

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO.2)

Environment Bill

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies, the legislative competence of the Senedd.
2. The Environment Bill (“the Bill”) was introduced in the House of Commons on 30 January 2020. On 26 February 2021 the Bill was made subject to a motion to carry the Bill over into the next UK Parliamentary session which commenced on 11 May 2021. The Bill was reintroduced to the UK Parliament on 26 May 2021, when House of Commons Report Stage and Third Reading concluded.
3. The Bill as amended at House of Lords Committee stage can be found at: <https://bills.parliament.uk/publications/42243/documents/555> . The clause references in this memorandum reflect the clause numbering in this version of the Bill unless otherwise specified.

Policy Objectives

4. The UK Government’s stated policy objectives for this Bill are to provide a legal framework for environmental governance and to make provision for specific improvement of the environment, including measures on waste and resource efficiency, air quality and environmental recall, water, nature and biodiversity, and conservation covenants.

Summary of the Bill

5. The Bill is sponsored by the Department for Environment, Food and Rural Affairs (DEFRA).
6. The Bill makes provisions about targets, plans and policies for improving the natural environment; for statements and reports about environmental protection; for the Office for Environmental Protection; about waste and resource efficiency; about air quality; for the recall of products that fail to meet environmental standards; about water; about nature and biodiversity; for conservation covenants; about the regulation of chemicals; and for connected purposes.
7. The clauses with particular relevance to matters within the legislative competence of the Senedd are:
 - Part 1 – Environmental Governance - Clause 20 (Statements about Bills containing new environmental law) and Clause 46 (Meaning of environmental law) in so far as it relates to clause 20.

- Part 3 – Waste and Resource Efficiency – clauses 50 and 51 (Producer Responsibility) and Schedules; clauses 52 – 55 (Resource efficiency), clause 58 (Electronic waste tracking: Great Britain), clause 60 (Hazardous waste England and Wales), clause 63 (Regulations under the Environmental Protection Act 1990), clause 64 (Powers to make charging schemes), clause 66 (Enforcement powers), clause 68 (Littering enforcement), clause 69 (Fixed Penalty notices), clause 70 (Regulation of polluting activities)
- Part 4 – Air quality and Environmental recall – clause 72 (Local air quality management framework), clause 73 (Smoke control areas: amendments of the Clean Air Act 1993)
- Part 5 – Water – clauses 78 and 79 (plans and proposals), clause 81 (Authority’s power to require information), clause 83 (Electronic service of documents), clause 85 (Water quality: powers of Secretary of State), clause 86 (Water quality: powers of Welsh Ministers), clause 89 (Water quality: interpretation), clauses 91 – 93 (Land drainage),
- Part 6 – Nature and Biodiversity – clause 112 (Use of forest risk commodities in commercial activity),
- Part 8 – Miscellaneous and General Provisions – Clause 136 (Amendment of Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) legislation)

Update on position since the publication of the first Legislative Consent Memorandum.

8. Since the laying of the first Legislative Consent Memorandum (“Memorandum 1”) on the Bill laid before the Senedd on 18 June 2021, the UK Government has proposed amendments for a purpose within the legislative competence of the Senedd. The proposed amendments relate to clauses 64, 68 and 92 and to schedules 5 and 10.

Proposed Amendment to Clause 64 (Clause 63 in Memorandum 1) – Powers to make charging schemes

9. Clause 64 amends section 41 of the Environment Act 1995 by inserting powers to allow the Environment Agency, Natural Resources Wales, and the Scottish Environment Protection Agency to make charging schemes as a means for recovering costs it incurs by performing functions.
10. The Bill as drafted amends the Environment Agencies (including NRW’s) existing powers to make charging schemes so as to include charges for functions performed in relation to Schedule 4 (Producer Responsibility Obligations). However, charges in relation to Schedule 5 (Producer Responsibility Disposal Costs) must be set in regulations. This means that the Agencies will have the power to make charging schemes in relation to Schedule 4 functions but charges in relation to Schedule 5 functions must be set out in regulations.
11. Where a producer responsibility scheme is being established using Schedule 4 and 5 powers, as is the case for packaging, the Agencies will need the ability to

make one charging scheme. The proposed amendment, therefore, is to amend clause 64 to include provision for the Agencies to make charging schemes in relation to Schedule 5 functions (as well as Schedule 4 functions) without the need for regulations.

12. This will mean the Agencies can ensure their charges reflect their true costs, enable them to deliver efficiencies and give them flexibility to adjust charges over time without requiring further secondary legislation. For producers it means a single charge, rather than two separate charges under one regime. It also means that where a UK-wide approach to producer responsibility is adopted the regulators can take a consistent approach.
13. The Welsh Government supports the amendment as a sensible change that aids operability.
14. As this clause makes provision for waste and environmental protection, a purpose within the legislative competence of the Senedd, it is the Welsh Government's view that consent is required. The clause would be *relevant provision* for the purposes of Standing Order 29.1.

