

UK Environment Bill 2020-21 Research Briefing

September 2020



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UK Environment Bill 2020-21

Research Briefing

September 2020

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This research briefing has drawn on the House of Commons Library analysis of the Environment Bill 2019-20 by Louise Smith, Sara Priestley and Georgina Hutton.

On 6 May the National Assembly for Wales became the Welsh Parliament, to be commonly known as Senedd. As a result, references in this research briefing reflect the change of name, referring to the institution as the 'Assembly' in a historical context (prior to 6 May) and 'Senedd' thereafter.



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1. Overview of the Bill

The UK Government introduced the **Environment Bill 2020-21** ('the Bill') to the House of Commons on 30 January 2020. It received its second reading on 26 February. The Bill is now being considered by a Public Bill Committee which will scrutinise its provisions line by line. Due to the coronavirus pandemic, the timeline for consideration of the Bill is currently unknown. The Bill has been reintroduced **from the previous parliamentary session**. The majority of clauses are substantially the same as its predecessor.

The Welsh Government laid the **Legislative Consent Memorandum (LCM) for the Bill** before the National Assembly on 26 February 2020. The Bill is subject to the legislative consent process as a number of the areas covered fall within the competence of the Senedd. Whilst most of the provisions extend to England and Wales there are some parts that extend to the whole of the UK or apply to specific UK nations.

The Bill covers two broad themes. Firstly it provides a new domestic framework for environmental governance. Secondly, it makes provision for specific environmental policy areas including waste, air quality, water, nature and biodiversity, and conservation covenants.

Following the UK's EU exit day on 31 January 2020, EU Directives and all domestic legislation implementing them continue to have the same effect throughout the implementation period by virtue of the **EU (Withdrawal) Act 2018**. On the implementation period completion day (currently expected to be 31 December 2020) the domestic legislation implementing the Directives will form part of retained EU law.

Part 1 aims to address the environmental governance gap in the UK (mainly in England but with some application in Wales and Scotland) following the end of the Implementation Period (IP) under the Withdrawal Agreement.

Part 1 establishes the Office for Environmental Protection (OEP) which would have scrutiny, advice and enforcement functions in relation to environmental protection and the natural environment. The OEP would only apply in Wales in relation to non-devolved matters. It also makes provision for the setting of long term environmental targets in England in four 'priority areas' (air quality, water, biodiversity and resource efficiency/waste reduction). The majority of Part 1 does not apply in Wales. However, the aspects which do (for example the OEP) are not

listed as requiring an LCM in the **Explanatory Notes** due to their non-devolved nature.

Part 2 relates to environmental governance in Northern Ireland.

Part 3 makes provisions for managing waste, and producer responsibility. The provisions include: introducing a revised extended producer responsibility (EPR) scheme; powers to regulate for eco-design standards and resource efficiency information across a wider range of products; powers to regulate imports and exports of waste; and amendments to responsibilities for separating and recycling waste. It also provides a framework for a deposit return scheme (DRS). The majority of the clauses in this part extend to Wales (except those relating to carrier bag charges and separation of waste). **Part 3 mainly provides broad regulation making powers for the Welsh Ministers, rather than providing detail on proposed schemes.**

Part 4 deals with air quality and amends the requirement for, and management of, Local Air Quality Management (LAQM) Frameworks. It also provides local authorities with greater powers in smoke control areas and includes provisions to require the recall of motor vehicles on environmental grounds. Aspects of Part 4 apply in Wales, and require legislative consent. The recall of motor vehicles aspect applies in Wales, but is not listed as requiring an LCM due to its non-devolved nature.

Part 5 includes provisions relating to water resources management, including: the development of joint regional plans for water resource management; a statutory duty for water companies to develop long-term drainage and sewerage management plans; amendments to Ofwat's water company licensing process; amendments to the abstraction licence process; and land valuation matters. The majority of provisions apply in Wales.

Part 6 provides for the creation of a new biodiversity net gain requirement in England.

Part 7 legislates for the introduction of voluntary legally binding conservation covenants between landowners and 'responsible bodies' which conserve the natural or heritage features of land. These clauses are for England only.

Part 8 outlines miscellaneous and general provisions. Clause 125 provides powers to the Secretary of State to amend the EU REACH Regulation (registration, evaluation, authorisation and restriction of chemicals). All the clauses in this part apply to Wales, but only Clause 125 requires an LCM.

1.1. Clauses relevant to Wales

The **Explanatory Notes** accompanying the Bill set out the territorial extent and application in the UK for all clauses. They also set out whether legislative consent is required for each clause.

The LCM identifies the clauses with particular relevance to matters 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 waste 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 to 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 the Secretary of State), Clause 82 (Water quality: powers of the Welsh Ministers), Clause 85 (Water quality: interpretation), Clauses 87-89 (Land drainage); and
- **Part 8: Miscellaneous and General Provisions** – Clause 125 (Amendment of REACH legislation).

1.2. Reasons for making provisions for Wales in the UK Bill

The LCM sets out a number of reasons why the Welsh Government considers it appropriate to legislate for Wales in these areas through a UK Bill. Firstly it states that there is **no time in the Senedd's timetable to bring forward an Environment Bill** which could be used to take the provisions forward.

In relation to the provisions being made for extended producer responsibility, waste management and single use plastics, the Welsh Government views the Bill as a **timely opportunity to progress key features of its circular economy**

strategy. It states that:

...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 businesses operating in the sector.

In written evidence to the Committee, the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths (“The Minister”) expands on the above stating:

...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.

For powers relating to extended producer responsibility, waste management, water plans and proposals, regulation of water and sewerage undertakers, and the REACH regulations, the LCM states that:

...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.

Implications if the provisions are not taken forwards

In her [letter to the CCERA Committee](#) on the Bill, the Minister sets out the potential future implications for Welsh policy if the provisions for Wales are not taken forwards in the UK Bill. She says that some provisions in the Bill reflect current Welsh Government policy, and that therefore the Bill enables future Welsh policy to be delivered. She also sets out that the Bill provides an ‘appropriate legislative vehicle’ which:

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

1.3. Concurrent plus powers

Concurrent plus powers are powers for the Secretary of State to legislate for Wales in areas that are within the Senedd’s competence – if given consent by the Welsh Ministers.

The Bill contains concurrent plus powers in relation to:

- Clause 47 and Schedule 4 – Producer responsibility obligations;
- Clause 48 and Schedule 5 – Producer responsibility for disposal costs;
- Clause 49 and Schedule 6 – Resource efficiency information;
- Clause 50 and Schedule 7 – Resource efficiency requirements;
- Clause 51 and Schedule 8 – Deposit schemes;
- Clause 81 – Water quality powers of the Secretary of State; and
- Clause 125 – Amendment of REACH legislation.

The LCM states that, as currently drafted, the inclusion of the ‘concurrent plus’ functions in the Bill also leads to the clauses requiring consent as the ‘provisions arguably ‘modify the legislative competence of the Assembly’ and in turn would be relevant provisions for the purposes of Standing Order 29.1 (ii)’.

The LCM outlines three outstanding areas of concern. Two relate to environmental governance (see next section). The third relates to a ‘carve out’ of powers. The LCM 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 (Government of Wales Act 2006, GOWA 2006) 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.

If the Welsh Government gave consent to the Secretary of State to make regulations under these ‘concurrent plus’ powers, the Secretary of State would be able to make regulations in devolved areas, but these regulations would not be subject to Senedd scrutiny.

1.4. Financial implications of the provisions

In her paper to the Climate Change, Environment and Rural Affairs (CCERA) Committee, the Minister provides details of work the Welsh Government has undertaken to assess the costs of the provisions for Wales – both for the Welsh Government, and for other relevant bodies on whom the costs will fall. The Minister says:

- The joint programmes developing DRS and EPR will include a regulatory

impact assessment which sets out the costs of implementing and running these schemes. This will be refined as the preferred options emerge and the details of both schemes are worked up;

- Broadly speaking, EPR and DRS should be cost neutral to public finances with the schemes looking to recover their costs through the fees and charges which will be payable by industry. This will include costs to cover regulatory oversight through compliance monitoring and enforcement. However, we do recognise there are start-up costs to both schemes, to support this the HM Treasury budget on 11 March 2020 allocated £700,000 for initial ICT work on EPR for Packaging;
- In relation to Clause 70 and Part 2 of Schedule 12 (*on Smoke Control Areas*), officials will undertake further work in relation to cost estimations but a preliminary assessment indicates costs will be minimal with no ongoing costs other than translation costs;
- The amendments, land drainage rates & levies strengthen the positions of Welsh Government and Natural Resources Wales (NRW) who administer Internal Drainage Boards in Wales, thus providing a mechanism for applying correct levies and drainage rates;
- There are no financial implications arising from the powers given to Ministers by the chemicals provisions as Ministers do not have to exercise them. The provisions do not create new obligations but give powers to amend the existing REACH regulations. When Ministers decide to exercise these powers an assessment of the financial implications would be made at the time. This could result in financial costs or savings.
- In respect of costs for water and/or sewerage companies of meeting the requirements for joint proposals, water resources management drought plans, and drainage and sewerage management plans – with the exception of statutory Drainage and Wastewater Management Plans there should be no additional costs as water companies already prepare statutory water resource management and drought plans.

