishment of interim environmental governance measures following the end of the transition period and the UK's exit from the EU.

**Recommendation 6.** The Minister should publish the report of the stakeholder group she tasked with considering future environmental governance arrangements in Wales. The Minister should publish the Welsh Government's response to the group's recommendations.

### 3. Part 3 – Waste and Resource Efficiency

**33.** Part 3 of the Bill makes provisions in relation to waste and resource efficiency. It confers extensive regulation-making powers on relevant national authorities, in Wales's case, the Welsh Ministers. Some of these are described as 'concurrent plus powers', which would enable the Secretary of State to legislate for Wales in an area that is devolved to Wales, if given consent by the Welsh Ministers.

**34.** In summary, the key provisions in Part 3 provide regulation-making powers for the Welsh Ministers to:

- reform the producer responsibility schemes, with the aim of making producers responsible for the full net costs of managing their products at end of life (Clauses 47 and 48, and Schedules 4 and 5);
- set minimum requirements for manufacturers and producers to provide information about their products, and to make provision for the enforcement of regulations (Clauses 49 and 50, and Schedules 6 and 7);
- introduce a deposit return scheme ('DRS') for certain items such as single-use drinks containers (Clause 51 and Schedule 8);
- apply charges to single-use plastic items which are supplied in relation to a good or service (e.g. plastic take-away food containers or plastic cutlery) (Clause 52 and Schedule 9);
- make provision for the purpose of tracking relevant waste, and to establish an electronic tracking system (Clause 55); and
- make provision to regulate hazardous waste (Clause 57).

#### Welsh Government policy proposals

**35.** In February 2019, the Welsh Government, UK Government, and other devolved administrations, jointly consulted on proposals:

- to reform the UK packaging producer responsibility system<sup>2</sup>; and

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<sup>2</sup> Whilst waste policy is a devolved responsibility, the packaging waste producer responsibility scheme has operated on a UK-wide basis to date. The current producer responsibility packaging waste regulations are GB-wide with identical regulations in place in Northern Ireland.

- for introducing a Deposit Return Scheme ('DRS')<sup>3</sup>.

**36.** The summary of responses to the consultation explained that the above measures would be introduced by taking powers in primary legislation (the Environment Bill). It said that further consultation would take place in 2020, with a view to introducing an extended producer responsibility<sup>4</sup> system for packaging in 2023, and a DRS from 2023.

**37.** The Welsh Government's consultation, *Beyond Recycling: A strategy to make the circular economy in Wales a reality* (December 2019) reflects the above intentions. It also refers to proposals for a tax or charge on disposable plastic cups and food containers, and "applying bans or restrictions to phase out the use of unnecessary, highly littered, single-use plastic". The consultation closed at the end of April 2020. A summary of responses had not been published at the time of publication of this report.

**38.** In March 2020, the Welsh Government announced its intention to bring forward proposals to ban a range of single-use plastic items, including plastic straws, cutlery and polystyrene food and drink containers. This followed a similar announcement by the UK Government.

## Evidence from stakeholders

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### Producer responsibility

**39.** There was general support for the provisions in relation to producer responsibility.

**40.** NRW referred to the need for "the development of producer responsibility systems that are proportionate and fit for Wales", and for effective and adequately resourced regulation.

**41.** WEL raised concern that "the Bill appears to limit producers' responsibility to disposal costs only". WEL called for the general power in Part 1 of Schedule 5 to be extended to enable charges to be made for "the environmental and social costs incurred throughout the lifecycle of the products of materials". A similar view was

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<sup>3</sup> The consultation included a broad range of drinks containers that could be included within a scheme (including plastic bottles, steel and aluminium cans and glass bottles), and proposed a deposit level of 15 pence per container.

<sup>4</sup> scheme. Extended producer responsibility (EPR) places responsibility on producers for the cost of managing their products once they reach end of life. It gives producers an incentive to design their products to make it easier for them to be re-used or dismantled and recycled.

expressed by the Marine Conservation Society ('MCS'), which raised concern that the general power “fails to take account of full lifecycle impacts”, which was “a significant omission”. It stated:

“MCS supports full net cost recovery to ensure that producers are fully responsible for the recovery, recycling and disposal of their products including any costs incurred through litter prevention and clean-ups”.

