

Report on the Legislative Consent Memorandum for the Environment Bill

September 2021

Overall conclusions and recommendation

Senedd scrutiny of LCMs

The legislative consent process involves the Senedd being asked to agree to the UK Parliament legislating on its behalf in areas of devolved competence. The need for adequate scrutiny of any such proposals must not be understated.

The initial scrutiny timetable provided this Committee with one meeting to consider the LCM before reporting. It was unreasonable and impracticable. Although the reporting deadline was extended, it remained inadequate, particularly given the size and complexity of the UK Bill.

The UK Bill makes substantive provisions for Wales in key areas of environmental policy and contains broad regulation making powers for the Welsh Ministers. In order to enable the Senedd to make an informed decision on legislative consent, the Welsh Government must fully explain the provisions, its reasons for making them in the UK Bill and its policy intentions. The LCM falls short in this regard – it is incomplete and lacks sufficient detail. Although the Minister covered these issues to an extent in evidence to us, we would have expected this information to have been made available to the Senedd from the outset.

There is an opportunity at the start of the Sixth Senedd to review the LCM process to ensure it is fit for purpose. The Business Committee should satisfy itself that the current practice of providing a minimum of six sitting weeks for committee scrutiny is workable within a timetable where policy committees meet fortnightly. It should also consider whether the Standing Order requirements in relation to the information provided in LCMs need to be strengthened to enable the Senedd to make informed decisions on consent.



Using the UK Bill to make provisions for Wales

The Welsh Government took a decision in the Fifth Senedd to use the UK Bill to legislate in key areas of environmental policy. Since then, the UK Bill has been subject to significant delays. The next available opportunity for the Welsh Government to legislate on environmental policy will be through the Senedd environmental governance Bill.

We believe the most appropriate way to legislate for Wales on environmental matters is through a Senedd Bill, made by Senedd Cymru and its elected members, to whom the Welsh Government is accountable. However, the Senedd environmental governance Bill is at least another year off. While not ideal, using the UK Bill is the only way to ensure the provisions for Wales can be made within a reasonable timeframe.

The UK Bill will enable the Welsh Government, among other things, to deliver key reforms in waste management policy as part of wider action to tackle the climate and nature emergencies. The implementation timelines for these have already been pushed back. We would not wish the delivery of these reforms to be subject to further delays.

Notwithstanding the above, we have serious reservations about specific provisions. Our strong preference is for these concerns to be addressed through amendments to the UK Bill. However, the UK Bill has reached its final scrutiny stages, which means there is limited time available for the Welsh Government to negotiate amendments with the UK Government and the other devolved administrations. With this in mind, we have made alternative recommendations, which, if accepted, would adequately address our concerns.

We recommend to the Senedd that it gives consent to the provisions in the UK Bill, subject to it being satisfied by the Welsh Government's response to recommendations 1, 2, 12, 17, 18 and 19 in this report. The Welsh Government must provide a detailed response to these recommendations before the debate on legislative consent. In its response to recommendation 1, we expect the Welsh Government to outline the steps it has taken to engage with the UK Government and the other devolved administrations.

The Welsh Government must respond to all remaining recommendations as soon as practicable, or within the timeline stipulated by the Committee.

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- set out her position on establishing a formal procedure to govern Senedd involvement in consent decisions in respect of ‘concurrent plus’ powers in the UK Bill.

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Recommendation 6. The Minister should clarify:

- whether the Senedd environmental governance Bill is the only suitable vehicle within the Welsh Government’s legislative programme for the Sixth Senedd to make provision for statutory biodiversity targets; and
- if so, whether and how this will impact on the timing of the introduction of the Bill.

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Recommendation 19. The Minister should further explain why she believes it is appropriate for a non-binding informal agreement to be used to resolve the dispute with the UK Government over legislative competence in respect of the provisions in relation to the use of forestry commodities.25

1. Introduction

- 1.** On 18 June 2021, the Minister for Climate Change ('the Minister') laid a [Legislative Consent Memorandum for the Environment Bill](#) ('the LCM').
- 2.** On 29 June 2021, the Business Committee referred the LCM to this Committee and to the Legislation, Justice and Constitution Committee ('LJC Committee') to consider, with a reporting deadline of up to 13 September 2021. Following a request from this Committee and the LJC Committee, the Minister wrote to the UK Government requesting Lords' Third Reading to be scheduled at a later date to provide further time for Senedd scrutiny. The reporting deadline was subsequently extended to 23 September 2021.
- 3.** On 3 September 2021, the Minister laid a [Supplementary Legislative Consent Memorandum for the Environment Bill](#) ('the Supplementary LCM'). It was subsequently referred to this Committee. The scrutiny timetable for the Supplementary LCM meant that the Committee was not in a position to consider it.