The CCERA Committee published [**its report on the LCM**](#) on 2 July 2020. Its overall recommendation was:

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

The Welsh Government [**responded to the report**](#) on 16 July, accepting 14 of the 15 recommendations, with one accepted in principle. .

The Committee made two other overarching recommendations on the Bill:

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

And:

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

The Welsh Government accepted recommendations 1, 2 and 3. In relation to recommendation 2, the Minister stated that it will carry out ‘proper and appropriate consultation’ with those who are likely to be affected by the legislation, and those who have an interest in its overall impact before making regulations using the powers provided in the Bill. On recommendation 3, the Minister outlined that both EPR and DRS are being designed based on the ‘polluter pays’ principle, and that obligated producers will be required to pay a fee. This fee will cover a range of elements, including the costs of any compliance and monitoring required. She said that NRW officials are fully engaged in the development of both schemes and are developing costing models to ensure the costs recovered by producers reflects the costs they will incur in any regulatory activity. In relation to the water proposals in the Bill, the Minister said that any additional responsibilities placed on NRW and their resource implications will be assessed against its remit and statutory obligations, and NRW will be consulted throughout.

2. Part 1 – Environmental Governance

Part 1 of the Bill aims to provide a new domestic framework for environmental governance and principles post-Brexit, mainly for England. The Bill follows a ***draft UK Government Environmental (Principles and Governance) Bill 2018***; a ***Senedd Research blog post*** provides details on the draft Bill.

A ***House of Common's Briefing Paper*** provides a comprehensive analysis of the Bill's provisions. Detailed below are provisions that will be of interest to Members of the Senedd as they are relevant to the CCERA Committee's previous work, or are included in the Welsh Government's LCM.

2.1. Policy statement on the environmental principles

Clauses 16-18 of the Bill relate to a requirement on the Secretary of State to prepare a policy statement on environmental principles, and for a Minister of the Crown to have regard to this statement when making policy decisions. The policy statement must contribute towards environmental protection and sustainable development.

The policy statement on environmental principles only applies in England.

The meaning of 'environmental principles' are set out in Clause 16(5) as follows:

- (a) the principle that environmental protection should be integrated into the making of policies,
- (b) the principle of preventative action to avert environmental damage,
- (c) the precautionary principle, so far as relating to the environment,
- (d) the principle that environmental damage should as a priority be rectified at source, and
- (e) the polluter pays principle.

2.2. Statements on environmental law

Clause 19 requires that, where a Bill introduced into Parliament contains provisions that would be 'environmental law' (defined under Clause 43) once enacted, the Minister in charge must make a statement to the House. The statement must set out that the Bill does not have the effect of reducing the level of protection provided by any existing environmental law; essentially a 'non-regression' statement. Alternatively, the Minister must set out that they are unable to make such a statement, but that the UK Government nevertheless wishes Parliament to proceed with the Bill. The Explanatory Notes to the Bill set out that 'this could

be where an existing UK environmental protection is no longer justified by new scientific evidence’.

The definition of ‘environmental law’ provided under Clause 43 includes ‘devolved legislative provision’ for the purpose of Clause 19. The Welsh Government’s LCM says ‘the effect of this is [that] the above requirements [the non-regression statements] apply equally to UK Bills involving ‘environmental law’ applying in Wales, in the same way as England.’ **Clauses 19 and 43 apply across the UK.**

The Welsh Government sets out in its LCM that, in its view, the Senedd’s consent is required for 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. However the UK Government has not identified these clauses as requiring consent. Senedd legal advisers agree with the UK Government’s position that the Senedd’s consent is not required for these provisions.

The LCM explains that the UK Government is of the view that these provisions relate to Parliamentary processes, and as such are a reserved matter. However, the Welsh Government argues that the purpose of these provisions are environmental and therefore devolved, requiring consent.

2.3. Office of Environmental Protection

Clauses 21-40 (Chapter 2) relate to the establishment and the powers of a new environmental governance body, known as the Office of Environmental Protection (OEP). It would have scrutiny, advice and enforcement functions. **The OEP would apply across the UK, but in Wales only in respect of environmental matters that are not devolved.**

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. **This applies across the UK.**

In her evidence to the CCERA Committee the Minister provides further detail on the role of the OEP in Wales (Senedd Research emphasis added):

The remit of the OEP is for England and reserved matters. There are few areas of reservation, one particular example is INSPIRE (Infrastructure for Spatial Information in Europe), which is specifically reserved in the Government of Wales Act 2006. However, the remit of the OEP has been extended to include climate change, which is closely connected to energy, which is, bar some exceptions, a reserved matter.

Whilst there will be very few areas in which the OEP will have oversight of environmental matters in Wales, where this does occur it **is vital the OEP works with the relevant body responsible for environmental governance in Wales to ensure areas of intersection between reserved and devolved issues are fully explored.**

2.4. LCM and environmental governance

The LCM states that the Welsh Government is generally supportive of the Bill as drafted. However, it raises three outstanding areas of concern, two of which are in relation to the environmental governance part of the Bill:

These [concerns] relate to the impact of Clause 19 (non regression of environmental protection standards) on devolved competence and the duty on the Office of Environmental Protection to consult devolved environmental governance bodies (Clause 24(4)). Clause 24(4), requires the Office for Environmental Protection 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. These outstanding issues are currently under discussion with Defra.

The Minister's paper states that she is seeking a strengthening of the current consultation duty contained in Clause 24(4) of the Bill, which requires the OEP to consult devolved environmental governance bodies. She outlines that (Senedd Research emphasis added):

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.**

2.5. Background

2.5.a The EU system of environmental governance

The European Commission (EC), Court of Justice of the European Union and other European bodies govern the implementation of environmental laws across the EU. These laws, and how they are interpreted, are shaped by the **EU environmental principles**, which are designed to ensure high environmental standards. These governance structures will no longer apply after the Brexit transition period.

There has been wide concern across the environment sector that this will create a **'governance gap' in the UK.**

2.5.b A Welsh environmental governance system

The Welsh Government is of the opinion that separate governance arrangements to those in the Bill are required in Wales due to the different legislative context. It previously concluded that the UK Government's model for a governance body is 'not suitable' for Wales. Notwithstanding this, the Minister has acknowledged that UK-wide collaboration is required.

The Welsh Government has **committed** to legislating in this area. The Minister has **convened a Stakeholder Task Group** which provided recommendations to the Minister earlier this year. In her paper to the CCERA Committee she provides an update on the work of the group. She outlines that her officials will be undertaking a full analysis of the recommendations in the report as part of a wider options appraisal. The timescale for this work is not outlined.

2.6. The CCERA Committee's previous work on environmental governance

The CCERA Committee has carried out two inquiries into environmental governance and principles. The **first inquiry** (summer 2018) was an initial look at the issues. The **second inquiry** (summer 2019) followed the **Welsh Government's June 2019 consultation on environmental principles and governance.**

In terms of the environmental governance body/bodies, the Committee heard concerns that the proposed OEP would 'cross over and collide' with the Welsh Government's proposals given the constitutional complexity of the plans. As discussed, the OEP would apply in Wales but only in non-devolved environmental areas, whilst a Welsh governance body would apply in devolved environmental areas. CLA Cymru stated that this approach would become a 'legal minefield' if not resolved. In its second report (2019) **the Committee recommended:**

The Welsh Government should set out how it intends any new Welsh governance body to work with the proposed OEP and any equivalent body in Scotland to ensure a co-ordinated approach to environmental protection across the UK post-Brexit.

As discussed, Clause 24(4), requires the OEP to consult a devolved environmental governance body if it considers a matter to be relevant to the exercise of that body's function. However the Welsh Government states in its LCM that discussions around co-ordination are on-going.

In terms of the interaction between Welsh-specific and UK-wide environmental principles, the Committee concluded in its **first report**:

We are concerned about potential conflict between UK Government decisions on reserved matters and Welsh policies. It will be possible for the UK Government to make decisions relating to reserved matters in Wales that would be in direct conflict with principles or standards adopted by the National Assembly for Wales. In practice, this could mean two sets of standards running in parallel in Wales, with potentially different environmental standards being applied to devolved and reserved matters.

In August 2019, the **Minister informed the CCERA Committee** that the Welsh Government '[has] already agreed with the UK Government to have a common set of environmental principles and work is on-going on proposals, which where appropriate enable collaborative governance approaches'. However it is not apparent how this agreement would operate given the principles and policy statement outlined in this Bill only apply in England.

In her paper to the Committee, the Minister provides an update on the introduction of a Welsh environmental principles and governance Bill. She says:

We have been clear in our commitment to legislate to place our approach to environmental principles and governance on a statutory footing.

The current legislative programme is coming under considerable pressure both from the need to introduce urgent legislation to address Covid-19 and the substantial programme of secondary legislation to deliver a functioning statute book for the end of the Transition Period later this year. This has obviously had impacts on our legislative timetable and is impacting on the Bills currently within the legislative programme.

In light of all of this, the Welsh Government cannot provide any guarantees on any new Bills being introduced later this year.

