

# The Welsh Government's Legislative Consent Memorandum on the Environment Bill

July 2020



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July 2020



# About the Committee

The Committee was established on 15 June 2016. Its remit can be found at:  
[www.senedd.wales/SeneddLJC](http://www.senedd.wales/SeneddLJC)

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## Committee Chair:



**Mick Antoniw MS**  
Welsh Labour

## Current Committee membership:



**Suzy Davies MS**  
Welsh Conservatives



**Carwyn Jones MS**  
Welsh Labour



**Dai Lloyd MS**  
Plaid Cymru



# Contents

<b>1. Background .....</b>	<b>5</b>
The UK Government's Environment Bill .....	5
The Welsh Government's Legislative Consent Memorandum .....	5
Provision for which the Senedd's consent is required .....	6
Areas of dispute or where further discussion is required .....	7
Concurrent plus powers .....	7
The use of a UK Bill .....	8
<b>2. Committee consideration .....</b>	<b>10</b>
Our view .....	10
Overview .....	10
How the UK Bill relates to Common Frameworks .....	11
An appropriate legislative vehicle .....	13
Disputes about legislative competence .....	19
Delegated powers in the UK Bill – general observations .....	21
Clauses in Part 3 relating to producer responsibility, resource efficiency, managing waste and waste enforcement and regulation .....	23
Clause 70 in Part 4 relating to smoke control areas .....	27
Clauses in Part 5 relating to water .....	28
Concurrent plus powers .....	30
Standing Order 30C process .....	31
Accessibility .....	31
<b>Annex .....</b>	<b>33</b>





# 1. Background

## The UK Government's Environment Bill

1. The UK Government's Environment Bill<sup>1</sup> (the UK Bill) was introduced into the House of Commons on 30 January 2020. It is sponsored by the Department for Environment, Food and Rural Affairs.
2. A previous Environment Bill was introduced into the UK Parliament on 15 October 2019.<sup>2</sup> It passed its second reading on 28 October 2019, but fell at dissolution for the General Election in December 2019. The majority of the clauses in the UK Bill are substantially the same as its predecessor.
3. The explanatory notes to the UK Bill (as introduced) state:

"Clause 130 sets out the territorial extent of the clauses in the Bill. The extent of a Bill is the legal jurisdiction where it forms part of the law. The extent of a Bill can be different from its application. Application refers to where it has practical effect.

Subject to a small number of exceptions, the Bill forms part of the law of England and Wales and applies to England. Around half of the Bill's provisions extend and apply to Wales with a significant number of provisions having Great Britain, UK or England, Wales and Northern Ireland extent ... Clauses 82 and 87 apply to Wales only."<sup>3</sup>

## The Welsh Government's Legislative Consent Memorandum

4. On 26 February 2020, the Welsh Government laid before the Senedd a Legislative Consent Memorandum<sup>4</sup> (LCM) in respect of the UK Bill.
5. The Business Committee agreed that the Legislative, Justice and Constitution Committee (the Committee) and the Climate Change, Environment and Rural

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<sup>1</sup> Environment Bill 2019-21 [HC Bill 91]

<sup>2</sup> Environment Bill 2019 [HC Bill 3]

<sup>3</sup> Environment Bill, Explanatory Notes, January 2020, paragraphs 56-57

<sup>4</sup> Welsh Government, Legislative Consent Memorandum, Environment Bill, February 2020

Affairs (CCERA) Committee should report on the LCM by 1 May 2020.<sup>5</sup> This deadline was subsequently extended to 17 July 2020.<sup>6</sup>

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#### Provision for which the Senedd's consent is required

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**6.** Paragraph 6 of the LCM identifies the clauses which the Welsh Government consider are within the legislative competence of the Senedd:

“Part 1 – Environmental Governance - Clause 19 (Statements about Bills containing new environmental law) and Clause 43 (Meaning of environmental law) in so far as it relates to clause 19

Part 3 – Waste and Resource Efficiency – clauses 47 and 48 (Producer Responsibility) and Schedules 4 and 5, clauses 49 – 52 (Resource efficiency), clause 55 (Electronic wastes tracking: Great Britain), clause 57 (Hazardous waste England and Wales), clause 60 (Regulations under the Environmental Protection Act 1990), clause 61 (Powers to make charging schemes), clause 63 (Enforcement powers), clause 65 (Littering enforcement), clause 66 (Fixed Penalty notices), clause 67 (Regulation of polluting activities)

Part 4 – Air quality and Environmental recall – clause 69 (Local air quality management framework), clause 70 (Smoke control areas: amendments of the Clean Air Act 1993)

Part 5 – Water – clauses 75 and 76 (plans and proposals), clause 77 (Authority's power to require information), clause 79 (Electronic service of documents), clause 81 (Water quality: powers of Secretary of State), clause 82 (Water quality: powers of Welsh Ministers), clause 85 (Water quality: interpretation), clauses 87 – 89 (Land drainage),

Part 8 – Miscellaneous and General Provisions – Clause 125 (Amendment of Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) legislation).”

**7.** Paragraphs 7 to 75 of the LCM set out the Welsh Government's assessment of why these provisions in the UK Bill require the Senedd's consent.

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<sup>5</sup> Business Committee report, Timetable for consideration of the Legislative Consent Memorandum on the Environment Bill 2020, March 2020

<sup>6</sup> Business Committee report, Revised timetable for consideration of the Legislative Consent Memorandum on the Environment Bill, July 2020

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**8.** Annex A to the UK Bill's explanatory notes lists the clauses which the UK Government believes require consent.

#### Areas of dispute or where further discussion is required

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**9.** The LCM states that the Welsh Government is “generally supportive of the Bill as drafted”, but notes two outstanding issues of concern which require further discussion. These are:

- the impact of clause 19 (non-regression of environmental protection standards) on devolved competence;
- the duty on the Office for Environmental Protection (OEP) to consult devolved environmental governance bodies (clause 24(4)). Clause 24(4) requires the OEP to consult a devolved environmental governance body if it considers a particular exercise of its functions may be relevant to the exercise of a devolved environmental governance function. Given the possibility of the OEP investigating a complaint which could be concerned with reserved and devolved matters it may require the ability for that body to work cooperatively with an equivalent body in Wales.<sup>7</sup>

**10.** It would appear that there are two areas where the Welsh Government consider the Senedd's consent is required, but the UK Government disagrees:

- clauses 19 and 43 of the UK Bill (statements about Bills containing new environmental law), and
- the general provisions (clauses 126 to 133) in Part 8 of the UK Bill.

#### Concurrent plus powers<sup>8</sup>

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**11.** The LCM also states:

“The Bill includes concurrent plus powers in relation to clauses 47-51 and associated schedules, Clause 81 and Clause 125. As currently drafted, the inclusion of the ‘concurrent plus’ functions in the Bill also leads to the clauses requiring consent as the provisions arguably

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<sup>7</sup> LCM, paragraph 82

<sup>8</sup> A ‘concurrent plus’ power is a power that can be exercised in relation to Wales by the Welsh Ministers and the Secretary of State acting independently of each other. However, before the Secretary of State can exercise the power, the consent of the Welsh Ministers is required.

‘modify the legislative competence of the Assembly’ (and in turn would be ‘relevant provisions for the purposes of SO29.1(ii)).

There was insufficient time prior to the introduction of the Bill to include a ‘carve out’ for the concurrent plus provisions from the associated Schedule 7B restrictions. A Ministerial commitment has been made by the Parliamentary Under-Secretary of State for the Environment to carve out these provisions. At present, as the provisions will modify Assembly competence but are also provisions for a purpose within Assembly competence, they will require consent.”<sup>9</sup>

## The use of a UK Bill

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**12.** Paragraphs 78 to 83 of the LCM set out the reasons for making the provisions for Wales in the UK Bill.

**13.** The LCM states:

“We follow the principle that primary legislation in devolved areas should be enacted by the National Assembly, however, there are circumstances where it is sensible and advantageous to seek provisions in UK Parliament Bills which would be within the Assembly’s legislative competence, with the consent of the Assembly.

At present there is no time within the Assembly’s timetable to bring forward an Environment Bill that could be used to take forward these provisions.”<sup>10</sup>

**14.** The LCM also explains that:

“In relation to provisions being made for extended producer responsibility and waste management, and single use plastics, the Bill provides a timely opportunity to progress key features of the circular economy strategy. 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.

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<sup>9</sup> LCM, paragraphs 76-77

<sup>10</sup> LCM, paragraphs 78-79

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.”<sup>11</sup>

**15.** The LCM concludes:

“In the view of the Welsh Government it is appropriate to use the UK Environment Bill as a vehicle to take forward initiatives likely to be required to progress the circular economy strategy, particularly where these require a joined up approach with other UK administrations. Similarly, the effective management of water quality and the regulation of chemicals post EU Exit are appropriate matters to be taken forward in this Bill. The proposed legislative changes in air quality and land drainage allow for the clarification of the Welsh Ministers’ responsibilities or are administrative in nature and the Bill provides a timely opportunity to take these forward.”<sup>12</sup>

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<sup>11</sup> LCM, paragraphs 80-81

<sup>12</sup> LCM, paragraph 85

## 2. Committee consideration

**16.** As a result of the Covid-19 pandemic, we wrote to Lesley Griffiths AM, the Minister for Environment, Energy and Rural Affairs (“the Minister”), and Hannah Blythyn AM, the Deputy Minister for Housing and Local Government, with a series of questions on the LCM on 9 April.<sup>13</sup> <sup>14</sup> The Minister replied to our letter on 14 May 2020<sup>15</sup> and this response is included as an Annex within this report.

### Our view

**17.** We are grateful to the Minister for her response to our questions on the UK Bill.

### Overview

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**18.** We are concerned at the lack of clarity generated by the Minister’s response. In particular, it is difficult to determine how the inclusion of certain provisions in the UK Bill fits within a coherent legislative approach to delivering environmental policy in Wales. This in part stems from the LCM lacking information explaining how the need to legislate through the use of a UK Bill fits within the Welsh Government’s overall environmental policy. While we recognise that there is no obligation in Standing Order 29 to include this information, it would have been helpful to do so given the range and disparate nature of the provisions included. The extent to which the UK Bill is required to deliver obligations as a consequence of the UK’s exit from the EU is also unclear in the LCM.

**19.** Seeking the consent of the Senedd to permit the UK Parliament to legislate significantly in areas of environmental policy that have been devolved for over 20 years should be accompanied by full and transparent information. This is because, in adopting this approach, the ability of Members of the Senedd to hear expert evidence, listen to the views of stakeholders in Wales and table amendments to test, challenge and influence the Welsh Ministers—a key tool of scrutiny—ceases to be available. Any case made by the Welsh Government for the UK Parliament to

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<sup>13</sup> Letter to the Minister for Environment, Energy and Rural Affairs and the Deputy Minister for Housing and Local Government, 9 April 2020

<sup>14</sup> An evidence session with the Minister and Deputy Minister had been scheduled for 20 April 2020, but was not able to go ahead as a result of the circumstances caused by the Coronavirus Covid-19 pandemic, and the Business Committee formally agreed to designate a recess from 9 April to 21 April 2020.

<sup>15</sup> Letter from the Minister for Environment, Energy and Rural Affairs, 14 May 2020

legislate in devolved areas should be fully justified and not approached as a matter of routine business.

**20.** Moreover, we note the Minister's comment that there are no immediate plans for a Welsh Environment Bill;<sup>16</sup> that for some provisions the UK Bill provides a "timely opportunity" to take these forward"<sup>17</sup>, and that the UK Bill "has provided us with an alternative opportunity to put legislation in place in some key areas."<sup>18</sup> In the absence of appropriate policy context and information, these statements suggest that the use of the UK Bill for some provisions is a matter of legislative convenience. The use of a UK Bill should not be regarded as a substitute for using devolved powers and an "England and Wales" approach should not be seen as the default for legislating on environmental issues.