**42.** Wales Environmental Services Association ('WESA') stated that “EPR should form part of a coherent system, along with other measures, to improve recycling”. It cautioned:

“The proposals for EPR reform - combined with the parallel changes proposed for kerbside collections, the introduction of a deposit scheme, and the plastics packaging tax-increase the risk of system failure. WESA is concerned that the multiple concurrent radical changes have the potential to distort the market and lead to unintended negative consequences.”

## Deposit schemes

**43.** There was broad support for these provisions. Several witnesses commented on the detail of potential schemes, which will be a matter for the Minister and the Senedd to consider in due course.

## Charges for single-use plastic items

**44.** There was broad support for the provisions in relation to charges for single-use plastic items.

**45.** Some stakeholders suggested that the powers to charge should be extended beyond plastics to include other materials. This would disincentivise the replacement of plastic with other environmentally harmful materials for single-use items. WEL highlighted that amending the Bill in this regard “provides further flexibility for how Wales would set charges”. It added:

“The Bill needs to be ‘future proof’ and anticipate that new single-use products can be created, still out of materials that are very difficult to recycle, degrade or re-purpose.”

**46.** WESA called for a “clear definition of 'single-use'...in line with the definition used in the EU Single-Use Plastic Directive”.

**47.** NRW noted the UK Government’s proposals for a plastic packaging tax. It suggested that consideration should be given to “how the proposed new charges would interact with a proposed plastic tax to ensure that they complement each other to drive forward appropriate behaviour change and avoid unintended consequences”.

## Waste tracking

**48.** NRW supported the provisions in relation to waste tracking, which would allow for the introduction of a mandatory electronic waste tracking system. It stated:

“Having the ability to use live data and information to better understand where waste is generated and where it goes, including where it leaks through the system or is handled illegally, either domestically or abroad will enable our regulatory focus to be more effective complementing our monitoring compliance at waste management sites and assisting in our efforts to tackle waste crime.”

**49.** Similar points were made by WESA, which called for any new system to be able to “interface easily with existing electronic systems operated by WESA members to avoid duplication of efforts/redundant IT systems”.

## Evidence from the Minister

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**50.** The Minister explained that the provisions in Part 3 provide “an essential set of legislative levers” which will allow the Welsh Government to take forward commitments and ambitions set out in *Beyond Recycling: A strategy to make the circular economy in Wales a reality*. In addition, the provisions provide powers to bring forward regulatory changes following the UK’s departure from the EU.

**51.** The Minister said that work was continuing on a joint programme with the other UK nations to develop an Extended Producer Responsibility (‘EPR’) scheme.

**52.** The Minister also said that work was continuing with England and Northern Ireland to develop a DRS. A second consultation on the detailed design and preferred workings of the DRS was being prepared. She added:

“There are potential benefits from a joint scheme, but equally it is important it reflects the needs of Wales. If a joint scheme will not achieve this, then a Welsh only DRS will be considered.”

**53.** The Minister explained that the detailed form of the regulatory oversight of the DRS was yet to be finalised. Discussions had taken place at an official level on the potential role for NRW in the regulation of a DRS and would continue as proposals develop.

**54.** In reference to how the powers in the Bill for the Welsh Ministers to make provision about charging for single-use plastic items align with the Welsh Government's proposals to ban certain single-use plastics, the Minister stated:

“The proposed ban on single-use plastic items is focused on a defined list of items often found in the marine environment throughout the European Union, for which non-plastic alternatives are readily available. These powers will allow us, if needed, to bring in charges for other problematic single-use plastic items where outright bans or restriction of sale may be less feasible.”

**55.** She explained that the Welsh Government was continuing to develop the evidence base in relation to a tax or charge on single-use plastic cups. If a tax, rather than a charge, was determined as the favourable option, proposals would need to be approved by the UK Government through the mechanism provided for under the Wales Act.

**56.** Responding to the suggestion that the powers to charge for single-use items should be extended beyond plastics to other materials, the Minister stated:

“Whilst the UK Government considered extending this power to other materials, the tight timescale required to develop the Bill and lack of wider evidence made this approach unfeasible. However, once these powers are in place the Welsh Government could, in due course, consider amending the legislation so it extends other items if it were considered to be appropriate to do so.”

