

Report on the Supplementary Legislative Consent Memorandum for the Environment Bill

February 2021

Overall recommendation

We recommend to the Senedd that it gives consent to the provisions in the Environment Bill, subject to it being satisfied by the Minister's response to the recommendations in this report, and in our first report on the Legislative Consent Memorandum.

1. Introduction

1. This is the Climate Change, Environment and Rural Affairs Committee's ('the Committee') second report on the UK Government's Environment Bill ('the Bill'). Our first report on the Legislative Consent Memorandum for the Bill was published in July 2020. In that report, we recommended the Senedd should give consent to the provisions in the Bill, subject to it having been satisfied by the Welsh Government's response to each of our recommendations.

2. This report sets out:

- our conclusions on amendments made to the Bill in Committee Stage in the House of Commons for which the Welsh Government considers consent is required; and
- outstanding matters of concern.

3. It should be read in conjunction with our first report on the Bill and the Welsh Government's response to our recommendations in that report.



4. Clause numbers in this report relate to the version of the Bill as amended during Committee Stage in the House of Commons.

2. The Supplementary LCM

5. The Minister for Environment, Energy and Rural Affairs ('the Minister') laid the Supplementary Legislative Consent Memorandum for the Bill ('the Supplementary LCM') on 4 December 2020.

6. On 8 December 2020, the Business Committee referred the Supplementary LCM to this Committee, and the Legislation, Justice and Constitution Committee, for consideration and set a reporting deadline of 4 February 2021. The deadline was subsequently extended to 24 February 2021.

Our approach to scrutiny

7. Following the referral of the Supplementary LCM to the Committee, we wrote to the Minister and asked her to respond in writing to several questions. The exchange in correspondence can be found at the end of this report.

8. We considered the Supplementary LCM and the Minister's response to our letter at our meetings on 14 and 21 January 2021.

Changes to the Bill that the Welsh Government considers require consent

9. The Supplementary LCM sets out the changes to the Bill made during Committee Stage in the House of Commons for which the Welsh Government considers consent is required. According to the Supplementary LCM, these are:

- amendments to update the name of the legislature in Wales to 'Senedd Cymru', and
- amendments to introduce new provision (clause 107 and Schedule 16) in relation to the 'use of forest risk commodities in commercial activity'.

Clause 107 and Schedule 16 – Use of forest risk commodities in commercial activity

10. Clause 107 introduces Schedule 16 and sets out the procedure for regulations made under the Schedule.

11. Part 1 of Schedule 16 prohibits ‘a regulated person’ from using a ‘forest risk commodity’ in their UK commercial activities unless that commodity has been produced in accordance with relevant laws in the country of origin. The meaning of ‘regulated person’ and ‘forest risk commodity’ will be defined in regulations made by the Secretary of State.

12. Part 1 of Schedule 16 also places a requirement on ‘a regulated person’ to establish and implement a ‘due diligence system’ to identify, assess and mitigate the risk of illegally produced forest risk commodities entering their supply chain. They will also be required to report annually on action taken in relation to due diligence.

13. Part 2 of Schedule 16 enables the Secretary of State to make provision in regulations about the enforcement of requirements, which may include:

- provision conferring functions and powers on an ‘enforcement authority’; and
- the imposition of fines or other civil sanctions for failure to comply with requirements in Part 1 or regulations made under Part 2, or for obstructing or failing to assist an enforcement authority.

The Welsh Government’s position

14. According to the Supplementary LCM, the Welsh Government “support[s] the policy position provided by [clause 107 and Schedule 16]”, recognising “the risks of failure to shift to a more sustainable production of key commodities”. However, it “disagree[s] with Defra’s contention that this provision falls within reserved competence as set out in Schedule 7A GOWA”.

15. The Supplementary LCM sets out the Welsh Government’s position that the provision falls within the Senedd’s legislative competence because it “relates primarily to the environment, the protection of forestry environments and tackling climate change, all of which are devolved”. However, Defra asserts the provision “relates to the reservation in section C1, paragraph 65 of Schedule 7A to GOWA 2006 – the creation, operation, regulation and dissolution of types of business association”.