**21.** We explore some of these issues further in the sections below.

**22.** In order for us to fulfil our scrutiny function, the response to our recommendations should be provided in good time ahead of the Welsh Government tabling the relevant legislative consent motion.

**Recommendation 1.** The Minister should respond to all recommendations contained in this report as a matter of urgency and in good time ahead of the Welsh Government tabling the relevant legislative consent motion.

### How the UK Bill relates to Common Frameworks

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**23.** A key issue for us to consider is the extent to which the UK Bill operates as a common framework<sup>19</sup> because this would be one of the main drivers for the UK Parliament legislating in devolved areas.

**24.** It is vital that any legislation relating to a common framework is clearly identified as such to enable frameworks to be effectively scrutinised. This is also important given the First Minister's comments in a recent letter to us:

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<sup>16</sup> Response to Q23 (see Annex)

<sup>17</sup> LCM, paragraphs 80 and 85

<sup>18</sup> Response to Q24, (see Annex)

<sup>19</sup> Common frameworks are being developed under the principles agreed between the UK Government and Scottish and Welsh Governments at the Joint Ministerial Committee (European Negotiations) (JMC(EN)) in October 2017.

“... while the Senedd and the other legislatures will be able to propose amendments or changes to the Frameworks, it may be difficult for amendments advocated by only one legislature to be accepted.”<sup>20</sup>

**25.** We note that in response to the External Affairs and Additional Legislation Committee's report, *Common policy frameworks: Assembly scrutiny*,<sup>21</sup> the Counsel General said:

“I will ensure that it is made clear to the Senedd when legislation relates to any of the Common Frameworks under discussion between the governments of the UK.”<sup>22</sup>

**26.** The Minister's response to our questioning on this point is included below:

**“2. Does the Bill equate to a Common Legislative Framework? Which provisions are necessary to achieve the Common Legislative Framework?”**

The Bill does not equate to a common legislative framework and does not establish any common legislative frameworks.

The UK Bill includes provisions for chemicals and extended producer responsibility, which are two areas with identified common frameworks. Whilst the Bill itself does not provide any provision for frameworks where administrations are jointly developing policies or legislation, which may apply across more than one administration, then an agreed common framework may provide an appropriate structure to discuss the policy and legislative development and address any differences of opinion.”<sup>23</sup>

**27.** We consider this response to be very confusing and would welcome clarity from the Minister on this matter, particularly given the Counsel General's commitment referred to in paragraph 25 above.

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<sup>20</sup> ~~Letter from the First Minister, Mark Drakeford MS, to the Chair~~ 11 June 2020

<sup>21</sup> External Affairs and Additional Legislation Committee, ~~Common Frameworks: Assembly Scrutiny~~, December 2019

<sup>22</sup> ~~Letter from Jeremy Miles MS, Counsel General to David Rees MS, Chair of External Affairs and Additional Legislation Committee~~, 23 January 2020

<sup>23</sup> Response to Q2 (see Annex)



**Recommendation 2.** The Minister should:

- state clearly which clauses of the UK Bill are in policy areas with identified common frameworks;
- explain how those clauses relate to the relevant planned common frameworks, in full or in part;
- state when a common framework in those policy areas will come forward and identify the mechanisms by which it will be achieved.

**28.** In making this recommendation, we share the concerns of the Scottish Parliament's Environment, Climate Change and Land Reform Committee regarding the lack of information relating to common frameworks provided with the UK Bill.<sup>24</sup>

**29.** Comprehensive information about how the planned frameworks relate to the powers in the UK Bill is important for two reasons. First, because of the First Minister's acknowledgement that a change to a common framework may be difficult (see paragraph 24); second, because the common framework will partly determine how the Welsh Government will be able to use the powers it is granted in the UK Bill. This is an important matter for us to consider as part of our scrutiny.

**30.** The uncertainty around the nature of the UK Bill is the context for the rest of our approach to reporting the outcome of our scrutiny.

### An appropriate legislative vehicle

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**31.** We note that the LCM indicates the Welsh Government's view that "there is no time within the Assembly's timetable" to bring forward a Welsh Bill that would deliver the relevant provisions that are included in the UK Bill.<sup>25</sup> This position was re-affirmed by the Minister telling us that the UK Bill is being used because "at present there are no immediate plans for a Welsh Environment Bill."<sup>26</sup>

**32.** We asked the Minister about the extent to which the provisions in the UK Bill are 'Brexit' related and time critical. The Minister replied by saying:

"With the loss of section 2(2) of the European Communities Act, which enables us to update secondary legislation where appropriate we have

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<sup>24</sup> Environment, Climate Change and Land Reform Committee, Legislative Consent Memorandum – UK Environment Bill, 19 June 2020, SP Paper 765, pages 10 and 11.

<sup>25</sup> LCM, paragraph 79

<sup>26</sup> Response to Q23 (see Annex)

taken enabling powers to update the legislation in some areas such as hazardous waste, water quality powers (priority substances) and REACH.”<sup>27</sup>

**33.** While the Minister then provided some useful information, particularly in relation to the REACH provisions and said that the Welsh Government would like to introduce all changes as soon as possible, we believe a more specific answer was required.<sup>28</sup>

**34.** We consider that the Minister's overall response to which clauses of the UK Bill are time critical as a consequence of the UK's exit from the European Union (EU),<sup>29</sup> lacks clarity and does not provide the level of detailed information we require. In reaching this view, we note that section 2(2) remains in force during the Brexit transition period, currently scheduled to end on 31 December 2020. In our view, the Minister should be explicit about whether the loss of these section 2(2) powers at the end of the transition period means that they must be replicated either in a Welsh or UK Bill as matter of urgency, and that accordingly, existing powers cannot be relied upon to perform the same functions.

**35.** If there are provisions for Wales in the UK Bill that are not related to Brexit, that suggests that they are nevertheless a priority, particularly when the use of the UK Bill was considered a “timely opportunity” for some provisions.<sup>30</sup> However, if there are such non-Brexit related matters which, in the view of the Welsh Government, need to be addressed urgently, it remains unclear why they were not prioritised within a Bill included as part of the Welsh Government's own legislative programme,

**36.** The Welsh Government acknowledges that it has contributed resources to working with the UK Government on preparing instructions for relevant provisions within the UK Bill, although it also notes that “in most cases, Welsh Legislative Counsel were not involved in the drafting”.<sup>31</sup> Given these comments and our own in paragraphs 34 and 35, we do not find the Minister's response to question 24 to be persuasive:

**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**

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<sup>27</sup> Response to Q25 (see Annex)

<sup>28</sup> Response to Q25 (see Annex)

<sup>29</sup> Response to Q25 (see Annex)

<sup>30</sup> LCM, paragraphs 80 and 85

<sup>31</sup> Response to Q4 (see Annex)

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?

The Welsh Government has finite resources for developing its legislative programme, particularly in respect of those specialists who draft and translate legislation. It makes decisions on the content of the programme based on the available resources and capacity to deliver, which in my portfolio has been significantly affected by the work required to respond to EU exit. Developing legislation takes time to ensure it is fit for purpose. In addition a Bill has to be introduced by a certain point in a Senedd term to ensure the Senedd has sufficient time for its scrutiny and approval before the next Senedd elections, otherwise the Bill falls. These challenges, combined with the necessary and ongoing work on legislation to respond to EU exit and transition, have meant a Welsh Environment Bill has not been possible. The UK Bill has provided us with an alternative opportunity to put legislation in place in some key areas."<sup>32</sup>

**37.** We are also concerned that when we asked about the duration of the provisions in the UK Bill and about the absence of a sunset provision, the Minister responded by saying:

"The enabling powers in the Bill will assist us in delivering current and future Welsh policy. We have used the UK Environment Bill as at present there are no immediate plans for a Welsh Environment Bill."<sup>33</sup>

**38.** Also relevant to our consideration of the most appropriate legislative vehicle for provisions relating to Wales are the clauses in the UK Bill concerning the OEP, which mainly apply to England. While these are issues that may be more relevant to the CCERA Committee's scrutiny of the LCM, there is one issue of interest to us. We note that the Welsh Government is seeking an amendment to the UK Bill in relation to Clause 24(4),<sup>34</sup> and that the LCM notes that this is an outstanding area of concern.<sup>35</sup> Clause 24(4) currently provides a duty for the OEP to consult a devolved environmental governance body where the exercise of its functions may

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<sup>32</sup> Response to Q24 (See Annex)

<sup>33</sup> Response to Q23 (see Annex)

<sup>34</sup> Response to Q3 (see Annex)

<sup>35</sup> LCM, paragraph 82

be relevant to those of such a devolved environmental governance body. An amendment is being sought because the Welsh Government believes that the duty to consult falls short of the need for co-operative arrangements to be in place “to identify and act on complaints which may be cross border in nature or touch on both reserved and devolved matters”.<sup>36</sup>

**39.** Given the existence of clause 24(4), the Welsh Government's preference for this provision to be amended and the proposed use of primary legislation<sup>37</sup> to introduce a Welsh environmental governance body, it emphasises the lack of clarity around why there are “no immediate plans” for a Welsh Environment Bill. We acknowledge that the Welsh Government indicated in July 2019 that an environmental principles and governance Bill would not be taken forward in the final year of its legislative programme,<sup>38</sup> but this does not explain why a Welsh Environmental Bill was not prioritised earlier given the content of the UK Bill.

**40.** We note<sup>39</sup> that the Welsh Government has undertaken its own consultations on environmental policy,<sup>40</sup> as well as joint consultations with other governments.<sup>41</sup> We also note that within those consultation documents there is little detail and clarity about the extent and nature of legislation required to implement the policy being consulted upon, or the appropriate timeframes. These are issues that are relevant not just to scrutiny but for stakeholders as well.

**41.** We acknowledge that there is no requirement within Standing Order 29 to include information about consultation exercises in the LCM. However, given the

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<sup>36</sup> Response to Q3 and Q10 (see Annex)

<sup>37</sup> Welsh Government Consultation Document, Environmental Principles and Governance in Wales Post European Union Exit, March 2019. See also footnote 40.

<sup>38</sup> Welsh Government Press Release, First Minister sets out legislative priorities to create a more equal Wales, 16 July 2019

<sup>39</sup> Response to Q6 (see Annex)

<sup>40</sup> Welsh Government Consultation Document, A Water Strategy for Wales, April 2014; Welsh Government Consultation Document, Beyond Recycling: A strategy to make the circular economy in Wales a reality, December 2019; Welsh Government, The Clean Air Plan for Wales Healthy Air, Healthy Wales, December 2019;

<sup>41</sup> Welsh Government joint consultation with Defra, the Scottish Government and the Department for Agriculture, Environment and Rural Affairs in Northern Ireland, Consultation on reforming the UK packaging producer responsibility system, February 2019; Welsh Government joint call for evidence with Defra, Part I: A consultation on proposals to enhance enforcement powers at regulated facilities Part II: A call for evidence on other measures to tackle waste crime and entrenched poor performance in the waste management industry, February 2015; Welsh Government joint consultation with Defra, A consultation on proposals to tackle crime and poor performance in the waste sector introduce a new fixed penalty for the waste duty of care, January 2018

breadth and extensive nature of the powers being sought, it would have been beneficial if the LCM had explained how the consultation exercises related to clauses in the UK Bill, thereby providing a clearer rationale and justification for why consent is being sought for their inclusion. In making this observation, we note that for a Welsh Environment Bill, Standing Order 26 would have required information about consultation exercises relevant to that Bill to be included in the Explanatory Memorandum accompanying it on introduction.