Stakeholder evidence and CCERA Committee conclusions

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

The Committee made three recommendations in this area:

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

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

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

The Welsh Government accepted recommendations 4, 5 and 6. On recommendation 4, the Minister said she is consulting with Defra and she plans to update the Senedd after the summer recess. In relation to recommendation 5, the Minister said the intention is for interim environmental governance measures to be in place for the end of the implementation period. She said it is her priority to ensure a complaints mechanism is in place, which will provide a dedicated webpage for environmental governance and a complaints form. On recommendation 6, the Minister said the stakeholder report will be published, along with further costed options analysis, when this work is complete in the Autumn.

3. Part 3 – Waste and Resource Efficiency

Part 3 of the Bill deals with waste and resource efficiency. It covers the following areas relating to Wales:

- Reforming the **packaging producer responsibility scheme**, with the aim of making producers (businesses which produce or use a certain amount of packaging, or sell packaged goods e.g. retailers or supermarkets) responsible for the full net costs of managing their products at the end of their life;
- Providing powers for the Secretary of State and devolved Ministers to set minimum requirements for manufacturers and producers to provide information about the **resource efficiency** of their products (subject to some exceptions, including medicines);
- Providing a framework to introduce a **deposit return scheme** (DRS) for certain items such as single-use drinks containers;
- Providing a framework for charges to be applied to **single-use plastic items** which are supplied in relation to a good or service (e.g. plastic take-away food containers or plastic cutlery);
- Allowing for the introduction of **electronic waste tracking** in Great Britain, with associated criminal offences and civil penalties;
- Enabling the Secretary of State to regulate the **import, export or transit of waste and hazardous waste**;
- Amending the existing charging power available to the relevant environmental regulators in England, Scotland and Wales in respect of environmental licences and producer responsibility schemes;
- Amending **enforcement powers** (e.g. seizure of vehicles, powers of entry etc) in relation to waste crime offences; and
- Providing the basis for the Secretary of State or the Welsh Ministers to issue guidance on the use of **litter enforcement** powers by local authorities.

3.1. Producer Responsibility

Clauses 47-48, and **Schedules 4** and **5** of the Bill deal with producer responsibility and associated obligations. **The Bill aims to extend the scope of the current extended producer responsibility (EPR) scheme. Clause 47** and **Schedule 4** repeal Sections 93 to 95 of the *Environment Act 1995* and replace these provisions with **regulation making powers about producer responsibility obligations**. These would allow the ‘relevant national authority’ (the Welsh Ministers or

Secretary of State in Wales) to **make new regulations to introduce a revised EPR scheme**. The Secretary of State can legislate in relation to Wales in this area with the consent of the Welsh Ministers (a 'concurrent plus' power).

Schedule 4 makes a number of provisions in respect of the regulation making power. It states that regulations may:

- Only be made for certain purposes. These purposes are preventing, or reducing the amount of, a product or material that becomes waste, and sustaining a minimum level of, or promoting or securing an increase in, the re-use, redistribution, recovery or recycling of products or materials;
- Set out the persons and products or materials that producer responsibility obligations may apply to, and provisions about the obligations that are to be imposed. They may also make provision about targets to be achieved as part of a producer responsibility obligation;
- Allow producer responsibility obligations to be met in whole or in part by payment of a sum of money, to be known as a 'compliance fee'; and
- Require persons subject to a producer responsibility obligation to be registered and mandated to join a compliance scheme.

Clause 47 and **Part 2 of Schedule 4** provide the **relevant national authority with powers to make regulations about the enforcement of the producer responsibility obligations**. This would allow regulations to be made in respect of the functions of the enforcement authority, powers of entry, and seizure and detention of property. They could also create sanctions which could be criminal offences (punishable with a fine) or civil sanction, for failure to comply with the regulations.

Clause 48 and **Schedule 5** make **provisions for those involved in the 'manufacture, processing, distributing or supplying products or materials' to be required, by regulations, to pay for or contribute to the costs of disposing of those items**. **Clause 48** and **Part 2 of Schedule 5** also provide a power to make regulations about enforcement of the scheme.

The LCM states that the powers conferred in **Clause 47** and **Schedule 4**, and **Clause 48** and **Schedule 5** are exercisable through the affirmative procedure before the Senedd, or before the UK Parliament where exercised by the Secretary of State.

In her paper to the CCCERA Committee, the Minister set out that work is

continuing on a joint programme of work on EPR with Scotland, England and Northern Ireland. She says that no decision has yet been taken as to the route by which the regulations to enact EPR will be introduced.

Background

Under the **EU Packaging and Packaging Waste Directive (94/62/EC)**, the UK has a statutory producer responsibility regime for packaging, covering the whole of the supply chain from the raw materials to the finished packaging. This is intended to incentivise packaging producers to take financial responsibility for the end recycling of their products. Packaging is any material used to hold, protect, handle, deliver or present goods. It covers a wide range of material beyond just plastic, encompassing paper, glass, aluminium, steel and wood. This EU Directive set packaging waste targets of 60% for minimum recovery (concerned with the collection of materials) and 55% for recycling, to be met by 31 December 2008. It also set material-specific recycling targets. These are 60% for glass, 60% for paper and cardboard, 50% for metals, 22.5% for plastics, and 15% for wood.

The **Amending Packaging Waste Directive 2018 (Directive (EU) 2018/852)** amends the *Packaging Waste Directive 1994* by increasing the recycling target to 70% (by weight) for packaging waste by 2030, with an interim target of 65% by 2025. EU Member States are required to transpose the *Amending Packaging Waste Directive 2018* into national law by 5 July 2020.

The UK Government implements the requirements of *the EU Packaging Waste Directive 1994* by placing a legal obligation on businesses over a certain size which make or use packaging, to ensure that a proportion of the packaging they place on the market is recovered and recycled. This known as an extended producer responsibility scheme (EPR) for packaging. The primary legislation establishing it is the *Environment Act 1995* for England, Wales and Scotland. The scheme has been in place since 1997 and operates UK-wide under GB and parallel Northern Ireland regulations:

- The ***Producer Responsibility Obligations (Packaging Waste) Regulations 2007*** and the ***Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007*** cover the recycling and recovery of packaging waste; and
- The ***Packaging (Essential Requirements) (Amendment) Regulations 2015***, cover design and manufacturing aspects of packaging.

Relevant businesses discharge their responsibilities by collecting evidence of waste packaging recycling and recovery equivalent to the weight of their obligations

from accredited re-processors and exporters. Packaging Recovery Notes (PRNs) or Packaging Export Recovery Notes (PERNs) are issued by accredited businesses and provide the evidence for compliance. In 2017, **7,002 companies registered** as having packaging obligations across the UK.

In 2019, the UK Government and Welsh Government **jointly consulted on proposals for EPR**. The Welsh Government has recently consulted on its **circular economy strategy** which includes producer responsibility proposals:

We will work with the other governments of the UK in developing legislation for an Extended Producer Responsibility (EPR) scheme for packaging and to develop an EPR approach for additional products such as tyres, textiles, bulky wastes (for example furniture, mattresses and carpets) and products used in construction.

3.2. Resource efficiency and ecodesign

The resource efficiency and ecodesign proposals within the Bill form part of the wider proposed reforms around producer responsibility. The previously outlined Welsh Government circular economy strategy consultation also includes resource efficiency related proposals.

Clause 49 of the Bill gives effect to **Schedule 6** which provides the relevant national authority (the Secretary of State, or devolved Ministers where they have responsibility) **with the power to make regulations setting minimum requirements for manufacturers and producers to provide information on the resource efficiency of their products**. The Explanatory Notes state that the intention of the measure is to reduce the impact of products on natural resources by ensuring consumers are supplied with information about the resource efficiency of those products in order to drive more sustainable consumption. All regulations under **Schedule 6** are subject to the affirmative procedure. The type of information that may be covered in the regulations is set out in **Schedule 6**, and includes:

- The expected life of the product;
- Aspects of the product's design which affect its expected life;
- The availability or cost of component parts, tools, or anything else required to maintain or repair the product;
- The ways in which the product can be disposed of at the end of its life (including whether and to what extent it can be recycled, and whether materials used in it can be extracted or reused/recycled);

- The materials from which the product is manufactured;
- The techniques used in its manufacture; and
- The pollutants released or emitted at any stage of the product's production, use or disposal.

Clause 50 and Schedule 7 give the relevant national authority the power to make regulations setting out resource efficiency requirements products are required to meet. All regulations under Schedule 7 are subject to the affirmative procedure.

3.3. Deposit Return Scheme (DRS)

The Bill defines a DRS in **Schedule 8, paragraph 1(2)** as:

A deposit scheme is a scheme under which-

- (a) a person supplied with a deposit item by a scheme supplier pays the supplier an amount (a 'deposit'), and
- (b) a person who provides a deposit item to a scheme collector is entitled to be paid an amount (a 'refund') in respect of that item by the collector.

The Bill **does not say which materials would be included within a deposit scheme, or at what price the deposit would be set.**

Clause 51 of the Bill and **Schedule 8** enable the relevant national authority (the Welsh Ministers in Wales) to **make regulations establishing deposit return schemes**. Parts (3) and (4) of the Clause allow the Secretary of State to make regulations on behalf of Wales and Northern Ireland, subject to their consent ('concurrent plus' powers). They allow regulations to define deposit 'scheme suppliers', 'scheme collectors' and 'scheme administrators' and to impose requirements on them. It also provides for **regulations to be made to enforce a DRS**. The Explanatory Notes state that the regulations are subject to the negative procedure, except in the following circumstances where the affirmative procedure would apply:

- The regulations establish a deposit scheme for the first time;
- The regulations are the first to provide for enforcement of a deposit scheme;
- The regulations create a criminal offence;
- The regulations provide for new civil sanctions; or
- The regulations increase the amount or the maximum amount of a fine or monetary penalty, or change the basis on which a maximum amount of a fine or monetary penalty is to be determined.