**Proposed Amendment to Clause 68 (Clause 67 in Memorandum 1)
– Littering Enforcement**

15. Clause 68 amends Part 4 of the Environmental Protection Act 1990 in relation to enforcement against littering and the unauthorised distribution of free printed material.
16. Clause 68 confers a new power on the Welsh Ministers (as 'appropriate person' in Wales) to prescribe conditions by regulations which must be met by an authorised officer operating on behalf of a litter authority, and to make provision requiring a litter authority to revoke an officer's authorisation if the officer fails to meet the prescribed conditions. The new powers are subject to negative procedure.
17. Clause 68 also confers guidance making powers on the Welsh Ministers. Any guidance issued under these powers would be subject to no procedure.
18. The proposed amendment places an additional duty on Welsh Ministers to publish and lay the guidance before the Senedd.
19. The Welsh Government is supportive of the amendment as it will provide the Senedd with a greater opportunity to scrutinise plans for litter enforcement in Wales.
20. This amendment will also provide parity with Welsh Government's existing statutory guidance, the Code of Practice for Litter & Refuse (COPLAR), which is required to be laid before the Senedd if substantial changes are made. It is proposed the existing COPLAR will be reviewed as part of our Litter & Fly-tipping

Prevention Plan programme and, therefore, the new enforcement guidance will form part of this work package.

21. As this clause makes provision for waste and environmental protection, a purpose within the legislative competence of the Senedd, the Welsh Government considers it requires consent. The clause would be *relevant provision* for the purposes of Standing Order 29.1.

Proposed Amendment to Clause 92 (91 in Memorandum 1) – Valuation of agricultural land in drainage district: England and Wales

13. Clause 92 as currently drafted provides the Welsh Ministers, as the appropriate National Authority in the case of any Welsh internal drainage district, with a regulation making power to make provision for the annual value of each chargeable property in a Welsh internal drainage district to be determined by the drainage board for the district. As currently drafted there is a wide ranging power to allow regulations to amend the Land Drainage Act *as well as other enactments*.
14. The revisions to the Land Drainage Act 1991 are important for the Internal Drainage Board, Natural Resources Wales in Wales, to collect revenue.
15. The proposed changes will mean that the Welsh Ministers regulation making power under 41A will be limited to only making amendments, repeals or revocations to the Land Drainage Act 1991 *and no other enactment*. Regulations made under these powers will require the approval of the Senedd in accordance with the affirmative procedure.
16. This amendment narrows the provision envisaged for the Welsh Ministers as National Authority in relation to Wales. This amendment provides the same effect in respect of the Secretary of State functions in England.
17. We are not aware of any regulations which might need to amend Acts other than the 1991 Land Drainage Act (LDA), in relation to the subject matter of clause 92. The narrowing of the scope of clause 92 is, therefore, considered reasonable.
22. As this clause makes provision for land drainage, a purpose within the legislative competence of the Senedd, the Welsh Government considers it requires consent. The clause would be *relevant provision* for the purposes of Standing Order 29.1.

Proposed Amendment to Paragraph 4(1) Schedule 5 – Producer responsibility for disposal costs.

23. Schedule 5 is concerned with producer responsibility for disposal costs. Paragraph 4(1) provides for the appointment of a scheme administrator relating to extended producer responsibility. An administrator's role is to manage

provision made in relation to disposal costs in the regulations. The provisions as currently drafted require that a scheme administrator be appointed by regulations.

24. The proposed amendment will allow for different appointment processes as suitable for different product schemes.
25. The Welsh Government considers the proposed amendment would allow for flexibility of process and enable either the administrator to be appointed via regulations (as is the case as currently drafted) or make provision for appointment administratively. This is broader than the original drafting of the provision.
26. As this clause makes provision for waste and environmental protection, a purpose within the legislative competence of the Senedd, it is the Welsh Government's view that consent is required. The clause would be *relevant provision* for the purposes of Standing Order 29.1.

Proposed Amendment to Schedule 10 – Enforcement Powers

27. Schedule 10 is concerned with enforcement powers. The Bill inserts new powers in section 108(4) of the Environment Act 1995, including the power to search premises, and seize and remove documentary evidence (new (4)(ka)). As these are search and seize powers, a requirement was included that an English or Welsh authorised person may not exercise the powers in subsection 4(ka) without the authority of a warrant.
28. In practical terms, the powers in section 108 are for checking compliance as well as for dealing with breaches that have happened. It is therefore essential that authorised officers are able to carry out their duty without having to obtain a warrant where consent has been given by the owner/ occupier to enter premises. The proposed amendment makes it clear that once entry has been gained, the consent of a person entitled to grant access to material on, or accessible from the premises, is sufficient to allow the search and seizure functions listed elsewhere in the provision to be exercised.
29. The Welsh Government considers that the amendment is required as it could only be implied from the original drafting that the powers set out would be exercisable with consent rather than expressly providing for it. The amendment provides clarity that the search and seizure functions can be exercised either with consent or with a warrant.
30. As this clause makes provision for waste and environmental protection, a purpose within the legislative competence of the Senedd, it is the Welsh Government's view that consent is required. The clause would be *relevant provision* for the purposes of Standing Order 29.1.

Financial Implications

31. There are no additional financial implications for the Welsh Government or the Senedd as a result of taking these amendments to the bill.

Conclusion

32. I am content to endorse the proposed amendments to the UK Environment Bill.

33. Memorandum 1 outlined the Welsh Government's view that the Bill is an appropriate vehicle to take forward initiatives requiring a joined up approach. In my view the amendments to the provisions highlighted above are appropriate and do not alter the Welsh Government view that the provisions remain relevant provision for the purposes of SO29 and require the legislative consent of the Senedd.

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Minister for Climate Change
3 September 2021