**42.** In addition, given that some of the Welsh Government consultations have finished after the introduction of the UK Bill,<sup>42</sup> it is unclear how the Welsh Government will take account of consultation responses in delivering any legislative change required to the UK Bill.

**43.** On the basis of the information before us, the case made for using a UK Bill to deliver Welsh environmental policy is weak and ill-defined.

**44.** Moreover, when considered against our comments in reports relating to the LCMs for the Agriculture and Fisheries Bills,<sup>43</sup> it strikes us that a single Welsh Government Brexit influenced Bill covering environmental, agricultural and fisheries policy issues could potentially have been a sensible approach. It could have been a better vehicle for delivering the provisions that the Minister believes to be necessary.

**45.** In our view, considering how policies could have been delivered within a Welsh legislative context, and prioritising such an approach in light of the result of the 2016 EU referendum, would have been in line with the principles of devolution, provided a greater voice for the Senedd in seeking to influence legislation and potentially minimised the executive dominance that is being enshrined within UK Bills.

**46.** While such a multi-topic Bill<sup>44</sup> may not have been ideal and should not as a rule be considered as a default starting point for government legislation, this approach would have been preferable to the situation that has arisen with so many UK Bills being used to legislate in devolved areas.

**47.** In reaching this view, we note the comments of the Counsel General in a written statement earlier this year regarding such Bills being inconsistent with the

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<sup>42</sup> Welsh Government Consultation Document, Beyond Recycling: A strategy to make the circular economy in Wales a reality. December 2019; Welsh Government, The Clean Air Plan for Wales Healthy Air, Healthy Wales, December 2019

<sup>43</sup> The reports are available on our [webpages](#)

<sup>44</sup> Often called "omnibus" or "portmanteau" bills.

views of Members of the Senedd. We acknowledge this point. However, we maintain that on this occasion the use of such a Bill would have been preferable to including the range of clauses within numerous UK Bills that deny Members of the Senedd the full opportunity to scrutinise them and reduce accessibility to Welsh law. As such, we would have viewed it as a one-off approach to accommodate the legislative challenge of the UK's exit from the EU.

**48.** We recognise the pressures placed on the Welsh Government following the UK's decision to leave the EU. However, as we indicated in our report on the Agriculture Bill 2017-19,<sup>45</sup> a Welsh Government statement in July 2018<sup>46</sup> indicated that flexibility had been built into its legislative programme to accommodate Brexit-related legislation, including Bills. At the time we said a Welsh Agriculture Bill would have been a prime candidate to take advantage of that flexibility. However, we believe that argument could be applied equally to a Bill covering environmental, fisheries and agricultural policy.

**49.** We acknowledge that it is easy to come to such a view with hindsight, and potentially without having fully understood the implications for the Welsh Government. Yet we believe it a fair suggestion to make, particularly as we have been faced with such a lack of clarity and uncertainty in terms of the Welsh Government's approach to this and other UK Bills that legislate in devolved areas.

**50.** We raise these points because it is important for the Welsh Government to recognise that seeking to permit the UK Parliament to legislate in devolved areas should not be taken lightly and that it should explore all avenues for using devolved powers thoroughly in the interests of the Welsh democratic process.

**Recommendation 3.** The Minister should set out clearly, and with an appropriate explanation, which clauses of the UK Bill, as they apply to Wales:

- are necessary to meet legal obligations arising from the UK's departure from the EU;
- are related to the UK's departure from the EU but are not necessary to meet legal obligations.

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<sup>45</sup> Constitutional and Legislative Affairs Committee, The Welsh Government's Legislative Consent Memorandum on the Agriculture Bill, January 2019

<sup>46</sup> Welsh Government, Statement by the First Minister: The Legislative Programme, RoP, 17 July 2018



**Recommendation 4.** The Minister should set out clearly which clauses of the UK Bill as they apply to Wales are not covered by recommendation 3.

**Recommendation 5.** The Minister should explain why it was necessary to include the clauses identified in recommendation 4 within the UK Bill, rather than within a Welsh Bill in the Sixth Senedd.

**Recommendation 6.** The Minister should explain why an Environmental Bill was not prioritised in any of the Welsh Government's annual legislative programmes to cover:

- environmental governance, including an appropriate body for Wales, arising from the UK's departure from the EU;
- other non-Brexit related environmental policies that now appear within the UK Bill.

**Recommendation 7.** The Minister should confirm that it remains the Welsh Government's policy to create a Welsh environmental governance body using primary legislation.

**Recommendation 8.** The Minister should confirm that primary legislation to create a Welsh environmental governance body will include standalone sections, in line with its commitment to consolidated legislation, and will not amend the UK Bill as a means of delivering the Welsh Government's policy objectives.

**Recommendation 9.** The Minister should explain how she will seek amendments to the UK Bill to reflect the outcome of relevant Welsh Government consultation exercises that have closed after the UK Bill's introduction to the UK Parliament.

**Recommendation 10.** The Minister should seek an amendment to the UK Bill such that the clauses covered by recommendation 4 are subject to a sunset clause requiring them to expire after a specified date.

## Disputes about legislative competence

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**51.** As we indicate in paragraph 10, there is disagreement between the Welsh and UK Government's as to whether clauses 19 and 43 of the UK Bill will require the Senedd's consent. We note that the Welsh Government considers that consent is required and the reasons why it holds that view.<sup>47</sup>

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<sup>47</sup> LCM, paragraphs 7-12 and response to Q8 and Q9 (see Annex)

**52.** Part 8 of the UK Bill concerns clause 125 about the amendment of REACH legislation, as well as clauses 126 to 133 relating to “general provisions”.

**53.** While there is agreement that clause 125 requires consent, the UK Government do not consider that the Senedd's consent is required for the general provisions. The Welsh Government disagrees and states in the LCM:

“The general provisions of the Bill will require consent in so far as they relate to the provisions of the Bill which are themselves ‘relevant provision’ for SO29 purposes.”<sup>48</sup>

**54.** We asked the Minister to specify which of the general provisions the Welsh Government consider require Senedd consent. Her response lists a number of clauses in relation to which the Welsh Government consider the general provisions of the UK Bill require consent.<sup>49</sup> We are unclear why consent is needed for general provisions in so far as they pertain to the following provisions of the UK Bill:

- Clause 21 in relation to Schedule 1 – The Office for Environmental Protection
- Clause 45 in relation to Schedule 2 – Improving the natural environment: Northern Ireland
- Clause 46 in relation to Schedule 3 – The Office for Environmental Protection: Northern Ireland
- Clause 78 in relation to Schedule 13 – Modifying water and sewerage undertakers' appointments: procedure for appeals
- Clause 90 in relation to Schedule 14 – Biodiversity gain as condition of planning permission
- Clause 100 in relation to Schedule 15 – Controlling the felling of trees in England
- Clause 115 in relation to Schedule 16 – Discharge or modification of obligations under conservation

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<sup>48</sup> LCM, paragraph 75

<sup>49</sup> Response to Q11 (see Annex)

- Clause 122 in relation to Schedule 17 – Application of Part 7 to Crown land
- Clause 124 in relation to Schedule 18 – Consequential amendments relating to Part 7

**55.** The substantive clauses referred to in paragraph 54 are not listed in the LCM as requiring Senedd consent and according to Annex A of the explanatory notes, the UK Government do not consider that they require consent.

**56.** The response from the Minister is in our view confusing given the lack of information about why consent is required. For example, we are unclear as to why consent would be required from the Senedd in relation to clause 100, which relates to tree felling in England. Additionally, there are a number of substantive clauses that both Governments agree require Senedd consent, but these are not listed in the Minister's response to this question.

**Recommendation 11.** The Minister should explain:

- why consent is required for clauses 21, 45, 46, 78, 90, 100, 115, 122 and 124 of the UK Bill in so far as they relate to the general provisions in Part 8 of the UK Bill;
- why information included in her letter of 14 May 2020 in response to Q11 is not included in the LCM with appropriate commentary and in accordance with Standing Order 29;
- why her response to Q11 does not refer to clauses 55, 57, 60, 61, 65, 66, 67, 75-77, 79, 81, 82, 85 and 87-89.

#### Delegated powers in the UK Bill – general observations

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**57.** We note the Minister's comment that the enabling powers in the UK Bill will assist the Welsh Government "in delivering current and future Welsh policy."<sup>50</sup> We also note that in response to our question on why the powers are necessary, the Minister said:

"The powers are required primarily to ensure policies will continue to function in the long term, by providing some flexibility to accommodate future changes in evidence, approaches, policymaking,

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<sup>50</sup> Response to Q23 (Annex)

industries or technologies which are not necessarily predictable at this time.”<sup>51</sup>

**58.** The Minister confirmed that in all cases the Welsh Government requested the regulation-making powers within the UK Bill. Given the Minister's comment that there are “no immediate plans” for a Welsh Environment Bill,<sup>52</sup> it is disappointing to see the Welsh Government advocate the use of a UK Bill to provide the Welsh Ministers with broad regulation-making powers to enable environmental policies to “continue to function in the long-term”, when the justification for taking them is limited and there is a lack of clarity about the extent to which they arise as a consequence of the UK leaving the EU. We have continually expressed concern at the use of delegated powers to deliver significant policy in the future without a clear plan for how the powers will be used. This concern is heightened where the powers are delegated to the Welsh Ministers by the UK Parliament through a UK Government Bill.

**59.** We note the Minister's explanation regarding why she believes the powers are necessary and the policies she intends to implement using these powers.<sup>53</sup> However, there was little justification for the procedure to be used in respect of each power, and this information was also not included in the LCM.

**60.** We also note that clause 63 and Schedule 10 relate to enforcement powers and are intended to fill a gap in the Welsh Ministers powers, providing them with powers of direction (which we acknowledge the Minister explains in her response). Powers of direction are also provided to the Welsh Ministers by virtue of clauses 75 and 76 making amendments to the *Water Industry Act 1991*. However, in each case these delegated powers and the procedure attached to them (no procedure) were not included in Annex A of the LCM on delegated powers.

**Recommendation 12.** The Minister should provide information, in either a supplementary document or within any supplementary LCM, justifying why it is appropriate to take each of the delegated powers for the Welsh Ministers contained within the UK Bill, and the choice of procedure for each power.

**Recommendation 13.** The Minister should confirm that she requested the procedure to be used for each delegated power for the Welsh Ministers contained in the UK Bill and that in each case her request was granted.

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<sup>51</sup> Response to Q12 (Annex)

<sup>52</sup> Response to Q23 (Annex)

<sup>53</sup> Responses to Q12 and Q13 (see Annex)

**61.** In addition to the general points above, there are some specific issues that we wish to highlight and on which we wish to provide some more detailed observations.

#### Clauses in Part 3 relating to producer responsibility, resource efficiency, managing waste and waste enforcement and regulation

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**62.** We note and recognise that producer responsibility obligations in clauses 47-51 have historically involved co-operation and collaboration between UK and devolved governments. As a result, we recognise the value of a concurrent approach to legislating in this policy area.<sup>54</sup>

**63.** However, we note that clause 48 together with Schedule 5 (relating to producer responsibility for disposal costs) “facilitates the making of separate provision about enforcement in Wales” and “will also provide flexibility to make different provision in relation to particular types of products, for example by specifying different bodies as enforcement authorities in different cases”. In addition, we note that clauses 49 and 50 together with Schedules 6 and 7 (relating to resource efficiency information and requirements) and clause 51 and Schedule 8 (relating to deposit schemes) allow the Welsh Government to develop policy proposals for, and make, separate regulations for various product groups.<sup>55</sup>

**64.** We recognise that there may be benefits to a joined up approach on Deposit Return Schemes (DRS) and extended producer responsibility given the need to operate cross border.