In her paper to the CCERA Committee the Minister outlines that work is continuing on a joint basis (with England and Northern Ireland) to develop a DRS. She says preparations are being made for a second consultation on the detailed design and preferred workings of the scheme. She says a decision is yet to be made as to the route by which the regulations to enact a DRS will be introduced.

The Bill does not outline which organisation will be responsible for the operational management of DRS in Wales. However, the Minister outlines in her paper that there have been officer level discussions on the potential role of NRW in the regulation of a DRS.

Background

Under a DRS consumers are charged a sum of money as a deposit upfront when they buy, for example, a drink in a single use container. This can be redeemed when the empty container is returned. In other countries that have DRS, consumers can either return containers through a reverse vending machine, or manually to a retailer.

In February 2019, the UK Government, Welsh Government and Department of Agriculture, Environment and Rural Affairs in Northern Ireland **jointly consulted on proposals for introducing a DRS** in England, Wales and Northern Ireland. The consultation proposed a broad range of drinks containers that could be included within a scheme (including plastic bottles, steel and aluminium cans and glass bottles). The consultation also proposed a deposit level of 15 pence per container.

The UK Government responded to the consultation on 23 July 2019, publishing a **summary of responses**, and **executive summary and next steps**.

Approaches such as DRS to reduce plastic waste support **Welsh ministerial plans** to move towards a circular economy, where products/packaging never become waste, but contribute positively to the economy. The Welsh Government has recently consulted on its **circular economy strategy**, the consultation ended on the 24 April. The strategy contains proposals on DRS.

3.4. Charges for single-use plastic items

Clause 52 and **Schedule 9** allow regulations to be made for charging for **single use plastic items**. It does not say what level the charge would be set at. The charge for a single-use plastic item would only apply to those items meeting the definition in the Bill:

(2) The regulations may specify only items which-

- (a) are single use items,
- (b) are made wholly or partly of plastic, and
- (c) are supplied in connection with goods or services.

(3) A 'single use item' is a manufactured item which is likely to be used only once, or used only for a short period of time, before being disposed of.

Schedule 9 provides that regulations could be made in respect of a number of provisions including on:

- imposing a requirement to charge on sellers of goods and services;
- the amount of the charge;
- providing an administration and registration scheme for the charge;
- record keeping and publication of records;
- enforcement of the charge; and
- civil sanctions for failure to comply with the regulations.

The first set of regulations would be subject to the affirmative procedure, as would regulations:

- imposing a charge on a new single-use plastic item;
- regulations that provide for conduct to be subject to a civil sanction (which is not subject to a civil sanction under existing regulations); and
- regulations that increase the amount or maximum amount of a monetary penalty (or change the basis on which such an amount or maximum is to be determined).

Otherwise regulations would be subject to the negative procedure.

Background

Both the Welsh and UK governments have recognised that there are significant environmental issues arising from the use and inappropriate disposal of single-use plastic items such as take away food containers and plastic cutlery.

In May 2019, the then Environment Secretary Michael Gove **confirmed a ban** on **plastic straws, drinks stirrers, and plastic-stemmed cotton buds** in England from April 2020. However, the **ban is now delayed until October 2020** due to the coronavirus pandemic.

On 18 March the Welsh Government **announced its intention** to ban plastic straws, cutlery, polystyrene food and drink containers and a range of other single use plastic items. It will consult on the proposals in the coming months; with restrictions due to come into force in the first half of 2021.

In her evidence to the CCERA Committee the Minister says:

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

The proposed ban on certain single use plastic items is to be brought in using existing legislative powers contained in Section 140 of the Environmental Protection Act 1990, whereas the introduction of any charges for single use plastic items will rely on powers contained in the Bill which are not yet in place, meaning such charges cannot be taken forward at the same pace.

In terms of the potential for a future tax on single use plastic items, the Minister says:

Welsh Treasury officials are continuing to develop the evidence base in relation to a tax or charge on single use plastic cups, specifically the possible impact on retailers. Should it be determined a tax – rather than a charge - is an effective route to drive positive behaviour change, this proposal would need to be first approved by UK Government through the mechanism provided for under the Wales Act. It is worth noting the process for introducing a tax is separate to the powers to introduce a charge provided for under the UK Environment Bill.

3.5. Electronic Waste Tracking

Clause 55 would amend the **Environmental Protection Act 1990** ('the EPA 1990') to allow for the introduction of electronic waste tracking in Great Britain, and to create associated criminal offences and civil penalties. It inserts a new Section 34CA into the EPA 1990. It creates a **power for the relevant national authority to make regulations about the tracking of specified waste, including the establishment of an electronic waste tracking system**. The regulations could require waste controllers and regulation authorities (NRW in Wales) to ensure specified information, such as how waste is processed, treated or moved, is entered into the system.

The Bill makes provision about the **enforcement of the regulations** through the insertion of a new Section, 34CB into the EPA 1990. It allows regulations to be

made to create criminal offences and civil sanctions.

Clause 55(4) would **allow the regulation authorities to establish charging schemes to recover costs incurred** in performing their functions under new electronic waste tracking regulations.

The LCM states that regulations under new Sections 34CA and 34CB are subject to the negative procedure, except for the situations specified in the new Section 160A(2) in which case the affirmative procedure applies.

In her evidence to the CCERA Committee the Minister sets out the implications of not taking forward the provisions on electronic waste tracking. She says this would mean that Wales would be unable to play its part in UK wide work to digitise waste tracking processes. This would include: lost business revenues to the legitimate waste sector; loss of Landfill Tax through the miscalculation of waste; and costs to the public sector of clearing abandoned waste sites and fly tipped waste.

Background

In June 2018, the then Defra Secretary Michael Gove commissioned an independent review to make recommendations for a strategic approach to waste crime. Waste crime includes offences such as landfill tax evasion, illegal waste exports and fly-tipping. The review **reported** in November 2018. One of the recommendations of the review was that mandatory electronic tracking of waste, and a national database of registered brokers, should be introduced at the earliest opportunity.

A new **Joint Unit for Waste Crime (JUWC)** was launched in January 2020. It includes the Environment Agency, NRW, the Scottish Environment Protection Agency (SEPA), HMRC and the National Crime Agency and the police.

All businesses that produce or handle waste are currently required by law to complete a written description of waste when they transfer it to someone else.

3.6. Hazardous Waste

Clause 57 of the Bill amends the EPA 1990 by inserting a new Section 62ZA. This section **creates a power, exercisable by the Secretary of State (in relation to England) or the Welsh Ministers to make regulations regarding hazardous waste**. These regulations may include:

- Prohibiting or restricting what can be done with hazardous waste;

- Imposing requirements about how hazardous waste may be kept;
- Providing for the regulation of hazardous waste controllers;
- Providing for the keeping and inspection of records relating to hazardous waste (inspection by NRW in Wales);
- The circumstances in which waste that is not hazardous waste should be treated as hazardous for the purpose of the regulations;
- Providing for the supervision of hazardous waste activities/controllers by the Environment Agency or NRW;
- Providing for records to be kept by the Environment Agency or NRW; and
- Providing for the recovery of expenses/charges for the treatment, keeping or disposal of hazardous waste.

In terms of enforcement, provision may be made in regulations that contravention of regulation of hazardous waste is to be a criminal offence, with a maximum penalty of two years imprisonment.

The LCM states that the regulations under the new section are subject to the negative procedure, except for the situations specified in new Section 160A(2), in which case the affirmative procedure applies.

Background

A significant amount of the UK law on hazardous waste is derived from EU law. Section 62 of the EPA 1990 had previously given the UK Government the power to regulate hazardous waste through secondary legislation. This was revoked for England and Wales in 2005 by secondary legislation implementing the EU **Hazardous Waste Directive (91/689/EEC)**.

Hazardous waste is defined in the Directive as waste that displays one or more of the hazardous properties listed in Annex III of the Directive. This includes waste that is explosive, corrosive, an irritant or highly flammable. **Clause 57(3)** of the Bill amends the statutory definition of hazardous waste. The *Hazardous Waste Directive* has been superseded by the **Waste Framework Directive (2008/98/EC)**.

Hazardous substances are one of the areas identified as requiring a Common Framework within the **Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks**. The **process and timescales for introduction and scrutiny of Common Frameworks is still being developed and agreed**

3.7. Transfrontier shipments of waste

The provisions in the Bill relating to the transfrontier shipment of waste apply in England and Wales. However, the Explanatory Notes set out that the provisions do not require legislative consent from the Senedd. The ‘prohibition and regulation of imports and exports’ is reserved by paragraph 71 of Schedule 7A of the *Government of Wales Act 2006*, so this is not with the Senedd’s competence. The LCM makes no mention of the provisions.

Clause 59 amends Section 141 of the EPA 1990. The EPA 1990 contains a power to make regulations to prohibit or restrict waste imports and exports. **Clause 59** amends Section 141 to **allow the Secretary of State to make regulations to regulate waste imports or exports or the transit of waste for export**. These include provisions or prohibiting or restricting the:

- Import of waste;
- Landing and unloading of waste in the UK;
- Export of waste;
- Loading of waste for export; and
- Transit of waste for export.