## Our view

In our “Report on policies and proposals relating to plastic pollution and packaging waste”, we recommended that “whatever the outcome of the joint consultation with DEFRA and any subsequent decision by the UK Government, the Welsh Government should introduce a comprehensive EPR scheme in Wales”. We note the Minister’s comments that work is continuing with England and Northern Ireland to develop a DRS. We fully support her comments that, if necessary, she will introduce a Wales-only scheme.

Our position has not changed that the DRS should apply to the broadest variety of containers so that no restrictions are placed on the size of containers eligible for the scheme. We continue to believe that, if the UK Government decides to introduce a scheme with a narrower scope, the Welsh Government should consult on a specific scheme for Wales, with a DRS with the broadest scope as its preferred and recommended option.

We would be grateful if the Minister would provide the Committee with further information on the work that is being undertaken to assess the evidence base for a tax or a charge on single-use plastics.

We believe the Minister should clarify the timetable for the introduction of extended producer responsibility and deposit return schemes and measures in relation to single-use plastics.

We note that the Welsh Government's Beyond Recycling consultation ended in April 2020. It is unclear as yet how the provisions in the UK Bill and the proposals in that consultation will align. We would be grateful for clarity from the Minister on this matter. The Minister should also clarify how this Bill will be used to support the green recovery post-Covid-19.

Finally, in our report, we recommended that the Welsh Government should explore the potential for introducing Welsh legislation to reduce plastic waste and pollution, based on the model for emissions reduction in the Environment (Wales) Act 2016. The recommendation was accepted.

That model consists of an overall, ambitious target made up of interim targets, and includes reporting requirements. Although it is far from perfect, the approach serves an important purpose as a policy driver. No such measures are included in the UK Bill. The Minister should clarify exactly how she intends to implement the Committee's recommendation, given that she accepted it.

**Recommendation 7.** The Minister should give a commitment that the Welsh Government's Deposit Return Scheme should apply to the broadest variety of containers so that no restrictions are placed on the size or type of containers eligible for the scheme.

**Recommendation 8.** The Minister should provide the Committee with further information on the work that is being undertaken to assess the evidence base for a tax or a charge on single-use plastics.



**Recommendation 9.** The Minister should clarify a timetable for the introduction of extended producer responsibility and deposit return schemes and measures in relation to single-use plastics.

**Recommendation 10.** The Minister should clarify how the provisions in the Bill will be used to give effect to the proposals in the Welsh Government’s “Beyond Recycling” consultation.

**Recommendation 11.** The Welsh Government should introduce an approach for plastic waste and pollution reduction based on the model set out in the Environment (Wales) Act 2016. The approach should include an overall target, interim targets and reporting requirements.

## 4. Part 4 – Air Quality and Environmental Recall

**57.** Part 4 of the Bill deals with air quality and environmental recall. The majority of the provisions in relation to air quality apply only in relation to England. While the provisions in relation to environmental recall apply to the whole of the UK, they do not fall within the Senedd’s legislative competence, therefore consent is not being sought.

**58.** Clause 69 of the Bill introduces Schedule 11, which amends the Environment Act 1995. Under the 1995 Act, the Secretary of State is required to produce a national air quality strategy covering the whole of Great Britain. The strategy must contain standards, objectives and measures for improving ambient (outdoor) air quality.

**59.** Paragraph 2 of Schedule 11 removes the requirement for the strategy to cover the whole of Great Britain. According to the LCM, the effect of this is that “it is put beyond doubt Welsh Ministers are responsible for publishing a national air quality strategy in relation to Wales and the current position and devolved nature of this role is more accurately reflected.”

### Welsh Government policy proposals

**60.** In December 2019, the Welsh Government published its consultation, Clean Air Plan for Wales: Healthy Air, Healthy Wales. It sets out the Welsh Government’s “commitment and long-term ambitions to improve air quality”. The Welsh Government has committed to publishing a White Paper on a Clean Air Act before the end of this Senedd term.

### Evidence from stakeholders

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**61.** Asthma UK and British Lung Foundation Wales supported the amendments to the Environment Act 1995 as a means of clarifying that the Welsh Government “is solely responsible for publishing [a] national air quality strategy for Wales”. It stated:

“By publishing the strategy at a devolved level, all interested parties can seek to support the Welsh Government during the process and cater the plan to the unique geography, demography and economy of Wales.”