**65.** Of specific note, clause 52 and Schedule 9, relating to charges for single use plastic items, allow the Welsh Ministers, to make regulations which reflects Welsh priorities,<sup>56</sup> such as in relation to disposable coffee cups and food containers.<sup>57</sup> These powers are will only be used “where the evidence shows charging is the most effective policy mechanism to reduce consumption in favour of readily available and more sustainable alternatives.”<sup>58</sup>

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<sup>54</sup> Response to Q20 (see Annex)

<sup>55</sup> Response to Q12 (see Annex)

<sup>56</sup> Response to Q12 (see Annex)

<sup>57</sup> Response to Q13 (see Annex)

<sup>58</sup> Response to Q13 (see Annex)

**66.** However, the timing of the Welsh Government's consultation on single-use plastics just before the UK Bill was introduced,<sup>59</sup> seems counter-intuitive. Equally, it is unclear how the pursuit of single use plastic powers in the UK Bill sits within a more ambitious approach to recycling policy that was outlined by the Welsh Government in March 2020.<sup>60</sup>

**67.** The regulation-making power for the Welsh Ministers contained in clause 52 of, and Schedule 9 to, the UK Bill is a clear example of why we are questioning whether the relevant powers could not have been included within a Welsh Environmental Bill. Given the Minister's view that they would only be used once clear evidence has emerged of the need to charge in order to change consumer behaviour or that they may be superseded by a Welsh recycling tax,<sup>61</sup> such powers could be exercised in the event of a Bill being passed early in the Sixth Senedd related to the Welsh Government's wider ambitions for recycling.

**Recommendation 14.** The Minister should clarify why it was necessary to include regulation-making powers in the UK Bill under clause 52 and Schedule 9 rather than in a future Welsh Bill covering recycling policy as part of its wider environmental and sustainability agenda.

**68.** It would therefore appear that, within the powers being sought in areas of producer responsibility and resource efficiency, there is considerable scope for the Welsh Ministers to develop Wales-only solutions. However, it is not entirely clear whether the Welsh Government intends to do so, or the extent to which it intends to develop policies with other administrations, particularly as the circular economy consultation exercise has only recently concluded.<sup>62</sup>

**69.** In relation to clause 57 (Hazardous waste: England and Wales), we note that the Welsh Ministers have discretion to decide when the provision comes into force and "the amendments being made by the Bill would enable the Welsh

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<sup>59</sup> The Welsh Government's Beyond Recycling: A strategy to make the circular economy in Wales a reality consultation document was issued in December 2019 and requested responses by 24 April 2020, while the UK Bill was introduced on 30 January 2020

<sup>60</sup> Welsh Government, [Single use plastics to be banned in Wales](#), 18 March 2020

<sup>61</sup> [Letter from Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs to Mike Hedges MS, Chair of Climate Change, Environment and Rural Affairs Committee](#), 14 May 2020

<sup>62</sup> The Welsh Government's, Beyond Recycling: A strategy to make the circular economy in Wales a reality, consultation document was issued in December 2019 and requested responses by 24 April 2020



Ministers to continue to be able to amend or replace regulations which govern how hazardous waste is managed, after the UK has left the EU.”<sup>63</sup>

**70.** We are aware that much of the hazardous waste regime is currently controlled through secondary legislation made under section 2(2) of the European Communities Act 1972.

**71.** We note that clause 57 introduces new section 62ZA into the *Environmental Protection Act 1990*, which contains detailed information about what provision may be made by the Welsh Ministers in regulations. We also note that these powers were requested by the Welsh Government.<sup>64</sup> As a result, it would have been helpful to have greater clarity and justification around why the powers are being taken now and through the UK Bill, particularly as regards the extent to which they are necessary given that section 2(2) of the *1972 European Communities Act* will be repealed after the implementation period.

**72.** As regards clause 65 relating to littering enforcement, while we note that existing regulations dealing with littering operate on a Wales and England basis, we also note that there are some differences in how the Welsh Government implements its policies, “which warrants Welsh Ministers having delegated powers.”<sup>65</sup> We also note that the Welsh Ministers are provided with a power to issue statutory guidance.<sup>66</sup>

**73.** In relation to some of the powers just described in this section there is clearly uncertainty about how quickly the Welsh Ministers intend to use them. This applies equally to other powers in the UK Bill:

- clause 61 provides regulation-making powers relating to charging schemes for producer responsibility schemes powers and the Minister explains that “the exact timetabling of bringing these powers into force has not yet been finalised”;
- for clause 66, the Minister notes that the powers are being taken because section 2(2) of the *European Communities Act 1972* will no longer be in force from the end of the Brexit transition period. The Minister advises that taking the powers in relation to fixed penalty notices enables them to be kept under review, adding that the Welsh

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<sup>63</sup> Response to Q12 (see Annex)

<sup>64</sup> Response to Q12 (see Annex)

<sup>65</sup> Responses to Q12 and Q13 (see Annex)

<sup>66</sup> Response to Q13 (see Annex)

Ministers have discretion when to commence the regulation-making powers but “will not be making regulations at this time”;

- for clause 67 in relation to the regulation of polluting activities, the power allows the Welsh Ministers to set out in regulations which conditions relating to exempt activities (which do not require a permit) Natural Resources Wales can determine, instead of those conditions having to be set out in regulations. The Minister notes that timetabling for making regulations under this clause has not been finalised;
- for clause 87 a power is provided for the Welsh Ministers to make regulations relating to the valuation of agricultural land in drainage districts, including a new duty to consult, while clause 88 provides regulating-making powers in relation to the valuation of agricultural land in drainage districts. The Minister notes that currently there is “no timescale for new regulations to be in place”.<sup>67</sup>

**Recommendation 15.** The Minister should explain why she is taking regulation-making powers in the UK Bill without a clear indication of when she intends to use them and therefore why they could not be included in a Welsh Environmental Bill within the Sixth Senedd.

**74.** As indicated above, clause 66 concerns fixed penalty notices. It provides for the negative procedure to apply to regulations amending the level of fixed penalty notices. The levels are currently set out in the *Environmental Protection Act 1990*. As such, the powers in clause 66 constitute a Henry VIII power. The Minister told us that:

“Negative procedure is considered appropriate as the fixed penalty notice scheme is already in place and this power allows only amendment to the amount of penalty to be charged. Welsh Ministers are required to act in accordance with public law principles and, accordingly, any increase in the penalty amount will need to be reasonable and fair. The approach is consistent with similar powers in section 34A(10), 46B(5), 47ZB(6) and section 97A(3) EPA 1990, which are subject to the same procedure.”<sup>68</sup>

**75.** Given that fixed penalty notice amounts are set out on the face of the *Environmental Protection Act 1990* itself rather than in secondary legislation, we

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<sup>67</sup> Responses to Q12 and Q13 (see Annex)

<sup>68</sup> Response to Q14 (see Annex)

believe that the affirmative procedure should apply to regulation-making powers that can change those fixed penalty notice amounts.

**Recommendation 16.** The Minister should seek an amendment to the UK Bill applying the affirmative procedure to the making of regulations under section 33ZB(10A) and 34ZB(8A) of the *Environmental Protection Act 1990*, as inserted by clause 66 of the UK Bill.

#### Clause 70 in Part 4 relating to smoke control areas

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**76.** Clause 70 and Part 3 of Schedule 12 to the UK Bill are concerned with smoke control areas and amend the *Clean Air Act 1993*. The Minister explained:

“We intend to move from the use of subordinate legislation to the creation of a duty on Welsh Ministers to publish lists for recording authorised fuels and exempted classes of fireplace ... The move away from subordinate legislation to published lists will bring Wales in line with the position in England and Scotland.”<sup>69</sup>

**77.** The Minister added:

“The rationale for using the UK Environment Bill is to bring about benefits for both manufacturers and consumers as soon as possible.”<sup>70</sup>

**78.** We note that the Welsh Government's consultation document, *The Clean Air Plan for Wales, Healthy Air, Healthy Wales*, which launched in December 2019 and closed in March 2020, sought views on a Clean Air Act for Wales. We note that the consultation document states that:

“We propose first to amend existing primary legislation to move from updating these lists through Statutory Instrument to online published lists.”<sup>71</sup>

**79.** Question 6 of the consultation document sought stakeholders views on whether they agreed with the proposals for tackling air pollution from domestic combustion (although we acknowledge that domestic combustion proposals in

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<sup>69</sup> Response to Q6 (see Annex)

<sup>70</sup> Response to Q1 (see Annex)

<sup>71</sup> Welsh Government consultation document, *The Clean Air Plan for Wales Healthy Air, Healthy Wales*, December 2019, page 57

the consultation are broader than just updating the lists of permitted fuels and fireplaces in smoke control areas).<sup>72</sup>

**80.** Our concern is not with the merits or otherwise of the change in policy approach, rather it is the means by which it is being achieved. Given the possibility of a Clean Air Bill being brought forward in the Sixth Senedd, it is unclear what makes the change in approach so urgent that a UK Bill is needed to effect this change. It is also unclear why the consultation document was not explicit in explaining the legislative vehicle being used. In addition, and as a point of principle, given that the Senedd has been scrutinising regulations on smoke control areas since 2000 and most recently in 2019, it would seem appropriate that a decision to use lists would be matter for Members of the Senedd to make rather than Members of the UK Parliament.

**Recommendation 17.** The Minister should explain:

- why it is so important to include clause 70 as it applies to Wales in the UK Bill, rather than in the Clean Air Bill to be introduced in the Sixth Senedd;
- without these powers, when the Welsh Ministers would next be due to amend regulations relating to smoke control areas using their powers under the *Clean Air Act 1993*.

#### Clauses in Part 5 relating to water

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**81.** Clause 75(2) amends the *Water Industry Act 1991* to omit certain procedural requirements regarding the preparation and review of Water Resources Management Plans, while clause 75(3) removes sections 37B and 37C of the 1991 Act regarding publication of plans and the provision of information. The provisions are replaced with a power for the Welsh Ministers to set out the requirements in regulations. We asked why it is appropriate to move this requirement from primary to secondary legislation. In our view the Minister's response<sup>73</sup> lacks clarity and an appropriate level of detail, particularly as the power contained in the UK Bill was requested by the Minister.<sup>74</sup>

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<sup>72</sup> Welsh Government consultation document, *The Clean Air Plan for Wales Healthy Air, Healthy Wales*, December 2019, page 59

<sup>73</sup> Response to Q15 (see Annex)

<sup>74</sup> Response to Q12 (see Annex)

**Recommendation 18.** The Minister should explain clearly why it is more appropriate to replace existing sections in the *Water Industry Act 1991* with regulation-making powers under that Act.

**82.** Clause 76 concerning drainage and sewerage plans 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, by virtue of section 94C(8), can confer a power on the Welsh Ministers to make provision by directions. We note the Minister's explanation for the use of the negative procedure for making regulations but note that she did not refer to the powers of direction that the regulations are permitted to include and which would be subject to no procedure.<sup>75</sup>

**83.** This clause highlights a concern regarding the use of a UK Bill. Members of the Senedd cannot use probing amendments to seek clarity on points such as these or to table amendments to address concerns.

**Recommendation 19.** The Minister should explain the rationale for taking the powers of direction in proposed sections 39G(1) and 94C(8) of the *Water Industry Act 1991* (inserted by clauses 75 and 76 of the UK Bill) and explain how they will be used.

**84.** We note that the explanatory notes to clause 81 (Water quality: powers of Secretary of State) of the UK Bill state:

"Subsection (4) establishes that the Secretary of State can only exercise the powers in this section to make provision that could be made by the Welsh Ministers or Northern Ireland Department of Agriculture, Environment and Rural Affairs under their own powers in clauses 82 and 83 respectively with their consent.