Our approach to scrutiny

- 4.** We took evidence from the Minister at our [meeting on 15 July 2021](#). We subsequently wrote to the Minister with a series of additional questions. This exchange in correspondence can be found on the [Senedd's website](#).

2. Background

Overview of the Environment Bill

6. The UK Environment Bill ('the UK Bill') comprises two thematic halves. The first provides a legal framework for environmental governance. The second makes provision for specific improvement of the environment, including measures on waste and resource efficiency, air quality, water, and nature and biodiversity.
7. Around half of the UK Bill's provisions extend and apply to Wales with a significant number of provisions having Great Britain, UK or England, Wales and Northern Ireland extent.
8. The UK Bill contains broad regulation making powers for the Welsh Ministers, some of which are 'concurrent plus powers', which would enable the Secretary of State to make regulations in areas of devolved competence with the Welsh Ministers' consent.

Progress of the Bill to date

9. The UK Bill was first introduced in the House of Commons on 30 January 2020. UK Parliamentary scrutiny of the UK Bill was suspended in March 2020 following the onset of the Covid-19 pandemic. The UK Bill did not complete its passage in the 2019-2021 UK Parliamentary session and was subject to a carry-over motion. It was reintroduced into the UK Parliament on 26 May 2021 when Commons Report Stage and Third Reading concluded, and consideration of the UK Bill in the House of Lords commenced.
10. Since the LCM was laid, Lords Committee Stage and Report Stage have concluded. It is anticipated Lords Third Reading will take place early in the autumn. Subject to the passing of the UK Bill by the UK Parliament, Royal Assent is expected in November 2021.

Consideration of LCMs in the Fifth Senedd

11. During the Fifth Senedd, the Welsh Government laid two LCMs for earlier versions of the UK Bill. The LCMs were referred to this Committee's predecessor, the Climate Change, Environment and Rural Affairs Committee ('CCERA Committee') and the Fifth Senedd's Legislation, Justice and Constitution Committee for consideration.
12. The CCERA Committee's reports on the LCMs along with the Welsh Government's responses can be found on the Senedd's website.

Provisions for which consent is being sought

13. The LCM explains that provisions for Wales are being made in the following Parts of the UK Bill: Environmental Governance (Part 1); Waste and resource efficiency (Part 3); Air quality (Part 4); Water (Part 5); Nature and biodiversity (Part 6); Miscellaneous and general provisions.

14. Paragraphs 8 to 83 of the LCM provide further details of the relevant provisions along with the Welsh Government's position on devolved competence. A more detailed description of the relevant provisions can be found in subsequent chapters of this report.

Reasons for making provisions for Wales in the UK Bill

15. According to the LCM, the Welsh Government "follow[s] the principles that primary legislation in devolved areas should be enacted by Senedd Cymru". It goes on to state, "there are circumstances where it is sensible and advantageous to seek provisions in UK Parliament Bills which would be within the Senedd's legislative competence, with the consent of the Senedd."

16. Paragraphs 86 to 99 of the LCM set out the Welsh Government's reasons for making provisions for Wales in the UK Bill. The LCM concludes:

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

3. Concurrent plus powers

17. A 'concurrent plus' power is a power that would enable the Secretary of State to make regulations in areas of devolved competence with the consent of the Welsh Ministers. The UK Bill includes 'concurrent plus' powers in the following areas: producer responsibility; resource efficiency; deposit schemes; water quality; and amendments to REACH legislation.

Evidence from the Minister

18. The Minister told the Committee that the criteria the Welsh Government would use when determining whether to consent to the use of concurrent plus powers is set out in The Guidance for Welsh Government officials on concurrent powers ('the Guidance').¹

19. According to Principle 8 in the Guidance:

"New concurrent powers should only be created in exceptional circumstances...Given that the creation of concurrent powers confines the Senedd in exercising its legislative competence, and GoWA is constructed on the basis that the number of concurrent powers will reduce, rather than increase, we should avoid seeking or agreeing to new concurrent powers wherever possible. Alternative solutions such as taking the powers for the Welsh Ministers only, implementing intergovernmental agreements through separate regulations, or composite instruments, should be sought."

20. It goes on state:

"Where a new concurrent power is proposed, Ministers...will need assurance that there is a very clear and strong rationale for requiring the power to be created in this way."