The Explanatory Notes outline further detail about the provisions, and set out what they mean for Wales. The amendments to the EPA allow the regulations to:

- Confer functions on NRW (and relevant bodies elsewhere in the UK), including functions related to enforcement of the regulations;
- Issue direction to NRW (and relevant bodies elsewhere in the UK) on how they exercise their functions when regulating waste imports, and the transit of waste for export;
- Include provisions about fees or charges to be paid to NRW (and other relevant bodies); and
- Allow NRW (and other relevant bodies) to use fees and charges to meet the costs they have incurred when regulating waste imports and the transit of waste for export.

In January 2020 in a **ministerial statement accompanying the publication of the Bill**, the UK Government said it intended to use this regulation making power to ‘ban’ the export of plastic waste to non-OECD countries. It said it would consult with industry, NGOs and local councils on the date by which this should be achieved.

Background

Three regimes govern the UK's international trade in waste:

- The **Basel Convention** covers international movements of hazardous waste;
- **OECD Decision Rules** cover trade in waste which is exported for recovery between OECD countries. These are divided into two lists. The 'Green List' is waste with a low risk to human health and the environment, which is subject to light touch environmental controls. The 'Amber List' is waste which poses a sufficient risk to justify greater control; and
- **The EU Waste Shipment Regulations** implement the Basel Convention and OECD Decision Rules for Member States. These international agreements set out the procedures and processes that govern the shipment of waste into, within, and from the EU.

Waste shipments are currently regulated by **EU Regulation 1013/2006**, further implemented in the UK by the **Transfrontier Shipment of Waste Regulations 2007**. The latter regulations set out offences and penalties and designate the competent authorities for enforcing the EU waste shipment regulations for the UK. The Bill would amend the UK Government's existing powers under the EPA 1990 to allow the 2007 regulations to be amended.

3.8. Regulations under the Environmental Protection Act 1990

Clause 60 amends the *EPA 1990* relating to procedures for subordinate legislation in the Act. The LCM says that this consolidates the various new provisions inserted into the Act by this Bill.

3.9. Powers to make charging schemes

Clause 61 amends Sections 41 and 56 of the *Environment Act 1995* to insert additional powers allowing the Environment Agency, NRW and (in some cases) SEPA **to make charging schemes to recover their enforcement costs**. This would, amongst other things, allow fees to be charged to site operators for interventions at unpermitted waste sites or those in breach of a permit.

Clause 61 (2) makes **provision to create charging schemes in relation to producer responsibility schemes**. NRW is the environmental regulator for producer compliance schemes in Wales. Environmental regulators can already charge producers fees for the current schemes they regulate. The new charging powers aim to make charging more consistent across the current producer responsibility schemes, and any future schemes. It would do this by bringing all

charging powers under Section 41 of the *Environment Act 1995*. In her evidence to the CCERA Committee, the Minister states that without the powers in the Bill, if NRW is the appointed regulator for an EPR scheme, it will not be able to put appropriate charging schemes in place.

3.10. Enforcement powers for waste offences

Clause 63 and **Schedule 10** amend legislation about enforcement powers in relation waste and other environmental matters.

The UK [Independent Review of Serious and Organised Waste Crime](#) (November 2018) found that the power for police to seize vehicles involved in waste crime currently requires an Agency (Environment Agency or NRW) officer to be present, with public funds paying for the recovery of the vehicle. The review recommended that Defra should update vehicle seizure provisions to allow police to seize a vehicle without requiring an Agency enforcement officer to be present, and to require the offender to cover the costs of storage and recovery of their vehicle.

Paragraphs 4-6 of Schedule 10 amend Section 108 of the *Environment Act 1995* to give an authorised person, with the power to enter the premises for an examination or investigation under Section 108(4)(c), the following additional powers:

To search the premises;

To seize and remove documentary or other evidence;

To require electronic information to be produced in a form that enables it to be removed or produced as documentary evidence; and

To operate equipment found on the premises in order to produce information from it.

In this context authorised persons are those authorised by the Secretary of State, the Welsh Ministers, the Environment Agency, NRW, or a waste collection or local enforcing authority.

3.11. Littering enforcement

Clause 65 amends the EPA 1990 which deals with the enforcement function of litter authorities, and their authorised officers. The Bill would insert a new Section

88B into the EPA 1990, **enabling the Secretary of State or the Welsh Ministers to issue guidance to litter authorities on the exercise of their enforcement functions by them and their officers**. This would impose a duty on litter authorities to 'have regard' to the guidance. The guidance would be subject to consultation, with the Explanatory Notes saying those considered appropriate to consult include litter authorities, authorised officers and the public.

The scope of the guidance may cover enforcement functions relating to leaving litter, littering from vehicles and distribution of free printed materials on designated land. These functions include:

- Setting fixed penalty levels;
- Authorising enforcement officers;
- Issuing penalty notices;
- Collecting and processing payments;
- Initiating and pursuing prosecutions; and
- Designating land (in relation to the distribution of free printed materials).

Clause 65 also makes provision requiring a litter authority to revoke an officer's authorisation if the officer fails to meet the prescribed conditions. The LCM states that the new powers are subject to the negative procedure. This clause also confers guidance making powers on the Welsh Ministers. The LCM says that there is no procedure for making any guidance under these powers.

3.12. Fixed penalty notices

Clause 66 of the Bill amends the EPA 1990 to **allow the level of fixed penalty notices (FPN) for the unauthorised or harmful depositing, treatment or disposal of waste to be varied**. The amendment would also allow the Secretary of State or the Welsh Ministers to amend by regulations the maximum, minimum, default and discounted penalty amounts specified in the EPA 1990. The LCM states that these powers are subject to the negative procedure (in accordance with Section 160A of the EPA 1990). The Minister states that without Clause 66 the Welsh Ministers would be unable to amend existing penalties for FPNs relating to fly tipping and householder duty of care.

3.13. Regulation of polluting activities

Section 2 of the **Pollution Prevention and Control Act 1999** provides the power to make regulations to regulate polluting activities. The **Environmental**

Permitting (England and Wales) Regulations 2016 (made under Section 2) set out which regulated facilities require environmental permits. They also set out specific conditions which must be met for lower risk facilities or activities to be exempt from the requirement to have an environmental permit.

Clause 67 of the Bill makes an amendment to the 1999 Act. This aims to allow the Environment Agency and/or NRW to set conditions for activities and facilities that do not require a permit. Currently, setting such conditions requires new regulations.

The LCM says that the functions under the *Pollution Prevention and Control Act 1999* are exercisable by the Welsh Ministers in relation to Wales, so this new amendment also broadens the scope of the Welsh Ministers' powers.

Stakeholder evidence and CCERA Committee conclusions

There was general support for the provisions in the Bill relating to waste and resource efficiency, including those on DRS and charges for single-use plastic items. In relation to charges for single-use plastic items, some stakeholders suggested that the powers to charge should be extended beyond plastics to include other materials.

The Committee made five recommendations in this area:

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

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

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

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

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

The Welsh Government accepted recommendations 7, 8, 9, 10 and 11.

In relation to recommendation 7, the Minister said that the Welsh Government is working in partnership with the UK Government and the Northern Ireland Executive to develop the proposals for the basis of a further consultation, to inform the final design of the DRS scheme. This is due to be published in 2021 – and the Minister said the consultation will set out the container sizes and material types to be included in the DRS. The Minister agreed with the Committee's recommendation that the scheme should cover a wide range of materials and bottle sizes.

In terms of recommendation 8, the Minister said that COVID-19 has generated some concerns about the safety of reusable products. She said that public hygiene concerns versus the longer term goal of tackling unnecessary single use plastic will need a balanced response, and that the ultimate goal will focus on long-term aspirations to protect the environment. She also said:

Any potential tax or charge measure on single-use cups would need to be carefully co-ordinated with the wider initiatives to ensure the intended behaviour change is encouraged without being overly burdensome on business. This includes EPR, DRS, forthcoming bans on specific SUP items (which will include expanded and extruded polystyrene cups), as well as the UK Government's proposals for a plastic packaging tax.. Further consultations on each of these areas are due soon.

In terms of timescales for EPR, DRS and single-use plastic measures (recommendation 9) the Minister said that this is dependent on the Bill being passed by the UK Parliament (currently expected to be November 2020). For DRS and EPR, the next consultation is due to be published in early 2021.

In relation to recommendation 10, the Minister said that the Bill provides powers which will enable the implementation of key actions encompassed by the Beyond Recycling consultation.

On recommendation 11, the Minister said that although the EPR and DRS schemes are intended to operate across the UK, reporting on material capture and recycling rates will be reported on an individual nation basis. Further detail on how statutory targets will work will be covered in the second consultation on both schemes in early 2021.