Subsection (5) establishes that the Secretary of State cannot exercise the powers in this section to make provisions which would fall within the Scottish Parliament's devolved competency, given effect by powers under an Act of that Parliament, with the exception of parts of the cross border river basin districts lying in Scotland, where the Secretary of State could exercise the powers to make provisions but only with Scottish Ministers' consent."<sup>76</sup>

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<sup>75</sup> Response to Q18 (see Annex)

<sup>76</sup> Environment Bill, Explanatory Notes, January 2020, paragraphs 778-779

**85.** We asked the Minister to explain why the Secretary of State's powers are more limited in Scotland than in Wales and the discussions she has had with the UK Government about this matter. In response the Minister said:

"There have been no discussions with the UK Government on this matter."<sup>77</sup>

**86.** We do not consider this to be a satisfactory response, particularly given that clause 82 relates to the powers of the Welsh Ministers in relation to water quality and Welsh Government officials have clearly been working closely with their counterparts in the UK Government on this clause. Furthermore, clause 81 is a concurrent plus power, exercisable by the Secretary of State in a devolved area with the consent of the Welsh Ministers.

**Recommendation 20.** The Minister should explain:

- why she has not discussed clause 81 with UK Ministers given that it is a concurrent plus power that impacts on Wales; and
- why the Secretary of State's powers under this clause are more limited in Scotland than in Wales.

### Concurrent plus powers

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**87.** The UK Bill includes a number of 'concurrent plus' powers (including in clauses 47 to 51 and associated Schedules 4 to 8 relating to producer responsibility, clause 81 relating to water quality and clause 125 relating to REACH legislation).

**88.** We note the Minister's explanation for the use of concurrent plus powers. We also note that she has secured the Secretary of State's agreement to amend the UK Bill, should this be required to provide a carve-out of paragraph 11, Schedule 7B of *Government of Wales Act 2006* and accordingly to remove the existing restriction on the Senedd's legislative competence. However, we also note that such an amendment would not be required if the matter could be addressed by means of a section 109 Order under the *Government of Wales Act 2006* and the Minister anticipates such an order being used.

**89.** We would welcome the use of a section 109 Order, rather than an amendment to the UK Bill, given the greater role in scrutiny for Members of the Senedd that use of an order provides.

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<sup>77</sup> Response to Q19 (see Annex)



## Standing Order 30C process

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**90.** We asked the Minister whether the Welsh Ministers would formally notify the Senedd when consent is given to UK Ministers making relevant regulations in devolved areas. We welcome the Minister's response that the Welsh Ministers will formally notify the Senedd as per the Standing Order 30C process.<sup>78</sup>

**91.** However, this approach is inconsistent with the Minister's confirmed approach for relevant regulations made by the UK Ministers in devolved areas under other Brexit-related UK Bills. We intend to raise this inconsistency of approach with the Welsh Government.

## Accessibility

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**92.** We asked the Minister, whether she was concerned that including all 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. In response she told us:

"We have considered accessibility of law to be a key consideration in taking powers in this Bill. As much of the legislation being amended operates on, at a minimum, an England and Wales basis using the UK Bill to make these amendments ensure there are not multiple similar amendments to a single provision, making it more accessible for the user.

In light of the Counsel General's programme for codification, we of course will consider at some point in the future how we can make environmental law in Wales more coherent and accessible."<sup>79</sup>

**93.** The Minister also told us:

"In addition, the existing legislative provisions are within a single piece of legislation and to provide continuity and accessibility for users the Bill provides a single source to amend the existing legislation therefore reducing the number of amendments within the source legislation."<sup>80</sup>

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<sup>78</sup> Response to Q22 (see Annex)

<sup>79</sup> Response to Q28 (see Annex)

<sup>80</sup> Response to Q1 (see Annex)

**94.** We note the arguments put forward by the Minister regarding the accessibility of the law. As we indicate earlier, we recognise that legislating following the UK's departure from the EU is challenging.

**95.** However, we re-iterate a point made in our progress report relating to the scrutiny of regulations under the *European Union (Withdrawal) Act 2018*,<sup>81</sup> that justifying England and Wales legislation on grounds of clarity and accessibility lacks credibility and seems a strange approach to advocate particularly in the context of devolution.

**96.** We are not therefore persuaded by the Minister's arguments. As a point of principle, using a UK Bill containing England and Wales provisions to amend existing legislation would be no different in terms of accessibility than amending that same legislation using a Welsh Bill. Indeed, using a Welsh Bill may improve accessibility because a UK Bill is likely to be more complex to navigate in order to determine which provisions apply in Wales.

**97.** We welcome the Minister's comment that the Welsh Government will consider at some point in the future how environmental law in Wales can be made more coherent and accessible.

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<sup>81</sup> Constitutional and Legislative Affairs Committee, *Scrutiny of regulations under the European Union (Withdrawal) Act 2018: Progress report*, February 2019

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# Annex

**Lesley Griffiths AC/AM**  
**Gweinidog yr Amgylchedd, Ynni a Materion Gwledig**  
**Minister for Environment, Energy and Rural Affairs**

Mick Antoniw AM  
Chair  
Legislation, Justice and Constitution Committee



**Llywodraeth Cymru**  
**Welsh Government**

14 May 2020

Dear Mick,

Thank you for your letter of 9 April, regarding the Legislative Consent Memorandum for the Environment Bill. As you will be aware scrutiny of the Bill is currently paused and subsequently a revised reporting date has been agreed for the Committee's report. I am grateful for the Committee's understanding of the impact of the unprecedented circumstances we find ourselves in and for allowing me to submit my responses by correspondence.

I have provided additional information as requested in the attached document.

Regards  
Lesley

**Lesley Griffiths AC/AM**  
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## **Responses to Legislation, Justice and Constitution Committee questions on the Legislative Consent Memorandum for the UK Environment Bill**

### **General**

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

I am unable to comment on the wider Bill as this is a matter for the UK Government. However, in respect of provisions included in the Bill for Welsh Ministers, I can confirm I consider these to be necessary.

The Environment Bill supports the UK's collective obligation to transpose the EU's Circular Economy Package (CEP). In addition to meeting the needs of the CEP provisions, the Bill will also support Wales's ambition to move to a more Circular Economy. It provides the legislative tools to support how we tackle waste crime, littering, improve recycling rates, incentivise resource efficiency and ensure producers pay for the end of life costs of the products and materials placed on the market.

In addition, the existing legislative provisions are within a single piece of legislation and to provide continuity and accessibility for users the Bill provides a single source to amend the existing legislation therefore reducing the number of amendments within the source legislation.

In relation to air quality Clause 70 and Part 2 of Schedule 12, amends Part III of the Clean Air Act 1993, in relation to Wales. The effect of the proposed amendment to the Clean Air Act 1993 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. The rationale for using the UK Environment Bill is to bring about benefits for both manufacturers and consumers as soon as possible. Businesses and manufacturers will benefit as the delay between obtaining a recommendation from the technical experts who recommend products for use and placing products on the market will be reduced. The adoption of published lists will minimise the margin of error when recording and updating the lists of products which can be lawfully used; and a streamlined, more effective process will increase consumer choice as more products enter the market sooner. 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.

The powers for Welsh Ministers in relation to water align with the commitments in the Welsh Government Water Strategy for Wales, including working with water companies, regulators and local authorities to introduce planning for waste water and sewerage management. Our aim is for sewerage and drainage systems to be resilient and well maintained both for present and for future generations, with sufficient capacity to manage the demand placed on them without causing pollution or sewer flooding of people's homes. This will enable us to move towards a preventative approach, another key principle of sustainable management of natural resources.

Land drainage powers are necessary to allow for the revision and update of the methodology of calculating the split of income between special levies and drainage rates. The Bill also makes provision to provide an alternative methodology for calculation of the value of chargeable land (agricultural land and buildings) to avoid the potential distortion of the apportionment calculation.

The powers in respect of REACH are necessary to deliver a functioning chemicals regime. Certain changes which would help UK REACH function more effectively were outside of the scope of the powers within the Withdrawal Act. We are going from a system designed for 28 member states to a single state with four nations. Therefore, some aspects of REACH are impracticable or overly burdensome on businesses. This is likely to require changes to the existing REACH regulations to ensure they are suitable for use on a UK-only scale. In addition, when we lose section 2(2) powers of the European Communities Act 1972, we will be unable to make any changes to REACH enforcement regulations.

Without these powers UK REACH would have to operate in the context of the EU Exit SIs. In this scenario we could quickly face a number of risks and issues, particularly in relation to the deadlines for registration and repeat animal testing. The powers may also be needed to mirror changes to the EU regime which we wish to maintain. REACH covers reserved matters such as workplace health and safety and product standards, as well as devolved areas like public health and the environment. In this respect, measures to restrict a chemical inflicting harm to human health as well as incurring environmental damage would require the same legislative instrument. Therefore, legislating for such powers in the Assembly would be difficult.

## **2. Does the Bill equate to a Common Legislative Framework? Which provisions are necessary to achieve the Common Legislative Framework?**

The Bill does not equate to a common legislative framework and does not establish any common legislative frameworks.

The UK Bill includes provisions for chemicals and extended producer responsibility, which are two areas with identified common frameworks. Whilst the Bill itself does not provide any provision for frameworks where administrations are jointly developing policies or legislation, which may apply across more than one administration, then an agreed common framework may provide an appropriate structure to discuss the policy and legislative development and address any differences of opinion.

## **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?**

The regular Inter-Ministerial Group Meetings on Environment, Food and Rural Affairs include an agenda item on legislation and I have used these meetings to raise issues about the UK Environment Bill.

As a result of these discussions we have secured amendments to the Bill regarding the application of environmental principles to reflect the devolved nature of the environment. As such, Ministers of the Crown making policies in relation to Wales will not be required to have regard to the approach in the UK Bill but to the approach we will introduce in future Welsh legislation.

We have also secured the Secretary of State's agreement to amend the Bill, if required, to include a carve-out of paragraph 11 of Schedule 7B to the Government of Wales Act 2006 in relation to concurrent plus functions. We anticipate that a section 109 Order will be brought forward shortly and that it will address the concurrent functions issue in this Bill. This would mean amendment of the Bill would not be required.

Discussions are continuing about the impact of clause 19 (non regression of environmental protection standards) on devolved competence and the duty on the Office of Environmental Protection (OEP) to consult devolved environmental governance bodies (clause 24(4)).

Clause 24(4) places a duty on the OEP to consult a devolved environmental governance body if it considers a particular exercise of its functions may be relevant to the exercise of a devolved environmental governance function.

It has long been the Welsh Government's view the respective environmental governance bodies in England and Wales will need 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.

Citizens in both countries also need to have ease of access to a complaints process with the onus being on the environmental governance bodies to facilitate rather than citizens having to navigate the reserved/devolved landscape.

The proposed duty to consult falls short of providing for this cooperative approach, as it 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. Accordingly, we are seeking an amendment to the Bill to enable cooperative arrangements.

**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?**

Policy officials and legal services considered and, where appropriate, contributed to policy instructions produced by UK policy officials. Again in most cases, Welsh Legislative Counsel were not involved in the drafting of Welsh provisions in the Bill.

Clause 70 and Part 3 of Schedule 12 to the Bill is concerned with smoke control areas, which amends the Clean Air Act 1993. This provision is the exception as it is a Wales-only clause. This clause was subject to separate instructions prepared by legal services and drafted by Welsh Legislative Counsel.

**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?**

Prior to the pausing of the UK Environment Bill on 19 March, the UK Government had informed us of all of the amendments it proposed to the Bill. This enabled us to consider any potential impacts on Wales. The amendments up to the 19 March, were all technical in nature for example a number of amendments were tabled to amend the name of the National Assembly of Wales to Senedd Cymru. Once the Bill continues its scrutiny through Parliament, we expect the same level of involvement.