21. In explaining the circumstances under which the Welsh Government would consider it appropriate for the Secretary of State to use the 'concurrent plus' powers in relation to Extended Producer Responsibility ('EPR') and Deposit Return Schemes ('DRS'), the Minister stated:

"The Bill provides powers to bring in Extended Producer Responsibility and Deposit Return Schemes on a wide range of items. The items will be considered on a case by case basis and in conjunction with the other nations."

¹ Letter from the Minister for Climate Change to the CCEI Committee, dated 6 August 2021

The legislative approach taken will depend on the requirements of each scheme. For this reason it is necessary to maintain the flexibility to either:

- *make our own regulations in Wales for a bespoke Welsh scheme;*
- *create 'mirror' legislation where common schemes in each nation are required, but we may wish to retain the ability to amend for certain aspects for Wales in the future or;*
- *allow the Secretary of State to legislate on our behalf, should a UK wide scheme be appropriate.*

The powers taken under these clauses, together with the carve-out of schedule 7b of the Government of Wales Act 2006 achieves the required level of flexibility."

22. However, she also explained she was planning to lay Welsh specific regulations to bring the schemes into force. She said the other UK administrations would be bringing in their own "mirror" regulations at the same time "to enable this UK wide implementation".

23. According to the Minister:

*"The approach taken for EPR packaging and DRS drinks is a balance of maintaining a level of Welsh ministerial accountability, the laying of Welsh secondary legislation, whilst at the same time being pragmatic on the use of resources we have and how working across the UK can maximise the outcomes for Wales."*²

24. The Minister said that, if the 'concurrent plus' powers were to be used in future, the Welsh Government "would have been fully involved in a policy development and implementation programme through our inter-governmental governance arrangements".³ She gave a commitment that the Senedd would have an opportunity to provide a view before Welsh Ministers consent to the use of the powers, time permitting.⁴

² Letter from the Minister for Climate Change to the CCEI Committee, dated 6 August 2021

³ RoP, para 15, CCEI Committee, 15 July 2021

⁴ Letter from the Minister for Climate Change to the CCEI Committee, dated 6 August 2021

Our view

The Minister has not provided a sufficiently strong rationale for including the 'concurrent plus' powers in the UK Bill.

We do not consider the inclusion of the 'concurrent-plus' powers in Part 3 are in line with the Welsh Government's own Guidance on proposals for new concurrent powers. The Guidance makes clear that "seeking or agreeing to new concurrent powers (including 'concurrent plus' powers) should be avoided wherever possible" and that any such powers should only be created in "very exceptional circumstances". Within this context, we do not believe the need for "flexibility" is sufficient reason to create new 'concurrent plus' powers.

We believe it is the responsibility of the Welsh Ministers to make important regulations for Wales in areas of devolved competence, and for those regulations to be subject to Senedd scrutiny. There may be some circumstances where it would be acceptable for regulations to be made on a UK-wide basis, for example, when implementing an agreed UK-wide policy. But, we would expect those regulations to be made jointly by the UK administrations, and to be subject to scrutiny by all four legislatures. This approach could also apply for regulations to be made on an England-Wales-Northern Ireland wide-basis and an England-Wales basis, for example, in the case of DRS regulations and regulations on water quality.

The Minister has confirmed that the 'concurrent plus' powers are not needed to enable EPR and DRS to be taken forward on a UK-wide basis. Indeed, she has indicated that they will not be used for this purpose. This further weakens the Minister's argument for the inclusion of these powers.

The 'concurrent plus' powers would enable the Secretary of State to make important environmental regulations for Wales on behalf of the Welsh Ministers, subject to their consent. The effect of this would be to by-pass Senedd scrutiny of those regulations. Instead, scrutiny would be undertaken by the UK Parliament. In consenting to the inclusion of 'concurrent plus' powers, the Senedd is forfeiting its right to exercise its scrutiny function.

We note the Minister's commitment to inform the Senedd of the Welsh Ministers' intention to consent to the use of 'concurrent plus' powers by the Secretary of State, in line with the Guidance. According to the Guidance, "where time allows", the Senedd will be provided with an opportunity to express a view before Ministers give consent. This falls woefully short of enabling the Senedd to scrutinise regulations for Wales in important areas of devolved competence.

There are already formal procedures that govern Senedd involvement in consent decisions for various categories of subordinate legislation made by UK Ministers in areas of devolved

competence. If the 'concurrent plus' powers are retained in the UK Bill, we believe there is a strong case for a formal procedure to apply to consent decisions in respect of these powers.