3.14. CCERA Committee work on waste

In 2019 the CCERA Committee undertook a **short inquiry into plastic pollution and packaging waste**. The inquiry focused mainly on microplastics, but made a

number of recommendations relevant to the provisions in the Bill, including:

- The Welsh Government should prepare and publish a 10 year, comprehensive and ambitious strategy aimed at reducing plastic pollution. The strategy should be developed with stakeholders and include targets and milestones. It must make clear linkages with other policy areas such as waste management and 'green' procurement;
- Whatever the outcomes of the **joint consultation with DEFRA** and any subsequent decisions by the UK Government, the Welsh Government should introduce a comprehensive EPR scheme in Wales; and
- The Welsh Government should introduce a DRS that applies to the broadest variety of containers, so that no restrictions are placed on the size of containers eligible for the scheme. If the UK Government decides to introduce a scheme with a narrower scope, the Welsh Government should consult on a specific scheme for Wales, with a DRS with the broadest scope as its preferred and recommended option.

3.15. Welsh Government 'Beyond Recycling' Consultation

The Welsh Government has recently consulted on its circular economy strategy, **Beyond Recycling**. The consultation ended on 24 April 2020 and responses are currently being reviewed. The strategy proposes eight headline actions:

- For Wales to become the world leader in recycling;
- Phase out single-use plastic, with the ambition to 'make Wales the first country to send zero plastic to landfill'. Plans include introducing EPR for packaging, a DRS for drinks containers, and applying bans or restrictions to phase out the use of unnecessary, highly littered, single use plastic;
- Invest in clean technology for materials collection, by introducing zero emission waste vehicles and associated infrastructure;
- Make more efficient use of food by eradicating avoidable food waste;
- Prioritising the purchase of wood, remanufactured and recycled content in the goods that the public sector purchases;
- Enabling communities to take collective action;
- Create the conditions for businesses to seize opportunities to reduce their carbon footprint, and become more resource efficient; and
- Taking full responsibility for Wales's waste, to ensure it is not exported to become a problem elsewhere.

In her paper to the CCERA Committee, the Minister outlines that the powers within the Bill would be used to take forwards many of the commitments and ambitions set out within the consultation. She indicates that it is the Welsh Government's intention to publish the final strategy later in 2020. She also says that the Bill forms part of a wider delivery of the actions set out within the consultation.

4. Part 4 - Air Quality

Part 4 of the Bill outlines provisions on air quality and environmental recall of motor vehicles.

4.1. Local Air Quality

Clause 69 of the Bill introduces Schedule 11 which makes amendments to the *Environment Act 1995* relating to air quality. **Schedule 11** introduces provisions (relating to Wales) that would remove Subsection (3) of Section 80 of the *Environment Act 1995*. This is the requirement for the National Air Quality Strategy to cover the whole of Great Britain. The LCM states that this omission puts it:

... beyond doubt that Welsh Ministers are responsible for publishing a national air quality strategy in relation to Wales and the current position and devolved nature of this role is more accurately reflected.

Paragraph 2(3) of Schedule 11 makes further provision in relation to the review of the national air quality strategy.

Background

Air quality is a devolved area and there is extensive legislation regarding air quality in Wales. This includes a number of EU Directives, UK Acts and Welsh legislation which provide the framework for the UK Air Quality Strategy and Local Air Quality Management (LAQM) in Wales.

- **Directive 2008/50/EC** on ambient air quality and cleaner air for Europe (CAFE): replaces five previous acts including nitrogen dioxide and particulate matter limits;
- **Directive 2004/107/EC** (the 4th Daughter Directive): creates targets for the concentration of arsenic, cadmium, nickel and benzo(a)pyrene in ambient air. The aim is to avoid, prevent or reduce harmful effects of these substances on human health and the environment;
- **The Environment Act 1995** establishes the framework for Air Quality Management Areas;
- **The Clean Air Act 1993** aims to protect public health from smoke emissions;
- **Air Quality Standards (Wales) Regulations 2010**: brings into law in Wales the limits set out in the EU Directives on air quality; and
- **The Air Quality (Wales) Regulations 2000**, as amended by the **Air Quality**.

(Wales) (Amendment) Regulations 2002: brings earlier EU Directives into law in Wales.

The Welsh Government published its **consultation on a Clean Air Plan for Wales** on 10 December 2019. The plan sets out a programme of work across four themes:

- Protecting health and wellbeing of current and future generations;
- Supporting environment, ecosystems and biodiversity;
- Supporting a prosperous Wales; and
- Supporting sustainable places.

The consultation sought views on a range of existing commitments and proposed new actions including:

- Increasing air quality monitoring outside areas such as schools and hospitals to protect vulnerable groups from transport emissions;
- Investing an additional £60 million over 3 years to implement the Active Travel Act, meaning local authorities must consult with communities and develop a safe network for walking and cycling;
- Investigating measures aimed at reducing personal vehicle use such as road pricing, Clean Air Zones and/or Low Emission Zones; and
- Increasing the proportion of vehicles which are electric and ultra-low emission (ULEV).

It also commits the Welsh Government to publish a White Paper this Senedd term on a Clean Air Act for Wales. The consultation closed on 10 March 2020. In her paper to the CCERA Committee the Minister outlines why, despite the Welsh Government's consultation, there are air quality provisions for Wales in the UK Bill. She states that the rationale for using the UK Environment Bill is to bring about benefits for manufacturers and consumers as soon as possible – whilst the Welsh Government develops its proposals within its Clean Air Plan.

In June 2019 the Senedd Research published a **research briefing on air quality** which provides useful background and details the current air quality management regime in Wales.

The *Environment Act 1995* requires the Secretary of State to produce a national air quality strategy (covering the whole of Great Britain). The strategy must contain standards, objectives and measures for improving ambient (outdoor) air quality. The latest strategy was produced in 2007 – **Air Quality Strategy for England, Scotland, Wales and Northern Ireland**. The Act also establishes the LAQM regime.

4.2. Smoke Control Areas

Clause 70 of the Bill introduces **Schedule 12**, which makes various amendments to the *Clean Air Act 1993* in relation to smoke control areas. **Part 2 of Schedule 12** amends Sections 20 and 21 of the *Clean Air Act 1993* in relation to Wales, **to allow the Welsh Ministers to publish a list of authorised fuels and exempt fireplaces for use in smoke control areas**. Under the current arrangements, the Welsh Ministers have to annually produce regulations and orders for this purpose. **The LCM says that the changes are intended to make the process of denoting authorised fuels and exempt fireplaces for sale in smoke control areas more efficient and less resources intensive**. This would bring Wales into line with England and Scotland. This intention to amend legislation to allow the Welsh Ministers to publish an online list of fuels and appliances, moving away from the method of updating through Statutory Instruments is also outlined in the Clean Air Plan for Wales consultation.

Background

The *Clean Air Act 1993* deals with the designation (by local authorities) of 'smoke control areas' i.e. areas within which emissions of 'smoke... from a chimney of any building' is a criminal offence unless the emission is from an 'authorised fuel' or an 'exempted class' of fireplace. The legislation targets smoke emissions from chimneys and premises, smoke emissions from non-residential furnaces, and domestic combustion of fuels. The Welsh Ministers have powers to authorise the fuels, and exempt the classes of fireplace, which can be used in smoke control areas. The Welsh Ministers also have powers under this Act to direct a local authority to measure and record levels of air pollution.

4.3. Environmental recall of motor vehicles

Clauses 71 - 74 of the Bill deal with the environmental recall of motor vehicles. They empower the Secretary of State to introduce a mandatory recall of any motor vehicle which fails to meet certain 'environmental standards' through regulations.

The Explanatory Notes accompanying the Bill stated that these provisions extend to England and Wales – but do not require legislative consent as they are in a non-devolved area. The LCM does not make any reference to the provisions.

Background

UK levels of nitrogen dioxide in some areas have breached European legal limits. In February 2018, **in a case brought by the environmental group ClientEarth,**

the High Court ruled that the Welsh Government had failed to meet EU targets to cut air pollution. The ruling in the case, which also included the UK Government, placed a legal obligation on the Welsh Government to draft a plan by the end of April 2018, and have a final plan in place by 31 July 2018, to improve air quality across Wales in line with EU law. However, in July 2018, the Welsh Government **applied to the High Court for an extension which was granted**. On 25 April 2018, the Welsh Government published the **consultation on its supplemental plan to the UK plan for tackling roadside nitrogen dioxide (NO₂) concentrations**. The High Court had ruled that the previous Welsh section of the plan did not satisfy EU requirements, and that managing exceedances of NO₂ on the motorway and trunk road network is the direct responsibility of the Welsh Government. The Welsh Government's **supplemental plan to the UK plan for tackling roadside nitrogen dioxide concentrations** was published in November 2018.

On 24 April 2018, the then Minister for Environment provided an **Oral Statement to Assembly Members outlining the Welsh Government's plan reduce air pollution in Wales**. The statement included an announcement that the Welsh Government would be introducing 50mph speed limits on some parts of the motorway and trunk road network in order to improve air quality.

Stakeholder evidence and CCERA Committee conclusions

Stakeholders supported the amendments to the *UK Environment Act 1995* as a means of clarifying that the Welsh Government is solely responsible for publishing a national air quality strategy for Wales. They also suggested that several of the provisions for England could usefully be replicated in a future Welsh Clean Air Bill. The Committee made one recommendation on air quality:

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

In relation to recommendation 12, the Minister said the Welsh Government intends to launch and complete a White Paper consultation on proposals for a Clean Air Bill for Wales within the current Senedd term. Furthermore, she stated that it expects to publish the lists of approved fuels and exempted classes of fireplaces within six months following the enactment of the Bill.