I can confirm I will lay a further Supplementary LCM in respect of the Bill if additional amendments are made which require the Senedd's consent.

**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?**

In 2019, the Welsh Government and UK Government jointly consulted on proposals for extended producer responsibility. The Welsh Government is currently consulting on its circular economy strategy, which includes producer responsibility proposals. The consultation states the Welsh Government will “work with other governments in the UK in developing legislation for an Extended Producer Responsibility (EPR) scheme...”

The 2019 consultation on a Circular Economy<sup>1</sup>, *Beyond Recycling*, sets out the Welsh Government’s intention for a mandatory electronic tracking system to be introduced to provide annual information on industrial and commercial waste produced in Wales.

Work continues on a joint basis with England and Northern Ireland to develop a Deposit Return Scheme. This work is currently on going with preparations being made for a second consultation on the detailed design and preferred workings of the scheme.

In 2016 the Welsh Government and Defra held a Call for Evidence on waste crime (<https://gov.wales/proposals-amend-existing-powers-tackle-waste-crime-and-poor-performing-sites-waste-management>). Following the call for evidence, the WG committed to developing measures to tackle waste crime, to help improve competence in the waste sector, review regulatory regimes which were susceptible to abuse such as the waste permitting exemptions and to create a level playing field for industry.

Since 2016 a number of Statutory Instruments have been introduced to tackle the issues identified and a subsequent consultation took place in January 2018 (<https://gov.wales/reducing-crime-sites-handling-waste-and-introducing-fixed-penalties-waste-duty-care>). These consultations and discussion with the Waste Regulator generated a number of new ideas and proposals to tackle illegal waste activity, some of which are being worked on, for example improvements to operator competence and a requirement to have financial provision for non-landfill sites. However, in some areas of waste crime it has been identified strengthened powers would help maximise the potential benefits and these are now proposed in the UK Bill. Some of these proposals have also been consulted on separately for example in our 2019 consultation on a Circular Economy, *Beyond Recycling*, we set out the intention to consider a mandatory electronic tracking system, and in the 2017 the Environment, Animal Health and Welfare Bill consultation we included proposals to amend the Powers of Entry in section 108 of the Environment act 1995, both of which are now proposed in the UK Bill.

The provisions in the Bill for single use plastics were shaped by wider concerns about the impacts of plastic in the environment. This was driven by consultations and evidence collected at EU level. Our consultation, *Beyond Recycling: A strategy to make the circular economy in Wales a reality* will help to shape the way the Welsh Government will tackle these challenges.

On the UK wide plastic packaging tax, the latest consultation round comes to a close in August and we are encouraging views and evidence from key Welsh plastics industry stakeholders. With regards to proposals on litter and single use plastics, consultation will be undertaken prior to the introduction of regulations.



Clause 70 and Part 3 of Schedule 12 to the Bill are concerned with smoke control areas and amend the Clean Air Act 1993. We intend to move from the use of subordinate legislation to the creation of a duty on Welsh Ministers to publish lists for recording authorised fuels and exempted classes of fireplace. This will enable an easier, more effective way of identifying which fuels and classes of fireplace may be lawfully used in Wales' Smoke Control Areas. We are also ensuring manufacturers can sell their products without hindrance. We did not consult stakeholders or the wider public on this provision as it does not change policy (rather it improves the operation of the existing smoke control regime in Wales). The move away from subordinate legislation to published lists will bring Wales in line with the position in England and Scotland. In the Clean Air Plan, where we outlined and sought views on the work we propose to undertake in relation to domestic burning (such as the regulatory and non-regulatory actions listed in the consultation), we referred to existing work which was being undertaken through the UK Environment Bill to exemplify actions taken to date.

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 and to modernise the regulation of water and sewerage companies to make it more flexible and transparent.

The 21<sup>st</sup> Century Drainage Programme was set up by Water UK (a national body consisting of water and sewage undertakers across the UK and Ireland), to consider how to ensure water company planning, investment, delivery and regulatory policy relating to the design of the UK's sewerage infrastructure can be improved and updated to meet the needs of current and future generations.

It undertook research and developed tools to better understand the current and long term issues facing the drainage sector. The aim of the Programme was to understand the current and long term requirements of our drainage networks and to develop an evidence based, transparent and collaborative planning framework to ensure the provision of resilient and affordable drainage services. It adopted a partnership-based approach, working with water companies, regulators, local authorities, and NGOs. Welsh Government and Natural Resources Wales are members of the Programme Steering Group.

The programme recommended putting planning for drainage and wastewater services on a statutory footing, following a similar approach already in place for water resources planning. The approach taken by the project, and the proposals strongly aligned with commitments in the Welsh Government Water Strategy for Wales, including the following;

- We will work with water companies, regulators and local authorities to introduce planning for waste water and sewerage management. Long term collaborative planning for wastewater and sewerage management is critical to address urban flood risk and deliver Water Framework Directive and Urban Waste Water Treatment Directive outcomes.
- Our aim is for sewerage and drainage systems to be resilient and well maintained, with sufficient capacity to manage the demand placed on them without causing pollution or sewer flooding of people's homes. This will enable us to move towards a preventative approach, another key principle of sustainable management of natural resources.
- The water company planning and regulatory framework for water and sewerage should include:
  - Embedding and aligning Water Company planning with our National natural resource policy and relevant area-based natural resource planning processes to

- ensure planning for water services both informs and takes account of our priorities for natural resources management.
- Collaborative catchment management plans and investment.
- Resilience measures, such as climate change projections, population growth and new development.
- A presumption in favour of sustainable solutions, and evidence of their use in preference to expanding or renewing existing infrastructure capacity.
- A strategy for engaging with stakeholders.
- Evidence sustainable waste water and treatment solutions have been considered, strong justification where they are not used.
- Robust, up to date and credible evidence to demonstrate compliance with our mandatory domestic and European obligations.

The Water Strategy was extensively consulted on and laid before the National Assembly. Putting Drainage and Waste water Management Plans (DWMPs) on a statutory basis can ensure other planning processes have regard to the DWMP, and require the relevant stakeholders to engage with and share information with the undertakers for the purposes of preparing DWMPs and Ofwat taking them into account as part of the price review process and the development of the regulatory framework of the industry. It can ensure undertakers keep to their commitment to prepare and consult on DWMPs, enable the Welsh Government to ensure they align with Welsh Government policies and priorities, and provide a clear and transparent process and timetable for the plans. It can also give Natural Resources Wales a clear role to participate in the engagement of the development of the plans, to provide technical guidance to the undertakers and advise the Welsh Government on the quality and robustness of the plans. Without putting them on a statutory footing there is a risk NRW may not allocate or be provided with the resources to give the DWMP's a similar level of engagement as they do Water Resource Management Plans.

The Bill gives the Welsh Ministers powers to make regulations in respect of the content and procedures to be followed on the preparation and publication of the DWMP's. Before using the powers the Welsh Ministers would consult with stakeholders on proposed regulations.

In respect of land drainage, Clause 87 introduces a consultation provision which places a duty on Welsh Ministers to consult appropriate parties to ensure the mechanism for valuation is correct when appraising levies and drainage rates.

## **7. How does the Bill affect existing international obligations?**

I am unable to comment on the wider Bill as this is a matter for the UK Government. However, in respect of the provisions included in the Bill for Welsh Ministers, a number of will contribute to our general international obligations in relation to, for example, the Paris Agreement on climate change through the impact moving to a more circular economy has on decarbonisation. It will also contribute to the UN Sustainable Development Goals, particularly goal 12 Responsible Consumption and Production.

Improved resource efficiency helps us deliver our international commitments to the Sustainable Development Goals and sustainably use of our natural resources as under the Convention on Biological Diversity

Charges for single use plastics will contribute to the Welsh Government's international obligations relating to reducing marine litter, of which plastic is the largest material. It is the high levels of plastic in the marine environment, and the potential environmental impacts this is having, which is driving action on plastic at an international level. The UK Marine Strategy is an overarching framework covering several marine components including marine

litter. It is the UK and devolved administrations obligation to place measures and set targets in order to achieve 'Good Environmental Status'. The programme of measures is due to be reviewed in 2021 and will allow the opportunity for UK Government and devolved administrations to put in place necessary measures and reduce the amount of marine litter in our seas.

### **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?**

My determination of the requirement for consent in relation to clause 19 (and by association clause 43) is based on our assessment of the purpose of this clause. In my view, the purpose of this clause is environmental protection, a devolved subject matter. Parliamentary process is the means of delivering protection against non regression, not the purpose in itself.

It is doubtful the Senedd could replicate such a provision requiring the Minister of the Crown to carry out certain Parliamentary actions. However, an argument could be made for the Senedd to legislate for Wales to provide 'substantially the same effect' as clause 19. For example, requiring a Minister of the Crown to lay a similar statement before the Senedd when proposing to legislate in relation to Wales.

Unlike the rest of the Bill, 'environmental law' for the purposes of this clause includes devolved legislative provision. The effect of this is the above requirements apply equally to UK Bills involving 'environmental law' applying in Wales, in the same way as England.

**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?**

Discussions have continued on these clauses, but have slowed during the pausing of the Bill. We have continued to press the UK Government to recognise the need for Welsh Ministers to be consulted before such a statement is made.

I believe we can reach some form of agreement in relation to these provisions. If agreement cannot be reached we will need to take this into consideration, amongst other factors, when we consider if a future UK Bill is an appropriate vehicle for delivering Welsh policy.

**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?**

Clause 24(4) places a duty on the OEP to consult a devolved environmental governance body if it considers a particular exercise of its functions may be relevant to the exercise of a devolved environmental governance function.

It has long been the Welsh Government's view the respective environmental governance bodies in England and Wales will need 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.

Citizens in both countries also need to have ease of access to a complaints process with the onus being on the environmental governance bodies to facilitate rather than citizens having to navigate the reserved/devolved landscape.

The proposed duty to consult falls short of providing for this cooperative approach, as it 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. Accordingly, we are seeking an amendment to the Bill to enable cooperative arrangements.

Discussions have continued with Defra on how the bodies can cooperate to consider complaints together, share information and, where appropriate, undertake joint investigations.

**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?**

We consider the general provisions of the Bill will require consent in so far as they pertain to the provisions of the Bill which require consent as follows:

*Clause 21 in relation to Schedule 1 — The Office for Environmental Protection*  
*Clause 45 in relation to Schedule 2 — Improving the natural environment: Northern Ireland*  
*Clause 46 in relation to Schedule 3 — The Office for Environmental Protection: Northern Ireland*  
*Clause 47 in relation to Schedule 4 — Producer responsibility obligations*  
*Clause 48 in relation to Schedule 5 — Producer responsibility for disposal costs*  
*Clause 49 in relation to Schedule 6 — Resource efficiency information in relation*  
*Clause 50 in relation to Schedule 7 — Resource efficiency requirements*  
*Clause 51 in relation to Schedule 8 — Deposit schemes*  
*Clause 52 in relation to Schedule 9 — Charges for single use plastic items*  
*Clause 63 in relation to Schedule 10 — Enforcement powers in relation*  
*Clause 69 in relation to Schedule 11 — Local air quality management framework*  
*Clause 70 in relation to Schedule 12 — Smoke control in England and Wales*  
*Clause 78 in relation to Schedule 13 — Modifying water and sewerage undertakers' appointments: procedure for appeals*  
*Clause 90 in relation to Schedule 14 — Biodiversity gain as condition of planning permission*  
*Clause 100 in relation to Schedule 15 — Controlling the felling of trees in England*  
*Clause 115 in relation to Schedule 16 — Discharge or modification of obligations under conservation*  
*Clause 122 in relation to Schedule 17 — Application of Part 7 to Crown land*  
*Clause 124 in relation to Schedule 18 — Consequential amendments relating to Part 7*  
*Clause 125 in relation to Schedule 19 — Amendment of REACH legislation*

These clauses are only relevant provisions (and thus requiring an LCM) insofar as the Schedules which they relate to make relevant provisions, those general provisions could be made by the Senedd.