**62.** Asthma UK and British Lung Foundation suggested that several of the provisions for England could usefully be replicated in a future Welsh Clean Air Bill.

## Evidence from the Minister

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**63.** Part 2 of Schedule 12 of the Bill amends the 1993 Act to enable the Welsh Ministers to denote authorised fuels and exempted fireplaces through a publicly available list. The list system is already in place in England and Scotland and therefore the provisions bring Wales in line with the rest of the UK.

**64.** The Minister explained that the effect of the amendment to the 1993 Act is “to create a duty on Welsh Ministers to publish lists for recording authorised fuels and exempted classes of fireplace which can be lawfully used in Wales’ Smoke Control Areas and to switch away from the making of subordinate legislation for achieving this goal”.

**65.** According to the Minister, this provision had been included in the Bill so as “to bring about benefits for both manufactures and consumers as soon as possible”. For example, reducing the delay between obtaining recommendations about products for use and placing products on the market. She said there will also be an environmental benefit “as improvement to the operation of the smoke control regime in Wales will make it easier to identify products which can be lawfully used in smoke control areas”.

**66.** The Minister highlighted that the provision “is an improvement to the operation of the smoke control regime in Wales rather than a change of policy”.

## Our view

We recognise that the Covid-19 pandemic has had an impact of the Welsh Government’s legislative programme and on its staffing resources and capacity. We would be grateful therefore for clarification from the Minister about whether she still intends to bring forward a White Paper on a Clean Air Bill before the end of this Senedd term.

Given that an equivalent to the list system provided for in Part 2 of Schedule 12 is already in place in England and Scotland, we would be grateful for further information from the Minister about when she intends to introduce the provisions in relation to Wales.

**Recommendation 12.** The Minister should clarify the Welsh Government’s intended timetables for the white paper on the Clean Air Bill and the introduction of the list system arising from Part of Schedule 12 of the UK Bill.

## 5. Part 5 – Water

**67.** Part 5 of the Bill amends existing primary legislation and makes new provision in relation to water resources; water quality; regulation of water and sewerage companies; and valuation of land in internal drainage districts.

### Plans and proposals (Clauses 75 and 76)

**68.** Clause 75 gives power to the Welsh Ministers (and the Secretary of State in relation to England):

- to direct water companies to prepare and publish joint proposals<sup>5</sup>, and
- to make regulations setting the procedure for preparing and publishing joint proposals, water resources management plans and drought plans.

**69.** It also removes certain procedural requirements regarding the preparation of Water Resource Management Plans in the Water Industry Act 1991 ('the 1991 Act'), which will, instead, be set out in regulations.

**70.** Clause 76 places a requirement on sewerage companies in England and Wales to prepare and publish a drainage and sewerage management plan, and makes provision for reviewing and revising plans. It also provides powers to the Welsh Ministers (and Secretary of State) to make regulations about the procedure for preparing and publishing a plan, and to give directions.

### Evidence from stakeholders

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**71.** There was broad support for the provisions in relation to plans and proposals. OFWAT stated:

“We support these clauses which remove perceived inflexibilities in the current framework for water resources management planning, and enable governments and regulators to require companies to collaborate to drive effective water resources planning”.

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<sup>5</sup> A joint proposal is defined as one that “identified measures that may be taken jointly by the companies for the purposes of improving the management and development of water resources. A joint proposal would be separate from a Water Resources Management Plan that each company is required to prepare.

**72.** According to OFWAT, the current lack of statutory planning processes “has long been considered an impediment to effective long term wastewater planning”.

**73.** CCW emphasised the importance of statutory plans given “the challenges faced by ageing infrastructure and increased rainfall and flood risk in Wales”. NRW believed that the introduction of statutory plans would be “a positive step”, which “will aid investment planning”.

**74.** Hafren Dyfrdwy and NRW raised concern that the term “drainage and sewerage management” used in Clause 76 is narrower in scope than “drainage and wastewater management” – the term already adopted by the water industry. NRW suggested there would be “some benefit” in using the term ‘wastewater management’ to align with the plans currently being prepared by water companies and non-statutory guidance which had been developed by the sector.