Evidence from the Minister

16. In expanding on why the Welsh Government supports the policy underlying the new provisions, the Minister stated:

“Protecting precious forest environments is central to tackling climate change, ensuring people have secure livelihoods, and protecting the natural systems on which we all rely for the food we eat, the water we drink and the air we breathe...Responsible businesses have been leading the way in establishing sustainable supply chains to protect forests, and this policy aims to support and reinforce these efforts.”

17. She added:

“We support the UK Government’s direction of travel in order to maintain Wales’ position as a global leader in our responses the climate change and nature crises. We do not think it would be appropriate to expect the small number of larger businesses who will be affected by this regulation to have to work with a different process in Wales compared to other parts of the UK. This would result in unnecessarily increased business costs as a result of complying with more than one set of processes.”

18. Schedule 16 confers regulation making powers on the Secretary of State and not on the Welsh Ministers. Given the Welsh Government’s position in relation to legislative competence, we asked the Minister whether she would be pursuing an amendment to the Bill to give the Welsh Ministers the same powers as the Secretary of State in relation to Wales, or to ensure the Welsh Ministers’ involvement when the Secretary of State makes regulations under Schedule 16 in relation to Wales. The Minister said she did not intend to pursue any such amendment.

19. The Minister explained her officials had secured agreement with DEFRA officials to be updated and informed of the progress of the development of future regulations under Schedule 16.

Our view

We are content with the amendments made to the Bill to update the name of the legislature in Wales to ‘Senedd Cymru’.

We note the UK Government’s assertion that new clause 107 and Schedule 16 does not fall within the Senedd’s legislative competence.

We acknowledge new clause 107 and Schedule 16 are designed to reduce the risk of illegal deforestation and land conversion within supply chains of UK businesses. We believe this has the potential to make a positive contribution to global efforts to tackle illegal deforestation and the wider climate change agenda.

Notwithstanding the above, in order to enable Members of the Senedd to make an informed decision on legislative consent, the Welsh Government must clearly set out why it considers it appropriate for the UK Government to legislate in an area of devolved competence. The Supplementary LCM does not adequately address this issue. Although the Minister's subsequent letter to us goes some way in explaining the Welsh Government's position, we would have liked a more detailed explanation, and for this to have been set out in the Supplementary LCM.

In her letter to us, the Minister suggests the Welsh Government is not opposed to a UK-wide approach to regulating the use of forest risk commodities in commercial activity. However, given the Welsh Government's view on legislative competence, it is unclear why the Minister does not consider it necessary for the Bill to ensure the Welsh Ministers' involvement in making regulations under Schedule 16. As a result, these regulations will not be subject to Senedd scrutiny, which is regrettable. We would welcome clarification on this matter.

We note that much of the detail in relation to the due diligence requirement, including the conditions that determine whether a business will be subject to the requirement, and monitoring and enforcement arrangements, will be set out in future regulations made by the Secretary of State.

We expect the Welsh Government to actively engage with the UK Government in the development of future regulations to ensure they adequately reflect the Welsh interests.

Recommendation 1. Before the debate on the legislative consent motion for the Bill, the Minister should provide a more detailed explanation about why the Welsh Government considers it appropriate to use the Bill to legislate for the use of forest commodities in commercial activities in relation to Wales.

Recommendation 2. Before the debate on the legislative consent motion, the Minister should set out why she does not consider it necessary for the Bill to ensure the Welsh Ministers' involvement in the making of regulations by the Secretary of State under Schedule 16.

3. Outstanding matters of concern

Cooperative working between environmental governance bodies

20. In our first report, we emphasised the importance of cooperative working between the Office for Environmental Protection ('OEP') and any equivalent Welsh environmental governance body. The Minister acknowledged the Bill did not adequately provide for this. She told us she was seeking an amendment "to enable cooperative arrangements" and was awaiting the Secretary of State's response. The Bill has yet to be amended to enable cooperative arrangements.