### **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?**

The powers are required primarily to ensure policies will continue to function in the long term, by providing some flexibility to accommodate future changes in evidence, approaches, policymaking, industries or technologies which are not necessarily predictable at this time.

In the case clause 66, to amend existing penalties for the FPNs relating to fly-tipping and householder duty of care and clause 125 for REACH, the powers are required to replace those lost under of s2(2) of the European Communities Act, which enables us to update secondary legislation.

I can confirm in all cases Welsh Government requested these powers.

**Clause 47 Schedule 4 Producer responsibility obligations** - Provides the flexibility to state, in regulations, which producer or business to impose producer responsibility obligations on and on what products or materials and what steps are required in order to achieve those obligations.

**Clause 48 Schedule 6 Producer responsibility for disposal costs** - Facilitates the making of separate provision about enforcement for Wales. It will also provide flexibility to make different provision in relation to particular types of products, for example by specifying different bodies as enforcement authorities in different cases.

**Clause 49 and 50 Schedules 6 and 7 - Resource efficiency information** - Allows the Welsh Government to develop policy proposals for, and make separate regulations for each type of product regulated.

It will also provide flexibility to make different provision in relation to particular types of products, for example by specifying different bodies as enforcement authorities in different cases.

Product-specific information requirements may be detailed and technical and thus more suitable for inclusion in regulations than in primary legislation.

**Clause 51 Schedule 8 Deposit schemes** - Allows Welsh Government to develop policy proposals for, and make, separate regulations for each product group regulated.

**Clause 52 Schedule 9 Charges for single use plastic items** - Although we work in conjunction with other administrations, Waste and recycling is a devolved matter. Having this devolved power allows Welsh Ministers to define items subject to any charge, the amount charged and the requirements and the appointment of any administrator to oversee the charge which reflect Welsh priorities.

**Clause 55 Electronic waste tracking** - Aligns waste tracking legislation with legislation for waste management, which is currently controlled through secondary legislation.

The waste tracking regulations will provide essential data to help develop a circular economy and future waste policy. Gathering data on wastes and those who are managing it will make it easier to determine who is (or was) responsible for the waste at any given time. This will support regulation of wastes and help identify those responsible for any illegal waste.

**Clause 57 Hazardous waste: England and Wales** - Aligns with the current regulatory system for hazardous waste, which is currently controlled through secondary legislation. See also the answer to Q13 below.

**Schedule 10 (Linked to clause 63 enforcement powers)** - There is a gap in the Welsh Ministers current powers in relation to waste enforcement. There are circumstances where rogue operators dump waste illegally with potentially severe consequences for local communities and the environment. There may also be situations where a waste collection contract fails, or a company or authority enters into receivership and it cannot carry out or pay for waste collection and removal liabilities which it is contracted to deliver which can also impose environmental costs and negatively affect communities.

Welsh Ministers can currently direct any person keeping waste on land to take the waste to a specified place and to direct waste operators to take and treat the waste. However, they cannot direct a waste carrier to collect waste from a specified place and take it to a specified waste site. This means in circumstances where waste has been dumped illegally and the landowner and/or criminal cannot be traced or the landowner cannot fund the removal, and in the case of major incidents, or where a waste collection contract fails, Welsh Ministers do not have the power to direct a waste carrier to remove the waste.

This provision would allow Welsh Ministers to give direction to authorised waste carriers to collect waste from a specified place and take it to a specified waste management site in circumstances where public health, communities or the environment are at risk. As with the current powers of direction, Welsh Ministers would also have the power to direct the keeper of the waste to pay the waste carrier's reasonable costs. If this is not possible, Welsh Ministers will also have the power to reimburse the waste carrier directly.

**Clause 65 Littering enforcement** - Welsh Ministers will need the flexibility to be able to change or update the prescribed conditions an authorised officer of a litter authority must meet to reflect changing needs and developments within the sector, meaning primary legislation would not be an appropriate vehicle for this power.

Whilst the existing regulations to deal with littering operate on an England & Wales basis and our guidance is broadly the same, there are some differences in how we implement our policies which warrants Welsh Ministers having delegated powers. For example, the Welsh Government works very closely with Local Authorities and the Third Sector to help develop and implement the educational and behavioural change aspects of tackling littering. We may, therefore, wish to have the flexibility to incorporate this type of approach into any new enforcement guidance we develop.

The power to issue statutory guidance is necessary to ensure the various litter authorities undertake littering enforcement functions in a consistent and proportionate way.

**Clause 66 Fixed Penalty Notices** - Taking a power to amend penalties in secondary legislation, allows for them to be kept under review, see if they are working effectively and amend them if needed.

See also the answer to Q13 below.

**Clause 67 Regulation of polluting activities** - Allows for the detailed conditions for any exemption (from the prohibition on carrying out an activity without a permit) to be set and amended by the regulator.

See also the answer to Q13 below.

**Clause 75 Water resources management plans, drought plans and joint proposals** - Allows flexibility to consider which undertakers should be directed to prepare joint proposals and when.

**Clause 76 Drainage and sewerage management plans** - Allows Welsh Ministers to intervene to ensure drainage and sewerage management plans address emerging challenges which may arise and therefore remain efficacious

**Clause 82 Power to amend legislation to make technical updates in the field of water quality** - Required to ensure substances and standards in relation to those substances or in relation to the chemical status of surface water or groundwater do not remain fixed after the UK withdraws from the EU. The power would enable action to be taken legislatively to tackle those new priority substances most accurately representing harm to the water environment.

**Clause 87 Valuation of other land in drainage district: Wales** - It is necessary to revise and update the methodology of calculating the split of income between special levies and drainage rates. The provisions within the Bill would allow the value of other land to be calculated via an alternative methodology (as IDBs will be able to make use of alternative data for these calculations), which will be set out in secondary legislation subject to the affirmative procedure.

Setting out the valuation calculation in regulations is appropriate and proportionate, because these provisions deal with details of a subsidiary and technical matter.

**Clause 88 Valuation of agricultural land in drainage district: England and Wales** - The Bill makes provision to allow the secondary legislation to provide an alternative methodology for calculation of the value of chargeable land (agricultural land and buildings) to avoid the potential distortion of the apportionment calculation.

Setting out the valuation calculation in regulations is appropriate and proportionate, because these provisions deal with details of a subsidiary and technical matter

**Clause 89 Disclosure of Revenue and Customs information** - The power to add to the list of qualifying persons set out under new section 37A(3)(h) is needed in order to ensure other persons requiring access to HMRC information for a qualifying purpose, who are identified at a later date, may be added to the list in secondary legislation, in circumstances where the framework of regulatory bodies operating in this area changes.

**Clause 125 Amendment of REACH legislation** - Section 1 of the European Union (Withdrawal) Act 2018 repeals the European Communities Act 1972. This means after exit day the only way to amend the REACH Enforcement Regulations 2008 and REACH EU Exit Regulations would be through primary legislation.

This power is needed to ensure the REACH Enforcement Regulations 2008 and REACH EU Exit Regulations can be kept up to date.



**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?**

We would require secondary legislation in the form of regulations to implement both DRS and EPR for packaging. These are key work areas which are progressing as a joint programme of work. The exact timetabling for when these regulations will be laid has not been finalised as the current focus of work has been the progressing a second round of consultation on both schemes. In due course we will consider other waste streams for new legislation on EPR, and we consulted on this in our recent consultation on a new Circular Economy Strategy for Wales. In due course we will discuss new legislation for environmental product labelling and standards with the other UK administrations.

**Clause 55 – Electronic tracking of waste:** This provision comes into force two months after the Act comes into force. The timetabling for when the Regulations will be laid has not been finalised, as Welsh Government and Natural Resources officials are working with their counterparts in the other UK nations on how we can digitise waste tracking processes. In particular, how we record what happens to waste as it moves from production to recovery or disposal.

**Clause 57 – Hazardous waste:** The Welsh Ministers have discretion to decide when the provision comes into force. Much of the law on hazardous waste is derived from EU law. The amendments being made by the Bill would enable the Welsh Ministers to continue to be able to amend or replace regulations which govern how hazardous waste is managed, after the UK has left the EU.

**Clause 61 – Charging powers:** The exact timetabling of bringing these powers into force has not yet been finalised. The powers:

- add new charging powers for NRW in relation to new or amended duties conferred on them in the future. The new powers will allow NRW to recover their reasonable costs of appropriate investigation, intervention and enforcement of current producer responsibility schemes and, as they are established, new EPR schemes;
- allow NRW to apply existing environmental permitting scheme charges to exempt waste operations, including registration and subsistence charges where appropriate, to fund compliance monitoring of these operations; and
- for NRW to create charging schemes for its functions related to the illegal disposal of waste and permitted waste sites. This would allow NRW to recover its reasonable costs of appropriate investigation, intervention and enforcement of illegal waste sites from those illegal waste sites. Currently, NRW is able to charge for the operation and compliance checking of the environmental permitting regime. However, they are unable to charge for the enforcement of those uncompliant with permitting requirements or operating illegally outside of the permitting regime.

**Clause 66 - Fixed Penalty Notices:** We will not be making regulations at this time. The Welsh Ministers have discretion to decide when the provision comes into force. Repeal of the ECA removes the current power to alter the levels of these penalties through secondary legislation, and so a new power is required to enable the level of these penalties through secondary legislation, to enable the level of the fines to be amended either up or down.

**Clause 67 - Exemptions:** This provision comes into force two months after the Act comes into force. The power allows the Welsh Ministers to set out in regulations which conditions relating to exempt activities (i.e. those not requiring an Environmental Permit) NRW can

determine, instead of those conditions having to be set out in regulations. Setting conditions currently requires Welsh Ministers to make new regulations each time a condition is changed. Allowing NRW to set the conditions will help ensure appropriate controls are in place as the waste market shifts. The timetabling for making regulations under this Clause have not been finalised.

**Clause 52 - Single Use Plastics** These powers will help support the Welsh Government's commitment to reduce the use of unnecessary single-use plastic items and to help meet our long-term goal of zero waste by 2050. The Welsh Government is already seeking to ban or restrict the sale of several commonly littered single-use plastic items including plastic cotton buds, straws and plates.

However, there are other single-use plastic items not included in the above measure and have ongoing negative externalities arising from their production, use and inappropriate disposal, for example disposable coffee cups and food containers. Since many of these plastic items are provided to the consumer seemingly "free of charge" and complementary to the purchase of other products, consumers are currently not incentivised or actively encouraged to limit their consumption to sustainable levels. We believe without further intervention, consumption levels could remain the same or even increase over time. This contributes to waste ending up in landfill and incineration following their use, or as litter causing pollution and harm to the natural environment.

We believe such items could, potentially, be dealt with through the provision of a charging regime similar to the one in place for single use carrier bags. We have seen applying a charge to single-use plastic items has led to positive change in consumer behaviour. Without the powers to require levies on other single-use plastic items where it will effectively reduce consumption, the negative externalities outlined above cannot be mitigated using legislation. However, secondary legislation will only be implemented for such items where the evidence shows charging is the most effective policy mechanism to reduce consumption in favour of readily available and more sustainable alternatives.

**Clause 65 - Litter enforcement:** We intend to create a specific power for Welsh Ministers to issue statutory guidance on the use of the enforcement powers in Part IV of the EPA 1990, to which those exercising the powers must have regard. This is intended to address the perception enforcement action may be used by Local Authorities or private companies, to raise revenue at the expense of 'unwary' citizens or enforcement action is otherwise illegitimate, unfair or disproportionate, by providing clear guidance to Local Authorities on the appropriate use of their enforcement powers, to which they must have regard. This is intended to promote greater consistency and improve public confidence in the legitimacy of enforcement action.