Recommendation 1. The Minister should engage with the UK Government and the other devolved administrations to seek agreement to amend the UK Bill to replace the 'concurrent-plus' powers with powers for the UK administrations to make joint regulations when implementing UK-wide policies. These regulations should be subject to scrutiny by each of the UK legislatures.

Recommendation 2. If the Minister cannot secure amendments to the UK Bill, she should:

- give a commitment that the 'concurrent plus' powers will be removed at the earliest opportunity; and
- set out her position on establishing a formal procedure to govern Senedd involvement in consent decisions in respect of 'concurrent plus' powers in the UK Bill.

4. Part 1 – Environmental Governance

25. Part 1 aims to provide a post-Brexit framework for environmental governance, mainly in England and Northern Ireland, and places the UK Government’s 25 Year Environmental Plan on a statutory footing.

26. Part 1 makes provision for a new environmental governance body, known as the Office for Environmental Protection (‘OEP’), which will have scrutiny, advice and enforcement functions in relation to environmental protection and the natural environment. The OEP’s remit covers England and UK-wide reserved matters.

A Welsh environmental governance body

27. During the Fifth Senedd, the Welsh Government indicated its intention to legislate to address any environmental governance gaps in Wales arising from the loss of access to the EU governance system. It did not commit to a timeline to do this and a Senedd environmental governance Bill was not brought forward in the Fifth Senedd.

28. In March 2021, the Welsh Government appointed an Interim Assessor for Environmental Protection for Wales (‘Interim Assessor’) “to oversee the interim measures for environmental governance for a period of up to two years”. The Interim Assessor’s role is to consider concerns raised about the ‘functioning of environmental law’.⁵ The environmental sector has raised concern that this is a significant step backwards from the pre-EU exit position and has continued to call for a Senedd Bill to be introduced as a priority.

Evidence from the Minister

29. The Minister told the Committee she was hoping to introduce the Senedd environmental governance Bill in the second year of the Welsh Government’s legislative programme, although she was unable to confirm a timeline. She added:

“we’re very keen for [the Bill], if possible, to incorporate the [biodiversity] targets that we want to put in place. But these things are always a balance. So, I wouldn’t want to hold the Bill up if I couldn’t put the targets on the face of the Bill; on the other hand, I do want to have statutory targets. So, there’ll be some give and take on that, but that’s the current plan. I’m not in a

⁵ According to the [Welsh Government’s guidance](#), (December 2020), concerns about the functioning of environmental law fall into three broad categories: it no longer delivers intended objectives and outcomes.; guidance or information about the law is not accessible; and practical delivery of the law is impeded.

*position to promise it yet, but I can tell you that I've bid for that place and that we're hopeful that we'll get it."*⁶

30. The Minister told the Committee she would "much prefer to have [the Senedd environmental governance] Act in place by the end of [the Interim Assessor's two year tenure] if at all possible".⁷ However, the Minister added:

*"my portfolio has a very large amount of legislation inside it, so we're in the process of trying to balance all of that about where we are in the legislative programme, so where those Bills sit for Senedd time and committee time, but also quite frankly where the resources inside the portfolio are to be directed in terms of who's taking what Bill through..."*⁸

Our view

The Welsh Government has been aware of the potential for gaps in environmental governance in Wales since the 2016 EU referendum result. Although the Welsh Government has acknowledged that gaps exist, it has been slow to take action to address them. Despite calls from the environmental sector and our predecessor Committee, the Welsh Government has chosen not to prioritise the Senedd environmental governance Bill in the first year of its legislative programme.

Once the UK Bill is enacted, Wales will be the only UK nation without legislation in place for a bespoke, post-Brexit environmental governance system. This is deeply disappointing and at odds with the Welsh Government's commitment to ensure there is no reduction in environmental standards post-Brexit. We expect the Welsh Government to make time available for the Senedd environmental governance Bill in the second year of its legislative programme.

The Minister has expressed a preference for a new oversight body to be in place before the end of the Interim Assessor's tenure in early 2023. While we fully support this, we are concerned it will not be achievable unless the Senedd environmental governance Bill is brought forward at the start of the second year of the legislative programme. Given the Welsh Government has yet to consult on detailed legislative proposals, we question whether the Senedd Bill will be ready for introduction within this timeframe. We seek assurance from the Minister on this matter.

⁶ RoP, para 25-26, CCEI Committee, 15 July 2021

⁷ RoP, para 35, CCEI Committee, 15 July 2021

⁸ RoP, para 37, CCEI Committee, 15 July 2021

We note the Minister is considering introducing statutory biodiversity targets. Although this is a positive development, it falls short of the firm commitment to statutory targets that the Senedd has called for. We believe the Welsh Government should commit to introducing statutory biodiversity targets at the first available opportunity.