5. Part 5 - Water

Part 5 of the Bill relates to water. It covers:

- Water resources;
- Water quality;
- Regulation of water and sewerage companies; and
- Valuation of land in internal drainage districts.

For all but the clauses on water quality, the UK Government (via Defra) consulted on the substance of the changes in its consultation on [improving management of water in the environment](#), **between January and March 2019**. The [UK Government response](#) and summary of responses was published in July.

With the exception of certain cross-border issues, the consultation relates to England. Senedd Research is not aware of an equivalent Welsh Government consultation on these issues.

In her evidence to the CCERA Committee the Minister outlines the potential implications if the provisions in the Bill are not taken forwards. She says:

Without the powers in relation to water, the ability of Welsh Ministers to align with commitments in the Welsh Government Water Strategy for Wales and move towards a preventative approach will be compromised.

The Minister also says that the Welsh Government has no timetable for the use of the powers set out in the Bill, and that it will consult with stakeholders on all proposed regulations.

5.1. Water resources management plans, drought plans and joint proposals

Clause 75 would insert new sections into the *Water Industry Act 1991* to give the Welsh Ministers in Wales (and the Secretary of State in England) the **power to direct that water companies prepare and publish joint proposals** (new Section 39E). A joint proposal is defined in the Bill as one that 'identifies measures that may be taken jointly by the companies for the purposes of improving the management and development of water resources'. A joint proposal would be separate from the Water Resources Management Plan that each company is required to prepare.

The [Explanatory Notes](#) state that the directions are 'likely to require matters that

change over time and location are addressed, for example, population, climate change, or drought projections’.

The new sections provide powers to the Welsh Ministers in Wales (and the Secretary of State in England) to **make regulations about the procedure in relation to Water Resources Management Plans, drought plans and joint proposals**. These regulations would be made by the negative procedure. The Explanatory Notes state that ‘it is likely’ that the procedural requirements would cover similar requirements to the existing regulations for Water Resources Management Plans and drought plans. Several matters that the Welsh Ministers or Secretary of State ‘may’ include in the regulations are specified, such as requirements around sharing information and how water companies should consult with other bodies.

The Minister’s paper sets out that the Welsh Government currently has no plans to use this power. She also highlights that water companies in England and Wales have already undertaken to prepare drainage and wastewater management plans on a non-statutory basis by 2022.

Clause 75 would also **amend the *Water Industry Act 1991* to omit certain procedural requirements regarding the preparation of Water Resources Management Plans from the primary legislation. These requirements would instead be set out in the regulations.**

The [Delegated Powers Memorandum](#) explains that the UK Government believes that the current provisions on the procedure for Water Resources Management Plans are outdated and would be more effective if set out in secondary legislation so that plans can be more easily kept up to date.

The [UK Government has stated](#) that more than three quarters of respondents to its consultation on the changes to the Water Resources Management Plan process supported the proposals, with support across all sectors.

Background

A water company is responsible for managing the public water supply in its area. As part of this, every five years, each water company has a statutory duty to prepare a Water Resources Management Plan that sets out how the company will meet the demand for water over the next 25-year period, taking into account factors such as increases in population, new housing, and changes in weather patterns due to climate change. The plans are approved by the Welsh Ministers (for

water companies wholly or mainly in Wales) and the Secretary of State (if wholly or mainly in England).

The [House of Commons Library briefing on the Bill](#) notes that [Environment Agency has said](#) that water resources in England and Wales are known to be under pressure, particularly in the South East of England. The briefing goes on to say that:

While some areas of England are water stressed, facing risk of drought, other parts of England have surplus water. The National Infrastructure Commission report [Preparing for a drier future](#) (April 2018) highlighted that water company Water Resources Management Plan showed 'little join-up' between companies despite established regional coordination groups. In a [letter in August 2018](#) the [UK] Government and water industry regulators (Environment Agency, Drinking Water Inspectorate and Ofwat) called on water companies to take a more regional cooperative approach to water resource planning that 'transcends company boundaries'.

5.2. Drainage and sewerage management plans

Clause 76 would **make it a legal requirement for each sewerage company in England and Wales to prepare and publish a drainage and sewerage management plan.**

A drainage and sewerage management plan is defined in the clause as a plan for how the sewerage company will manage and develop its drainage and sewerage system so as to meet its obligations under Part 4 of the *Water Industry Act 1991*. Part 4 contains, amongst other things, the duty for sewerage companies to provide a public sewerage system and to ensure they are effectively drained.

Clause 76 would insert five new sections into the *Water Industry Act 1991* (new Sections 94A–E). The new sections contain provisions including:

- A requirement that sewerage companies assess their plans annually;
- A requirement that plans must be revised at least every five years (or earlier in certain circumstances); and
- Powers for the Welsh Ministers in Wales (or Secretary of State in England) to make directions about the form and content of the plans and make regulations about the procedure for producing and publishing plans (Minister means the Secretary of State or Welsh Ministers as appropriate).

The regulations would be made by the negative procedure.

The [UK Government's summary of responses](#) to the consultation stated that over half of respondents supported the proposals from across sectors. It stated that the water industry supported the proposals but felt that the costs of developing the statutory plans had been underestimated.

Background

Water companies in England and Wales have legal responsibilities under Part 4 of the *Water Industry Act 1991* for ensuring effective drainage of wastewater and sewerage. However, there is no statutory duty to prepare long-term plans for managing wastewater and drainage.

Effective surface water drainage is an important part of managing the risk of surface water flooding. Additionally, failure or overloading of the sewerage network can lead to significant environmental impacts such as sewerage overflows into rivers or sewerage flooding of properties.

The UK Government's consultation set out proposals to put a requirement to develop drainage and wastewater management plans on a statutory footing. The consultation document explained that having a statutory requirement would enable the development of consistent plans and a defined, enforceable minimum standard. It stated it would also improve collaboration between water companies and other stakeholders (such as local authorities) who own assets that drain into the water network.

5.3. Regulation of water and sewerage companies

Clause 77 would strengthen Ofwat's **information gathering powers** in support of its function to ensure that water companies are carrying out their responsibilities in accordance with their licence conditions. It would amend the *Water Industry Act 1991* to **give Ofwat the power to serve a notice on a water or sewerage company requiring it to produce, within a specified time, certain documents or information** (as set out in the notice). Ofwat could commence enforcement action if a notice is not complied with.

The UK Government's consultation indicated that the extreme cold weather 'freeze/thaw' events in March 2018 highlighted the need for this provision. The consultation document stated that while Ofwat carried out informal requests for information to assess the situation, it lacked specific powers to enforce a deadline for receiving information, which compromised Ofwat's ability to obtain comprehensive or prompt responses.

The UK Government's [summary of responses](#) to the consultation stated that in general there was broad support across all sectors to strengthen Ofwat's information gathering powers.

Clause 79 would amend the *Water Industry Act 1991* to enable documents served under the Act to be sent by e-mail. Currently documents issued under the Act must be sent in hard copy.

Background

Most water and sewerage companies in England and Wales are regional monopolies, with dedicated pipe networks and water supplies in each water company area. This means that most people cannot choose or switch their supplier, and competition is limited. Consequently, there is a need for economic regulation of the industry to ensure that customers get value for money. Ofwat (the Water Regulation Authority) is the economic regulator for the industry. The *Water Industry Act 1991* sets Ofwat's statutory powers and the regulatory framework for the industry.

All water companies hold an appointment as a water undertaker (or sewerage undertaker as relevant), which is subject to conditions with which the companies must comply. This is also referred to as a licence. Ofwat is responsible for enforcing the licence conditions. Further information including the licences themselves can be found on Ofwat's [licences webpage](#).

The UK Government's consultation included three proposals for modernising Ofwat's regulatory powers and are taken forward in this Bill. The most significant of these is to give Ofwat more flexible powers to modify water company licence conditions, however this applies to England only (**Clause 78**).

For further background to the debate at UK level, and for detail on **Clause 78**, see the [House of Commons Library briefing on the Bill](#).

5.4. Water Quality

Clause 81 would provide a **regulation-making power for the Secretary of State to amend or modify specified water quality legislation** to:

- **Make provision for the substances to be considered when assessing the chemical status of surface water or groundwater.** The Explanatory Notes state that this would allow either the addition of a completely new substance or the removal of an existing substance; and

- **Specify standards for those substances or in relation to the chemical status of surface water or groundwater.** The Explanatory Notes state that this would allow the environmental quality standard to be set for a new substance or for an existing standard to be modified.

The regulations under this clause would be made by the negative procedure.

Regulations under **Clause 81** could only be made by the Secretary of State in relation to Wales, either:

- Where the Welsh Ministers do not have the executive competence to make regulations under **Clause 82** (i.e. the exercise of the power is beyond the legislative competence of the Senedd (see **Clause 82(5)**); or
- With the consent of the Welsh Ministers if they contain provision which could be contained in regulations made by the Welsh Ministers under their own powers set out in **Clause 82** (see **Clause 81(4)**).

As previously outlined, these are described as ‘concurrent plus’ powers.

Clause 82 confers a **regulation-making power, broadly comparable with that in Clause 81, on the Welsh Ministers in relation to Wales**. It requires that the Welsh Ministers consult with certain bodies, including NRW before making regulations under this provision. Regulations under this provision can only make provision for matters within the legislative competence of the Senedd.