Evidence from the Minister

21. We asked the Minister to provide an update on the above amendment. She told us she had "reached an agreement in principle with Defra to bring forward the amendment to Clause 26(1) at Lords' Stage".

Our view

We note the UK Government has agreed in principle to bring forward an amendment to the Bill to enable cooperative arrangements between the OEP and the new Welsh environmental governance body. We will monitor the progress of the Bill through the remaining amending stages in the UK Parliament. We expect such an amendment to be agreed before the debate on the legislative consent motion.

Concurrent plus powers

22. A concurrent plus power is a power that can be exercised in relation to Wales by both 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.

23. Clauses 49 to 53 and associated Schedules, clause 83 and clause 131 of the Bill include concurrent plus powers.

24. Under Schedule 7B to the Government of Wales Act 2006, the Senedd cannot remove or modify the UK Ministers' side of a concurrent plus power without Secretary of State consent. This means the more concurrent plus powers that are created, the more things that are outside the legislative competence of the Senedd (because the Senedd cannot modify or remove the UK Ministers' side of those concurrent powers).

25. The LCM for the Bill states:

“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.”

26. The Bill has not yet been amended to address this issue. However, the Minister told the Legislation, Justice and Constitutional Affairs Committee (‘LJC Committee’):

“Officials have since secured confirmation an amendment will be brought forward to ensure the concurrent functions within the UK Bill are not caught by the restrictions of Schedule 7B to the Government of Wales Act 2006 relating to Minister of the Crown functions. I have received correspondence from Minister Pow reiterating this commitment.”

Our view

As highlighted by the LJC Committee in recent reports, legislation arising from the UK’s departure from the EU has created many new concurrent functions. We share the concerns of the LJC Committee about the negative impact this has on the Senedd’s legislative competence. We note the UK Government’s commitment to bring forward an amendment to the Bill to include the necessary ‘carve outs’ before the end of its passage through the UK Parliament. We expect an additional supplementary legislative consent memorandum to be made available for scrutiny before the debate on the legislative consent motion.

Lesley Griffiths MS

Minister for Environment, Energy and Rural Affairs

17 December 2020

Dear Lesley,

You will be aware that the Supplementary Legislative Consent Memorandum for the Environment Bill (the Supplementary LCM) has been referred to the Climate Change, Environment and Rural Affairs Committee (the Committee) for consideration, with a reporting deadline of 4 February 2021.

In order to inform the Committee's consideration of the Supplementary LCM, it would be helpful if you could respond to the questions set out below.

Clause 107 and Schedule 16: Use of forest risk commodities in commercial activity

The Supplementary LCM outlines that, while the Welsh Government considers the provision to fall within the Senedd's legislative competence, the UK Government does not agree.

1. The Supplementary LCM states that the Welsh Government "support[s] the policy position provided by the provision". Can you set out your reasons for this?
2. To what extent are you satisfied that Welsh stakeholders were provided with sufficient opportunity to engage with the development of the policy?
3. To what extent are you satisfied that the provision adequately reflects Welsh interests
4. Given your view in relation to legislative competence, can you clarify whether you have pursued, or will be pursuing, an amendment(s):
 - to give Welsh Ministers the same powers as the Secretary of State as they relate to Wales and consequently Senedd involvement in scrutinising the exercise of the powers, or



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- to ensure Welsh Ministers' involvement in the making of regulations by the Secretary of State as they relate to Wales under Schedule 16?

5. If you do not intend to pursue any of the above amendments, how will you ensure that future regulations made under Schedule 16 align with, and represent, Welsh policy and interests? What assurances will you be seeking from the UK Government in this regard?

Schedule 16 enables the Secretary of State to make regulations about enforcement, which may include conferring functions and powers on an 'enforcement authority'.

6. What discussions have you had with the UK Government about any future 'enforcement authority' and who this might be? What is the outcome of any such discussions?