It is unclear whether the Senedd environmental governance Bill is the only suitable vehicle within the Welsh Government's legislative programme for the Sixth Senedd to make provision for statutory biodiversity targets. If that is the case, we question whether and how this will impact on the timing of the introduction of the Bill. We seek clarification from the Minister on these matters.

We note the Minister will be responsible for taking forward a high volume of primary and secondary legislation in the Sixth Senedd. We acknowledge the need for the Welsh Government to balance priorities and manage its resources. However, a lack of resource or capacity within the Minister's department or the Welsh Government's legal department is not an acceptable reason to delay the introduction of key environmental legislation, such as the Senedd environmental governance Bill. Nor do we expect this lack of resource to lead to an increase in the use of UK Bills to legislate for Wales. We seek assurance from the Minister on this matter.

Recommendation 3. The Welsh Government must commit to make time available for the Senedd environmental governance Bill in the second year of its legislative programme.

Recommendation 4. The Minister must report back to the Committee within six months of the publication of this report on progress made towards the development of the Senedd environmental governance Bill.

Recommendation 5. The Welsh Government must commit to introduce statutory biodiversity targets at the first available opportunity.

Recommendation 6. The Minister should clarify:

- whether the Senedd environmental governance Bill is the only suitable vehicle within the Welsh Government's legislative programme for the Sixth Senedd to make provision for statutory biodiversity targets; and
- if so, whether and how this will impact on the timing of the introduction of the Bill.

Recommendation 7. The Minister must set out what steps she intends to take to ensure there is sufficient resource and capacity within her department, and the Welsh Government's legal department, to deliver on current legislative commitments.

Recommendation 8. The Minister must report back to the Committee on any discussions she has had, or intends to have, with the UK Government on using UK Bills in the 2021-22 Parliamentary session to legislate for Wales on matters that fall within her portfolio.

5. Part 3 – Waste and Resource Efficiency

31. Part 3 makes provisions in relation to waste and resource efficiency. It provides broad regulation making powers for the Welsh Ministers and includes ‘concurrent plus’ powers for the Secretary of State.

32. In summary, the key provisions in Part 3 provide regulation making powers for the Welsh Ministers to:

- reform producer responsibility schemes, with the aim of making producers responsible for the full net costs of managing their products at end of life (Clauses 49 and 50, and Schedules 4 and 5);
- set minimum requirements for manufacturers and producers to provide information about their products, and to make provision for the enforcement of regulations (Clauses 51 and 52, and Schedules 6 and 7);
- introduce a deposit return scheme (‘DRS’) for certain items such as single-use drinks containers (Clause 54 and Schedule 8);
- apply charges 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) (Clause 52 and Schedule 9);
- make provision for the purpose of tracking relevant waste, and to establish an electronic tracking system (Clause 57); and
- make provision to regulate hazardous waste (Clause 59).

Evidence from the Minister

33. We asked the Minister to explain the implications on the delivery of waste policy in Wales if the provisions in Part 3 were not taken forward. She stated:

“if we don't get it through at the same time as the UK, it will have to wait on our Bill, and that could be a year or more down the road. So, in the interim period we will not have any of the strengthened powers, and so on. It just complicates things. It's not impossible to do it in Wales, but it would be later,

*and then we'd have to make sure it aligned back to this Bill, so it's not optimal. So, this is, I think, by far the best way of doing it in a timely fashion."*⁹

34. The Minister confirmed the Welsh Government's preference was for an 'all-in DRS'. i.e. capturing drinks containers up to 3 litres in size, including glass and PET plastic bottles, and steel and aluminium cans. She said the UK Government and Northern Ireland Executive were yet to make a definitive decision on the scope of their schemes.¹⁰

35. We asked the Minister to clarify how and when the Welsh Government would use the powers provided to introduce charges on single use plastics (SUP). She said the Welsh Government was "committed to exploring the use of the new charging powers".¹¹

36. The Minister reaffirmed the Welsh Government's commitment to legislate to ban the use of more commonly littered single use plastics. She said the Welsh Government was considering all options available to bring in the proposed ban, including regulations made using existing executive powers and "a short, single issue [Senedd] Bill".¹²

37. The Minister explained the Welsh Government's plans to ban the use of SUP had already been delayed as a result of the UK Internal Market Act 2020¹³ ('UKIMA'). She went on to explain:

*"Discussion between officials suggests there are some differences in the intentions of different administrations in the UK with regard to the introduction of bans on single use plastic items...The continuing differences between governments will mean we may need to revise our ambitions for the bans or further delay their introduction in Wales."*¹⁴

38. The Minister said that discussions were taking place about "a potential carving out of [single use plastics] restrictions from the ambit of the 'mutual recognition principle' altogether". This approach would enable the Welsh Government to meet its "full policy ambition". However,

⁹ RoP, para 43, CCEI Committee, 15 July 2021

¹⁰ RoP, para 75, CCEI Committee, 15 July 2021

¹¹ RoP, para 82, CCEI Committee, 15 July 2021

¹² Ibid.

¹³ Under the UKIMA, the devolved administrations will be able to regulate goods and service providers in their part of the UK, but these regulations will not necessarily be enforceable on goods or service providers from other parts of the UK. If lesser standards are applied elsewhere in the UK then it is likely the mutual recognition principle under the UKIMA may impact on the Welsh Government's ability to ban or restrict from the Welsh market the supply of such products produced in other UK nations, or imported into other parts of the UK.

¹⁴ Letter from the Minister for Climate Change to the CCEI Committee, dated 6 August 2021

the Minister said “UKG officials have suggested getting agreement on the carve out is unlikely to be a quick process”.¹⁵

Our view

Extended Producer Responsibility and Deposit Return Schemes

We welcome the assurance provided by the Minister that EPR for packaging and the DRS for Wales will be established through regulations made by the Welsh Ministers, subject to Senedd scrutiny. As outlined in Chapter 5, this weakens the Minister’s argument that the ‘concurrent plus’ powers in Part 3 are needed.

The Welsh Government, in conjunction with the other UK administrations, has already consulted on final policy proposals for EPR for packaging and a DRS. At the time of writing this report, the outcome of these consultations is not yet available. The Minister should report back to us on the outcome as soon as practicable.

The delivery timelines for EPR for packaging and a DRS have already been pushed back to 2023 and late 2024 respectively. We would not wish the schemes to be subject to further delays unnecessarily. However, given the significance of the reforms we believe the Welsh Government should commit to consulting on the draft regulations to establish the schemes.

We seek further assurance from the Minister that the Welsh Government will commit to introduce an ‘all-in DRS’ in Wales, regardless of whether the UK Government and Northern Ireland Executive decide on a scheme narrower in scope.

Charge for single-use plastics

The Welsh Government has been exploring options for a tax or charge on single-use plastics for some time. It is unclear when the Welsh Government will make a definitive decision on its preferred option. Depending on the Welsh Government’s decision, it is possible that the powers to charge being taken in the UK Bill will not be used. We do not believe it is appropriate for the Welsh Government to request executive powers unless they have firm plans to use them.

Ban on single-use plastics

The Welsh Government has had to delay plans to ban single use plastics as a result of uncertainties around the impact of the UKIMA on the scope of the ban. This is deeply

¹⁵ Letter from the Minister for Climate Change to the CCEI Committee, dated 6 August 2021

regrettable and is a clear example of how the UKIMA is directly impacting on the delivery of devolved policy.

There is a risk that the Welsh Government will be forced to lower its ambitions for the ban unless it can agree a way forward with the other UK administrations. This would be deeply disappointing. We are keen for a ban that delivers the Welsh Government's full policy ambitions to be introduced as soon as possible. The Welsh Government should press the other UK administrations to agree a way forward that would enable it to achieve this outcome.

Recommendation 9. The Minister should report back to the Committee on the outcome of the March 2021 consultations on EPR for packaging and a DRS, and the July 2020 consultation on reducing single use plastics, as soon as practicable.

Recommendation 10. The Welsh Government must commit to introducing an 'all-in DRS' in Wales, regardless of whether the UK Government and Northern Ireland Executive decide to introduce a scheme narrower in scope.

Recommendation 11. The Minister should provide the Committee with an update on the work that is being undertaken to assess the evidence base for a tax or a charge on single-use plastics. She should also clarify when the Welsh Government is likely to be in a position to make a definitive decision on its preferred option.

Recommendation 12. The Minister should explain why she believes it is appropriate to take the powers to charge for single-use plastics in the UK Bill when it is unclear whether those powers will be needed.

Recommendation 13. The Welsh Government should press the other UK administrations to agree a way forward which would enable it to introduce a ban on single use plastics that delivers its full policy ambition.