We also intend to extend Welsh Ministers' power to prescribe conditions to be satisfied before a person may be authorised to issue fixed penalties for littering. This is intended to act as a further safeguard against inappropriate enforcement activity by ensuring authorised persons must have met certain conditions relating to the skills, quality and professionalism of their activities before they can issue fixed penalties.

We will consult further with the industry, training providers, Local Authorities and other key stakeholders before exercising this extended regulation-making power. This could potentially result in prescribing conditions such as the attainment of a specific qualification, accreditation or charter-mark.

**Clause 87/88** - provides a regulation making power for the Welsh Ministers to make provision for the value of other land in a Welsh internal drainage district to be determined.

As the law stands IDBs calculate the value of drainage rates for non-agricultural land using a methodology based on valuation lists which are outdated and incomplete. The regulations would be subject to the affirmative procedure. There is currently no timescale for new regulations to be in place

**Clause 125** - The powers in respect of REACH are necessary to deliver a functioning chemicals regime. Certain changes which would help UK REACH function more effectively were outside of the scope of the powers within the Withdrawal Act. We are going from a system designed for 28 member states to a single state with four nations. Therefore, some aspects of REACH are impracticable or overly burdensome on businesses. This is likely to require changes to the existing REACH regulations to ensure they are suitable for use on a UK-only scale. In addition, when we lose section 2(2) powers of the European Communities Act 1972, we will be unable to make any changes to REACH enforcement regulations.

Without these powers UK REACH would have to operate in the context of the EU Exit SIs. In this scenario we could quickly face a number of risks and issues, particularly in relation to the deadlines for registration and repeat animal testing. The powers may also be needed to mirror changes to the EU regime which we wish to maintain. REACH covers reserved matters such as workplace health and safety and product standards, as well as devolved areas like public health and the environment. In this respect, measures to restrict a chemical inflicting harm to human health as well as incurring environmental damage would require the same legislative instrument. Therefore, legislating for such powers in the Assembly would be difficult.

**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?**

**Clause 66 Powers to Vary Fixed Penalty Notices** - Negative procedure is considered appropriate as the fixed penalty notice scheme is already in place and this power allows only amendment to the amount of penalty to be charged. Welsh Ministers are required to act in accordance with public law principles and, accordingly, any increase in the penalty amount will need to be reasonable and fair. The approach is consistent with similar powers in section 34A(10), 46B(5), 47ZB(6) and section 97A(3) [EPA 1990](#), which are subject to the same procedure.

**Clause 76 Drainage and sewerage management plans** - Negative procedure is appropriate as the regulations would be making minor and technical changes to the way in which plans are published and this may need to be done frequently. The Regulations would not make amendments to the content of the plans themselves.

The primary legislation puts the plans on a statutory footing and sets in place a regulatory framework. The regulatory powers relate to detailed procedural aspects of the preparation, consultation, timing and publication of the plan.

**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?**

The primary legislation puts the plans on a statutory footing and sets in place a regulatory framework. These sections regulatory powers relate to detailed procedural aspects of the

preparation, consultation, timing and publication of the plan. This will align the water resource planning procedures more closely with the procedure for preparing drainage and wastewater plans.

**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?**

The primary legislation puts the plans on a statutory footing and sets in place a regulatory framework. These sections relate to detailed procedural aspects of the preparation, consultation, timing and publication of the plan which are more appropriate to be prescribed by secondary legislation, which we will consult on before making.

**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?**

Section 11A(5)(b) of the Statutory Instruments Act 1946 provides in a case of a statutory instrument made by Welsh Ministers alone, the power of Her Majesty to revoke, by Order in Council a statutory instrument laid before the National Assembly for Wales, is a power of the Welsh Ministers to revoke it by order.

The newly inserted sections 94B and 94D to the Water Industry Act 1991 contain powers to make Regulations (new s.94D) and Orders (s.94B) made by both the Welsh Ministers in relation to Wales and the Secretary of State in relation to England, due to the cross border nature of those instruments.

Therefore, s1A(5)(b) will not apply to these instruments. The 1946 Act does not make express provision for a scenario where an instrument is made by both Welsh Ministers and Secretary of State. Therefore it was felt most practical for Her Majesty to provide for the revocation of both instruments.

**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?**

The primary legislation puts the plans on a statutory footing and sets in place a regulatory framework. The regulatory powers relate to detailed procedural aspects of the preparation, consultation, timing and publication of the plan. The negative procedure is appropriate for regulations made under this section.

**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?**

There have been no discussions with the UK Government on 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?**

The policy intention of Clauses 47-51 is to develop a joint UK wide regulatory approach to Extended Producer Responsibility which allows for a consistent scheme to operate across the UK for packaging, and potentially other products. The ability to have the option to develop a consistent scheme is important for market reasons. This includes the porous nature of the extensive border with England and the way many retailers operate their distribution systems. Operating different EPR systems between Wales and England might incentivise fraud, and would be confusing for both retailers and the public.

To enable this consistency, we are seeking a concurrent plus approach, the effect of which would be, Welsh Ministers, unless consent is provided, would carry out functions in Wales. Where it was considered appropriate, the Welsh Ministers could give consent to the Secretary of State (SoS) to exercise the powers in relation to Wales. Obtaining the powers for Welsh Ministers enables them to have flexibility in the future, and would also allow them to bring in EPR recovery for other products in Wales (for example disposable nappies). The inclusion of these powers in the Bill is in line with the First Minister’s criteria on the use of UK Bills as the interconnected nature of the relevant Welsh and English administrative systems mean it is most effective and appropriate for provision for both to be taken forward at the same time in the same legislative instrument.

Concurrent powers are also sought in respect of clause 81, which is concerned with technical updates in the field of water quality. It allows for the Secretary of State to make regulations or modify legislation for the purposes of:

- making provision about the substances to be taken into account in assessing the chemical status of surface water or groundwater;
- specifying standards in relation to those substances or in relation to the chemical status of surface water or ground water

The application of such powers will be in relation to river basin districts. Whilst we have one river basin district wholly in Wales, two of our river basin districts are cross border (the Dee and the Severn). The Ministerial powers in respect of those districts are currently exercised jointly by the Welsh Ministers and SoS. Given the existing legislative framework is exercised in such a way it is desirable be closely aligned with Defra on these matters so as to ensure a common approach in relation to the cross-border river basin districts.

Clause 125 and its associated schedules provides for the amendment of the REACH regulations and the REACH enforcement regulations. This provision is connected to the EU Exit SIs and provides an enabling power to make future amendments to retained EU law. The powers can only be exercised by the Secretary of State with consent of Welsh Ministers where they concern matters within devolved competence. This matches the approach taken with UK-wide powers in the EU Exit correcting SIs for REACH, which are required to enable a UK-wide regime.

Concurrent plus powers are also required in relation to the REACH enforcement regulations. Welsh Ministers currently have the power to amend REACH enforcement regulations in Wales under the European Communities (Designation) (No.2) Order 2007 (<http://www.legislation.gov.uk/ukSI/2007/1349/made>), as does the Secretary of State. The

concurrent plus power has been requested to maintain the status quo and retain powers currently exercisable by both Welsh Ministers and the Secretary of State under EU law.

We have secured the Secretary of State's agreement to amend the Bill, should this be required. This will enable us to include a carve-out of paragraph 11, Schedule 7B of GoWA, which restricts the Assembly's legislative competence to remove or modify Minister of the Crown functions without consent from the relevant UKG Minister. The function is applied where there is a qualified devolved function which includes a function which is to any extent exercisable concurrently.

**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?**

We anticipate that a section 109 Order will be brought forward shortly and that it will address the concurrent functions issue in this Bill. This would mean amendment of the Bill would not be required.

**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?**

A concurrent plus approach, has the effect of Welsh Ministers, unless consent is provided, carrying out functions in Wales. Where it was considered appropriate, the Welsh Ministers could give consent to the Secretary of State (SoS) to exercise the powers in relation to Wales.

Welsh Ministers will 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?**

The enabling powers in the Bill will assist us in delivering current and future Welsh policy. We have used the UK Environment Bill as at present there are no immediate plans for a Welsh Environment 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?**

The Welsh Government has finite resources for developing its legislative programme, particularly in respect of those specialists who draft and translate legislation. It makes decisions on the content of the programme based on the available resources and capacity to deliver, which in my portfolio has been significantly affected by the work required to

respond to EU exit. Developing legislation takes time to ensure it is fit for purpose. In addition a Bill has to be introduced by a certain point in a Senedd term to ensure the Senedd has sufficient time for its scrutiny and approval before the next Senedd elections, otherwise the Bill falls. These challenges, combined with the necessary and ongoing work on legislation to respond to EU exit and transition, have meant a Welsh Environment Bill has not been possible. The UK Bill has provided us with an alternative opportunity to put legislation in place in some key areas.

**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?**

I am unable to comment on the wider Bill as it is for the UK Government to determine how to deliver its policy objectives.

With the loss of section 2(2) of the European Communities Act, which enables us to update secondary legislation where appropriate we have taken enabling powers to update the legislation in some areas such as hazardous waste, water quality powers (priority substances) and REACH.

Under the transition agreement, the UK is obligated to transpose Article 8A amendments to the EU Waste Framework Directive as part of the EU's Circular Economy Package. The Extended Producer Responsibility provisions in the Bill are there to allow us, along with the other nations within the UK, to meet the general minimum requirements in relation to producer responsibility in the Circular Economy Package.

Powers in relation to REACH will need to be implemented shortly after the transition period. When we lose powers under section 2(2), we will be unable to make any changes to REACH enforcement regulations to enable us to keep pace with technical changes. By taking powers in this bill, Government will be able to respond promptly to any implementation issues arising and make workable what is a large and complex piece of EU-derived legislation.

The reason this is time sensitive is due to the fact that there are deadlines and activities/decisions to be made under REACH which are triggered by the end of the implementation period. The loss of the section 2(2) powers is less time critical compared to the need to potentially amend deadlines or to streamline the REACH process when it becomes operational. The section 2(2) powers relate to amending the REACH enforcement regulations. The rest of the REACH regulations were amended by EU law and applied to the UK without the need for domestic legislation. Without the powers included in the Bill, primary legislation would be necessary to address any teething issues with REACH (such as businesses being unhappy with the two year registration deadline).

More generally we would like to introduce all changes as soon as possible, given the benefits described in answer to question 1.

**26. How and when will you review the effectiveness of the Bill for making environmental policy in Wales?**

The review of the effectiveness of the Bill with respect to environmental policy will form part of the on-going policy and evidence review that takes place within Government. This is informed over time from a variety of evidence sources and feedback mechanisms such as



the State of Natural Resources Report prepared by Natural Resources Wales and other environmental metrics and targets that are in place, for example recycling rates, reported fly tipping.

The published lists for authorised fuels and exempted classes of fireplace will be updated, monitored and reviewed annually.

The effectiveness of the land drainage rates & levies provisions will be assessed by the introduction of a more consistent mechanism for review.

### **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?**

As regulations are developed to enact the powers in the Bill our usual call for evidence, engagement and consultation processes will be followed.

#### **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?**

We have considered accessibility of law to be a key consideration in taking powers in this Bill. As much of the legislation being amended operates on, at a minimum, an England and Wales basis using the UK Bill to make these amendments ensure there are not multiple similar amendments to a single provision, making it more accessible for the user.

In light of the Counsel General's programme for codification, we of course will consider at some point in the future how we can make environmental law in Wales more coherent and accessible.