### Regulation of water and sewerage undertakers (Clauses 77 and 79)

**75.** Clause 77 provides Ofwat with a power to require information from water or sewerage undertakers or water supply or sewerage licensees for the purpose of monitoring. Clause 79 enables documents served under the 1991 Act to be sent electronically.

#### Evidence from stakeholders

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**76.** OFWAT explained that the 1991 Act places a statutory duty on it to review water companies’ activities but does not provide it with a corresponding power to require information for the purpose of meeting that duty. It said that the power in Clause 77 addresses this anomaly.

**77.** OFWAT said the provisions to enable it to serve documents electronically would allow for the modernisation of OFWAT’s document service, “in line with those across much of the rest of the economy”.

### Water quality (Clause 82)

**78.** Clause 81 provides power for the Secretary of State to make regulations to amend or modify specified water quality legislation:

- to make provision for the substances to be considered when assessing the chemical status of surface water or groundwater; and
- to specify standards for those substances or in relation to the chemical status of groundwater.

**79.** The Secretary of State would be able to make regulations in relation to Wales on behalf of the Welsh Ministers, subject to their consent.

**80.** Clause 82 provides power for the Welsh Ministers in relation to Wales which is broadly comparable with that in Clause 81.

#### Evidence from stakeholders

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**81.** In commenting on the powers for the Welsh Ministers in relation to water quality, Hafren Dyfrdwy stated:

“As new pesticide and herbicide products come onto the market, the water companies are continually having to reassess their water treatment processes for new chemicals, some of which will be very costly to treat as well as having the potential to cause Water Framework Directive failures. Therefore, the ability for Ministers to modify water quality legislation is welcomed.”

**82.** WEL raised concern that the powers are “wide ranging” and enable the Welsh Ministers to amend regulations that implement the EU Water Framework Directive. It said:

“There may be some justification for a power to make technical updates to regulations, but this should not be a licence to weaken important targets via secondary legislation.”

**83.** WEL called for Clause 82 “to be deleted or amended to ensure that targets and standards cannot be weakened without thorough public consultation and scientific advice”.

**84.** NRW also highlighted “the need to ensure non-regression of standards”. It also highlighted the importance of “a nationally consistent approach”.

#### Evidence from the Minister

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**85.** The Minister said that Part 5 “introduces a range of measures to strengthen the resilience of water and wastewater services by enhancing the water industry’s long-term planning regime to modernise the regulation of water and sewerage companies to make it more flexible and transparent.”

**86.** According to the Minister, “the powers for Welsh Ministers in relation to water align with the commitments in the Welsh Government’s Water Strategy for Wales”. She said that, without these powers, the ability of Welsh Ministers to align with commitments in the Strategy and move towards a “preventative approach”,

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as a key principle of sustainable management of natural resources, will be compromised.

**87.** The Minister said that the Welsh Government “has no timetable for the use of [the powers in Part 5]” and “no current plans to require water companies to prepare joint proposals for improving the management and development of water resources”. She added that the Welsh Government would consult with stakeholders on all proposed regulations, and before making directions.

**88.** In responding to concerns about the terminology used in Part 5, the Minister explained that “in practical terms ‘drainage and sewerage management’ means the same as “drainage and wastewater management”. She said that the term ‘sewerage management’ “aligns the phrase and definition [used in the Bill] with the terminology used in the Water Industry Act 1991”.

## Our view

We welcome the Minister’s commitment that the Welsh Government would consult with stakeholders on all proposed regulations and before making directions under Part 5

Notwithstanding this, we note the concerns expressed about Clause 82. We agree with stakeholders about the importance of ensuring that the provisions in relation to water quality do not permit the regression of environmental standards.

While we note that the Welsh Ministers are required to consult before exercising their powers under Clause 82, there is no requirement to seek scientific advice. We believe the Minister should pursue an amendment to Clause 82 to seek scientific advice before exercising the powers set out in that clause. If it is not possible to secure such an amendment, the Minister should commit to ensuring that the Welsh Government should seek scientific advice before exercising the powers.