Outstanding matters in relation to the Environment Bill

In your letter, dated 5 November 2020, you reported productive discussions with Defra on a proposed amendment to strengthen the duty in clause 26(4) (previously clause 24(4)) for the Office for Environmental Protection ('OEP') to consult devolved environmental governance bodies. We note, however, that an amendment to this effect was not considered during the House of Commons Committee Stage.

7. Can you clarify whether you have managed to secure a commitment from the UK Government to table an amendment to clause 26(4) at a later amending stage? If not, can you explain what assurances you have received from the UK Government that there will be cooperative working between the OEP and the Welsh environmental governance body?

I should be grateful if you would respond no later than 14 January 2021.

Yours sincerely



Mike Hedges MS

Chair of Climate Change, Environment and Rural Affairs Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg
We welcome correspondence in Welsh or English.





Ein cyf/Our ref LG/452/21

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Chair of Climate Change, Environment and Rural Affairs Committee

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13 January 2021

Dear Mike

Thank you for your letter of 17 December, regarding the Supplementary Legislative Consent Memorandum for the UK Environment Bill.

I am content to assist the Committee's consideration of the Supplementary LCM by responding to the questions set out in your letter.

Question 1:

The Welsh Government supports the policy position provided by the provision because we agree it is part of the vital recovery from the COVID-19, and helps us to build a greener, fairer and more resilient global economy. Protecting precious forest environments is central to tackling climate change, ensuring people have secure livelihoods, and protecting the natural systems on which we all rely for the food we eat, the water we drink and the air we breathe.

Responsible businesses have been leading the way in establishing sustainable supply chains to protect forests, and this policy aims to support and reinforce these efforts. We support the UK Government proposal to introduce a new law designed to prevent forests and other important natural areas from being illegally converted into agricultural land.

The law they are proposing would work by requiring a relatively small number of large businesses to make sure the 'forest risk' commodities they use – commodities which can cause wide-scale deforestation – have been produced legally. This is because globally, a large proportion of forest clearance to produce these commodities is not considered legal.

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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.

We support the UK Government's direction of travel in order to maintain Wales' position as a global leader in our responses to the climate change and nature crises. We do not think it would be appropriate to expect the small number of larger businesses who will be affected by this regulation to have to work with a different process in Wales compared to other parts of the UK. This would result in unnecessarily increased business costs as a result of complying with more than one set of processes.

Question 2:

The UK Government consultation on the proposed amendment began on 25 August and concluded 5 October. Welsh stakeholders were able to take part in order to express their views. A summary of responses was published in November 2020:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/933985/due-diligence-forest-risk-commodities-government-response.pdf

Question 3:

We are satisfied Welsh interests are being adequately met by this provision because we believe it to be best for there to be consistency of approach towards the implementation of this provision across the UK. This would provide a more streamlined and efficient approach across the UK.

Question 4:

We do not intend to pursue any amendments to this provision.

Question 5:

My officials have secured agreement to be updated and informed of the progress of the development of this provision by DEFRA officials and are currently agreeing the details of how and when this will take place.

Question 6:

My officials received confirmation on 8 January 2021 from DEFRA leads:

'Enforcement of the due diligence law will be carried out by a Government regulator, who will help businesses to understand the requirements and investigate their compliance, but we are still in the process of confirming which (UK-wide) regulator this will be. With the primary legislation now under scrutiny in Parliament within the Environment Bill, we are turning our attention to the secondary legislation through which the finer details of the legislation will be laid out and to the accompanying guidance. This will include more on what the companies in scope are required to do and how exactly they will be monitored.'

As set out in (5) above my officials will liaise with the DEFRA leads to obtain more detail as the work progresses.

Question 7:

You are correct to note DEFRA did not bring forward a Government Amendment to strengthen a duty for the OEP to consult equivalent bodies in the Devolved Administrations at Commons Committee stage. I can inform the Committee I have reached an agreement in principle with Defra to bring forward the amendment to Clause 26(1) at Lords' Stage and I am content with this approach.

Regards

A handwritten signature in black ink, reading 'Lesley Griffiths'. The signature is written in a cursive style with a large, sweeping 'L' and a long, trailing 's'.

Lesley Griffiths AS/MS

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