Recommendation 14. The Minister should provide an update to the Committee, within two months of the publication of this report, on progress made in taking forward proposals for a ban on single use plastics.

6. Part 4 – Air quality

39. The majority of the provisions in relation to air quality apply only to England. However, the following provisions are relevant to Wales:

- removal of the requirement for the National Air Quality Strategy to cover the whole of Great Britain (Clause 71, Schedule 11); and
- Change to the procedure for the Welsh Ministers to authorise fuels and exempt fire places for use in smoke control areas (Clause 72, Schedule 12).

40. The LCM explains 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.

Evidence from the Minister

41. The Minister explained the provisions in relation to smoke control areas were being made in the UK Bill to ensure that changes to the process of denoting authorised fuels and exempt fireplaces could be made in the shortest time possible.¹⁶

42. The Minister said the Welsh Government was “still working on” its clean air Bill.¹⁷

Our view

We have no comments to make on the provisions for Wales in Part 4 of the UK Bill.

Given the Welsh Government has already consulted on a White Paper on the Clean Air (Wales) Bill, we are disappointed it chose not to prioritise the Bill in the first year of its legislative programme. At the time of writing this report, the outcome of the consultation is not available. We expect the Minister to report back to us on the outcome as soon as practicable. The report should include an indicative timetable for the remaining phases of the Bill’s development.

We expect the Welsh Government to introduce the Bill in the second year of its programme.

Recommendation 15. The Minister should report back to the Committee on the outcome of the Welsh Government’s consultation on the White Paper on the Clean Air (Wales) Bill as soon

¹⁶ RoP, para 98, CCEI Committee, 15 July 2021

¹⁷ RoP, para 99, CCEI Committee, 15 July 2021

as practicable. The report should include an indicative timetable for the remaining phases of the Bill's development.

Recommendation 16. The Welsh Government should commit to introducing the Clean Air (Wales) Bill in the second year of its legislative programme.

7. Part 5 – Water

43. Part 5 amends existing primary legislation and makes new provision in relation to water resources; water quality; regulation of water and sewerage companies; and valuation of land in internal drainage districts. It includes provisions for Wales to:

- change the procedural requirements for Water Resources Management Plans, and enable increased collaboration between different water undertakers to better manage water resources;
- require the preparation of Drainage and Sewerage Management Plans by sewerage undertakers, to better plan for the management of waste water;
- enable future updates to the lists of priority substances in water quality legislation;
- enable updates to be made to the valuation calculations relevant to the apportionment of internal drainage board (IDB) charges in secondary legislation, allowing for the creation of new or expansion of existing IDBs where there is a local desire to do so.

Evidence from the Minister

44. In explaining the purpose of the provisions in Part 5, the Minister stated:

"The regulatory regime for the privatised water industry is principally set out in the Water Industry Act 1991, and amendments made to that Act (notably in 2003 and 2014). A number of the clauses in this Bill seek to update requirements and reflect current practices e.g. providing information by electronic means."¹⁸

45. The Minister's letter to the Committee includes a more detailed explanation of the purpose of the relevant clauses.

46. In explaining the rationale for the 'concurrent plus' powers in Part 5, the Minister stated:

"this aims to reflect how the powers were exercised previously. These clauses seek to address a gap left following UK exit from the EU in relation to priority substances. Those powers were previously exercised under section 2(2) but

¹⁸ Letter from the Minister for Climate Change to the CCEI Committee, dated 6 August 2021

were also implemented via the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. Welsh Ministers powers are exercised for river basin districts wholly in Wales but for the 2 cross border river basin districts (Dee and Severn) those powers are exercised jointly with the Secretary of State.”¹⁹

Our view

By the Minister’s own admission, the provisions in Part 5 are “immensely complicated”. They make extensive amendments to the Water Industry Act 1991 and Land Drainage Act 1991 and provide broad powers for the Welsh Ministers, including powers of direction. Part 5 also contains a ‘concurrent-plus’ power for the Secretary of State in relation to water quality.

As outlined in Chapter 3, we do not believe the Minister has provided a sufficiently strong rationale for including the ‘concurrent plus’ powers in relation to water quality in the UK Bill.

Given the limited time available for scrutiny, we were not in a position to consider the provisions in Part 5 in detail.

The Minister’s predecessor gave a commitment to consult stakeholders before making regulations using powers under Part 5. We expect the Minister to reaffirm that commitment.

We note that Part 5 includes powers of direction for the Welsh Ministers. Before taking such powers, the Minister must explain why they are necessary. She must also set out the criteria the Welsh Government will use to determine whether these powers should be exercised.