The regulations under this clause would be made by the negative procedure.

Clause 85 contains definitions used in the clauses on water quality.

Background

Water quality standards are largely derived from **the EU Water Framework Directive (2006/60/EC)** (WFD) has been implemented by domestic legislation in the UK. There are also other more specific EU Directives including those relating to bathing water, drinking water and nitrates.

The overall aim of the WFD is for EU Member States to achieve ‘good’ status of all water bodies by certain deadlines. The WFD sets specific ecological, chemical and quantitative standards against which surface and groundwaters in each Member State are assessed.

The WFD is implemented in stages based on river basins, rather than national or political boundaries, through River Basin Management Plans (RBMPs). There are

three river basin districts identified in Wales – Western Wales, Severn and Dee. The Severn and Dee districts straddle the border with England. The Welsh Government is responsible for river basin districts lying wholly in Wales (Western Wales district) and the Welsh Government and UK Government have joint responsibility for river basin districts that are partly in Wales and partly in England. NRW leads on the development of the Western Wales and Dee RBMPs whilst the Environment Agency leads on the development of the Severn RBMP.

Reviews of the RBMPs take place every six years: Cycle 1 ran between 2009 and 2015 and Cycle 2 runs between 2015-2021. NRW's [Cycle 2 Interim Classification \(2018\) Frequently Asked Questions](#) document states that 40% of water bodies in Wales met good or better status in 2018, compared with 36% in 2015.

Valuation of land in internal drainage districts

Clause 87 amends Section 83 of the *Environment (Wales) Act 2016*, which itself amends the *Land Drainage Act 1991*, to provide **regulation-making powers for the Welsh Ministers to make provision for the value of 'other land' in a Welsh internal drainage district, to be determined in accordance with regulations.**

Regulations made under this section follow the affirmative procedure.

Clause 88 amends the *Land Drainage Act 1991* to provide the Welsh Ministers with a **regulation-making power to make provision for the annual value of each chargeable property (agricultural land and buildings) on a Welsh internal drainage district, to be determined by the drainage board for the district in accordance with the regulations.**

Regulations made under this section follow the affirmative procedure.

Clause 89 inserts new Sections 37A to 37C into the *Land Drainage Act 1991* to **govern the disclosure of revenue and customs information by the Valuation Office Agency (VOA) to various qualifying authorities in relation to drainage rates and special levies.**

Qualifying purposes are enabling the discharge of statutory functions relating to drainage rates and special levies. The Explanatory Notes state that the information it is envisaged qualifying persons will need are the council tax valuation list and the non-domestic rating list, both of which are compiled and maintained by the VOA and are not otherwise publicly available.

Qualifying persons are:

- An IDB, the Environment Agency or NRW, or a person authorised to exercise their functions, or providing a service to them, in relation to drainage rates or special levies; and
- The Secretary of State, the Welsh Ministers, or a person specified in regulations made by them.

New Section 37B would govern the onward disclosure of such information and new Section 37C includes provisions about how the disclosure would relate to existing legislation such as the *Freedom of Information Act 2000*.

Regulations made under this section follow the affirmative procedure and may only be made with the consent of the Commissioners for HMRC.

Background

There are **14 internal drainage districts in Wales** and **112 in England**. They are managed by different bodies in the two countries.

In England, each drainage district is managed by an Internal Drainage Board (IDB). IDBs are independent public bodies carrying out water level management in low lying areas. IDBs have permissive powers provided by the *Land Drainage Act 1991* to manage water levels within their respective drainage districts. IDBs undertake works on ordinary watercourses to reduce flood risk to people and property and manage water levels to meet local needs. The Environment Agency can also enter into public sector co-operation agreements with IDBs to facilitate IDBs undertaking maintenance activities on main rivers.

IDBs are made up of elected members who represent land occupiers, and others nominated by local authorities who represent the public and other interest groups.

In Wales, NRW performs the role of IDBs, having **assumed the functions, staff and assets of the IDBs** that previously existed in Wales in 2015.

The UK Government's consultation on **improving management of water in the environment** (which applies principally to England) states that there is a desire to create or expand IDBs in England, but restrictions around land valuation limits the potential for this to happen.

IDBs in England (and NRW in Wales in respect of its functions in relation to drainage districts) are mainly funded locally through drainage rates paid directly by

agricultural landowners and special levies issued to district or unitary authorities. In order to determine the special levy charge the *Land Drainage Act 1997* refers to rateable values shown in a 'non-domestic rating list of a charging authority on 1st April 1990' and 'valuation list on 31st March 1990'.

IDBs/NRW use this information to calculate the value of all 'other land' (mostly urban) in their district as part of their annual calculation undertaken in order to apportion their expenses between drainage rates and special levies. The *Land Drainage Act 1997* also sets out the apportionment calculation which determines how much is paid via drainage rates and how much via the special levy.

The UK Government's consultation document states that the *Land Drainage Act 1997* sets out how IDBs can determine their charges, but does not allow for any other valuation list to be used, and some of the data is missing or incomplete in some parts of England. It concludes that this limits where new IDBs can be created or existing ones expanded.

The consultation therefore proposes that secondary legislation would make alternative provision for the valuation of non-agricultural land, using up-to-date council tax and business rates data. Provision would also be made for the valuation of agricultural land 'to ensure that the apportionment calculation (i.e. between agricultural and non-agricultural land values) is up to date, and to reduce the risk of imbalance on either side of it'.

These proposals are taken forward in the Bill.

Further detail on this subject can be found in the [House of Commons Library briefing on the Bill](#) (pages 125 to 130).

Stakeholder evidence and CCERA Committee conclusions

There was broad support from stakeholders for the provisions in relation to plans and proposals, particularly the importance of statutory plans. Some concerns were raised about the breadth of the powers around water quality, and that the powers enable the Welsh Ministers to amend regulations that implement the EU Water Framework Directive. This led to further concerns about the potential for targets and standards to be weakened, and a subsequent regression in environmental standards.

The Committee made two recommendations in this area:

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

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

In her response to recommendation 13, the Minister committed to consulting stakeholders on regulations arising from Part 5 of the Bill. The Minister accepted recommendation 14 'in principle'. She stated that she assures the Committee that scientific advice will be thoroughly considered as part of the Welsh Government's operational practices, and as such there is no need to specify this requirement in law.

6. Part 8- Amendment of REACH

Clause 125 and Schedule 19 of the Bill on the regulation of chemicals extend and apply to the whole of the UK. They give the Secretary of State powers to amend the Articles of the REACH regulation. Schedule 19 also gives power to the Secretary of State to amend the REACH Enforcement Regulations under this provision, to the extent that the exercise of power would be within legislative competence. These regulations would be subject to the affirmative procedure.

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

The REACH Regulation (and the UK amending legislation) applies UK wide, but relates to a mixture of devolved and reserved matters. Paragraph 3 of Schedule 19 would provide that the Secretary of State's power to make any regulations under the Schedule would be subject to the consent of the devolved administrations, to the extent that the regulation is within devolved competence. The LCM states that as these provisions are within the legislative competence of the Senedd (environmental protection and human health) they require consent.

The Minister's paper says that the powers in the Bill are necessary to deliver a functioning chemicals regime. She says that, with the change from a system that covers 28 Member States to a single state with four nations, some aspects of the current regime are 'impractical or overly burdensome on businesses'. She goes on to say:

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

Background

The REACH Regulation refers to the EU regulation on chemicals: the **Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation (No 1907/2006)**. In summary, REACH requires chemical substances that are manufactured or imported into the EU to be registered with the European Chemicals Agency, along with safety data about the chemical, before being placed on the market. It then provides a mechanism to place restrictions on the manufacture and use of certain hazardous chemicals.

Following the UK's departure from the EU on 31 January 2020, REACH continues to have the same effect in the UK until the end of the implementation period. The nature of UK's chemical regulation regime after the end of the implementation period is dependent on the outcome of the ongoing trade negotiations between the UK and the EU. In the absence of any agreement with the EU to the contrary, REACH will be retained in domestic legislation on the implementation period completion day, in accordance with the *EU Withdrawal Act 2018*. **Secondary legislation has been passed** that would amend REACH in the UK to make it work in a UK only context.

The UK REACH regime would establish the Health and Safety Executive (HSE) as the chemicals Agency in the UK, and the UK Government has said that the UK regime replicates the EU system as closely as possible.

The House of Commons Library has produced a **briefing paper on Brexit and Chemicals Regulation (REACH)**.

The **REACH Enforcement Regulations 2008** are UK regulations that create an enforcement regime for REACH in the UK.

Stakeholder evidence and CCERA Committee conclusions

Stakeholders welcomed the inclusion of the provisions in relation to the regulation of chemicals. The Committee made one recommendation in relation to REACH:

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

The Welsh Government accepted recommendation 15. The Minister said the Welsh Government has called on the UK Government to negotiate continued membership of the European Chemicals Agency as part of a comprehensive trade agreement. She said that in the absence of such an agreement, it will remain important to keep pace with the progress being made in the EU to address the risks posed by hazardous chemicals to human health and the environment, even if the UK doesn't align with the EU on every regulatory decision. She outlined that the legislation supporting a UK approach to REACH is largely in place in the form of retained EU law, and that officials are working to put in place the non-legislative elements of a common regulatory framework on chemicals.