**Recommendation 13.** The Minister should reaffirm her commitment that the Welsh Government will consult stakeholders on all proposed regulations and before making directions arising from the provisions in Part 5 of the UK Bill.

**Recommendation 14.** The Minister should pursue an amendment to Clause 82 to seek scientific advice before exercising the powers set out in that clause. If an amendment is not achievable, the Minister should commit to ensuring that the Welsh Government should seek scientific advice before exercising the powers.

## 6. Part 8 – Miscellaneous and General Provisions

**89.** Part 8, amongst other things, makes provision for the amendment of REACH legislation.<sup>6</sup> The REACH Regulation (and the UK amending legislation) applies UK wide but relates to a mixture of devolved and reserved matters.

**90.** Clause 125 and Schedule 19 of the Bill on the regulation of chemicals extend and apply to the whole of the UK. They provide power to the Secretary of State to amend the Articles of the REACH Regulation and the REACH Enforcement Regulations, with the consent of the Welsh Ministers. Power is also provided to the Welsh Ministers to amend the REACH Enforcement Regulations under this provision, to the extent the exercise of the power would be within legislative competence. Such regulations would be subject to the affirmative procedure.

**91.** The UK Government’s policy statement on the Bill says the power would ensure the Secretary of State can take steps to ensure a ‘smooth transition’ to a UK chemicals regime following the UK’s departure from the EU.

### Evidence from stakeholders

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**92.** NRW welcomed the inclusion of the provisions in relation to the regulations of chemicals. It believed it would be “essential” for REACH to continue “in a nationally consistent manner going forward”. It added:

“REACH required the identification and gathering of knowledge about new chemicals or changes in chemical levels in the environment. This function of compiling a ‘watch list’ for future potentially harmful chemicals needs to be provided at a UK level, to ensure that regulation is fit for purpose now and in the future.”

### Evidence from the Minister

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**93.** The Minister explained that the REACH provisions in the Bill are necessary to deliver a functioning chemicals regime. She said that, with the change from a

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<sup>6</sup> The REACH Regulation refers to the EU Regulation on chemicals which, among other things, requires chemical substances that are manufactured or imported into the EU to be registered with the European Chemicals Agency along with safety data about the chemical, before being placed on the market. It provides a mechanism to place restrictions on the manufacture and use of certain hazardous chemicals. REACH continues to have the same effect in the UK until the end of the implementation period. In the absence of any agreement with the EU to the contrary, REACH will be retained in domestic legislation at the end of the implementation period.



system that covers 28 Member States to a single state with four nations, some aspects of the current regime are “impractical or overly burdensome on businesses”. She added:

“Without these powers UK REACH would have to operate in the context of EU Exit SIs. In this scenario we could quickly face a number of risks and issues...The powers may also be needed to mirror changes to the EU regime which we wish to maintain.”

## Our view

We note that stakeholders expressed no concerns in relation to these provisions.

We would be grateful if the Minister could set out what mechanisms are in place or will be necessary to ensure that REACH can continue in a consistent manner across all four constituent nations of the UK in future.

**Recommendation 15.** The Minister should set out what mechanisms are in place or will be necessary to ensure that REACH can continue in a consistent manner across all four constituent nations of the UK in future.

## Correspondence between the Committee and the Welsh Government

Letter from the Chair of the Committee to the Minister for Environment, Energy and Rural Affairs, 17 April 2020

Letter from the Minister for Environment, Energy and Rural Affairs to the Chair of the Committee, 14 May 2020

### List of written evidence

The following people and organisations provided written evidence to the Committee. All Consultation responses and additional written information can be viewed on the Committee's website.

Reference	Organisation
<b>EB 01 and EB 01a</b>	Wales Environment Link
<b>EB 02</b>	Wales Environment Link
<b>EB 03</b>	Consumer Council for Water (CCW)
<b>EB 04</b>	National Trust
<b>EB 05</b>	Welsh Environmental Services Association
<b>EB 06</b>	Ofwat
<b>EB 07 and EB 07a</b>	Hafren Dyfrdwy
<b>EB 08 and EB 08a</b>	Natural Resources Wales
<b>EB 09</b>	Marine Conservation Society
<b>EB 10</b>	Asthma UK and British Lung Foundation
<b>EB 11</b>	Wyeside Consulting Ltd