Recommendation 17. The Minister should commit to consulting stakeholders before making regulations using powers under Part 5.

Recommendation 18. The Minister should explain why the powers of direction in Part 5 are necessary, and set out the criteria the Welsh Government will use to determine whether these powers should be exercised.

¹⁹ Letter from the Minister for Climate Change to the CCEI Committee, dated 6 August 2021

8. Part 6 – Nature and Biodiversity

47. Part 6, amongst other things, includes provisions to address illegal deforestation in supply chains. Under these provisions, businesses operating in the UK will be required to establish, implement and report on a due diligence system to ensure illegally produced forest risk commodities do not enter their supply chain. The provisions prohibit businesses from using forest risk commodities that have not been produced in accordance with local laws relating to land use and land ownership.

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

49. The LCM explains that, in the Welsh Government's view, these provisions fall within devolved competence. The UK Government considers these provisions relate to reserved matters.

Evidence from the Minister

50. The Minister said the matter of whether the provisions fall within the Senedd's legislative competence was "quite contentious". She told the Committee:

"We've argued, the truth is, with DEFRA about whether this is or isn't in the competence of the Welsh Ministers, and DEFRA have rejected our argument and maintain that our consent is not required. So, they don't recognise that we have a formal role in developing the subordinate legislation in this part. However, by way of a compromise, and given the good working relationship we've had all the way through this Bill, we have been able to negotiate policy involvement in the development of the subordinate legislation. So, while that's not what we wanted, it's better than what they were offering."²⁰

51. The Minister said DEFRA would be consulting on proposals before the end of 2021. The Welsh Government was "expecting to be able to comment on the consultation before it goes live to make sure that it's devolution friendly".²¹

²⁰ RoP, para 130, CCEI Committee, 15 July 2021

²¹ Ibid.

Our view

We are disappointed the Welsh Government chose not to pursue amendments to the UK Bill that would provide powers to the Welsh Ministers in relation to the use of forestry commodities, reflecting the Welsh Government's position that this is an area of devolved competence. At the very least, we would have expected the Welsh Government to have pursued amendments that would require the Secretary of State to consult the Welsh Ministers before making regulations.

The Minister's "compromise" of Welsh Government involvement in the development of subordinate legislation in an area that falls within devolved competence is less than satisfactory. Although the Welsh Government may derive some benefit from this informal agreement, it excludes the Senedd entirely from the scrutiny process.

Recommendation 19. The Minister should further explain why she believes it is appropriate for a non-binding informal agreement to be used to resolve the dispute with the UK Government over legislative competence in respect of the provisions in relation to the use of forestry commodities.

9. Part 8 – Miscellaneous and general provisions

52. Part 8, amongst other things, makes provision for the amendment of REACH legislation. The REACH Regulation (and the UK amending legislation) applies UK wide but relates to a mixture of devolved and reserved matters.

53. In explaining the reasons for provisions in relation to REACH, the LCM states:

"the Welsh Ministers previously had the power to amend the REACH Enforcement Regulations in Wales under the European Communities (Designation) (No.2) Order 2007, although in practice those Regulations have usually been updated on a UK-wide basis by Defra with the consent of Welsh Ministers. Concurrent plus powers are required to maintain the prior status quo and retain powers previously exercisable by the Welsh Ministers under EU law."

Evidence from the Minister

54. We asked the Minister to set out what assessment the Welsh Government has made of the potential risks of regulatory divergence from the EU in this policy area, and to clarify whether the new UK REACH regime provides the same level of protection as the EU scheme it has replaced.

55. The Minister stated:

"As of the end of the implementation period, UK and EU REACH regulations were aligned as far as possible. Since then, decisions have been made under the EU REACH regime and a number of decisions will need to be taken under the UK replacement system. When considering action under UK REACH we are able to take the best ideas from both inside and outside the EU, and can take decisions that are fit for purpose in the GB context. As a result, divergence is considered on a case-by-case basis as decisions are taken.

The fundamental principles of REACH are enshrined in retained EU law and will remain protected from amendment using the powers contained in the Environment Bill. There is nothing to stop the UK replacement regime affording the same level of protection as the EU regime."²²

²² Letter from the Minister for Climate Change to the CCEI Committee, dated 6 August 2021

Our view

As outlined in Chapter 3, we do not believe the Minister has provided a sufficiently strong rationale for including the 'concurrent plus' powers in relation to REACH enforcement regulations in the UK Bill.

Given the limited time available for scrutiny, we were not in a position to consider the provisions in relation to REACH legislation in detail.