

Llyr Gruffydd AM,
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4 June 2019

Dear Llyr

During my OAQ session on 15th May, you raised questions relating to legislative competence for nuclear waste, with particular reference to geological disposal, and the Environmental Permitting (England and Wales) Regulations 2016.

A variety of environmental and planning functions are devolved to the Welsh Ministers in relation to the geological disposal of radioactive waste, including those under the Environmental Permitting (England and Wales) Regulations 2016 (“the 2016 Regulations”).

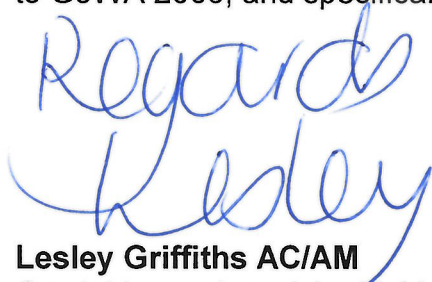
You refer to paragraph 3 of Part 4 of Schedule 23 to the 2016 Regulations. The power in that paragraph provides the Secretary of State with a power to provide facilities for the safe disposal or accumulation of radioactive waste where it appears to him that there are no adequate facilities to do so, or make arrangements for their provision. This is merely a power for the Secretary of State to provide facilities. It does not mandate their use, or, in effect, allow the Secretary of State to impose a geological disposal facility on a community.

Moreover, the power itself is not unqualified. It is subject to consultation and the Secretary of State is required to consult the Local Authority in whose area the facility would be situated and any other public or Local Authority as appears to the Secretary of State to be proper to consult. Furthermore, a GDF would, in any event, require approval from the Office for Nuclear Regulation and the relevant environmental regulator (Natural Resources Wales in relation to Wales). It would also require planning approval under the Welsh planning system. The power does not allow the Secretary of State to circumvent these legislative requirements.

I note in the context of your concerns about the devolved status of geological disposal, you have alluded to Schedule 5 to the Scotland Act, although, in the absence of a specific legislative provision or proposal it is not possible to undertake an analysis of legislative competence.

You will be aware the applicable test for determining whether or not a provision is within the legislative competence of the Assembly is contained in s.108A of the Government of Wales Act 2006 ("GoWA 2006"). A provision is outside the competence of the Assembly if it relates to a reserved matter; the question of whether a provision relates to a reserved matter being determined by reference to the purpose of the provision, having regard to its effect in all the circumstances.

Matters pertaining to the geological disposal of radioactive waste may well be properly understood as relating to waste, the environment, environmental protection and/or planning, rather than to nuclear energy and nuclear installations. Indeed, the contrary view would be inconsistent with assertions made by UK Government during the passage of the Wales Act 2017 that there would be no row-back in the Assembly's legislative competence when the settlement was transferred from a conferred powers model. In this context, it is worth noting that prior to the 2017 Act, environment was a conferred subject at paragraph 6 of Schedule 7 to GoWA 2006, and specifically included hazardous substances and disposal of waste.

A handwritten signature in blue ink, consisting of the word "Regards" on the top line and "Lesley" on the bottom line, written in a cursive style.

Lesley Griffiths AC/AM

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs