

# The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Environment Bill

February 2021

## 1. Background

1. The UK Government's Environment Bill (the UK Bill)<sup>1</sup> was introduced to the House of Commons on 30 January 2020. It is sponsored by the Department for Environment, Food and Rural Affairs ("Defra").

### The Welsh Government's Legislative Consent Memorandum

2. On 26 February 2020, the Welsh Government laid before the Senedd a Legislative Consent Memorandum (LCM)<sup>2</sup> in respect of the UK Bill.

Our report on the LCM

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3. We reported on the LCM in July 2020 (first report).<sup>3</sup>

4. Our first report includes the background to the UK Bill, including its purpose and extent. Overall, we raised concerns about the lack of clarity around how the

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<sup>1</sup> [Environment Bill 2019-21 \[HC Bill 9\] \(as introduced\)](#)

<sup>2</sup> Welsh Government, [Legislative Consent Memorandum Environment Bill](#), February 2020

<sup>3</sup> Legislation, Justice and Constitution Committee, [The Welsh Government's Legislative Consent Memorandum on the Environment Bill](#), February 2020



inclusion of certain provisions in the UK Bill fit within a coherent legislative approach to delivering environmental policy in Wales. In particular, we expressed concern:

- about the lack of information provided, given that the Welsh Government is seeking the consent of the Senedd to permit the UK Parliament to legislate significantly in areas of environmental policy that have been devolved for over 20 years (paragraph 19 of the first report);
- at the absence of a Welsh Environment Bill in the Welsh Government's legislative programme, particularly given that the UK Bill is being seen as a "timely opportunity" for certain provisions, which do not appear to be related to the UK's exit from the European Union (paragraphs 20 and 35 of the first report);
- that the UK Bill is being used as a matter of legislative convenience and should not be regarded as a substitute for using devolved powers, and that an "England and Wales" approach should not be seen as the default for legislating on environmental issues (paragraph 20 of the first report);
- at the absence of sunset provisions and the use of enabling powers in the UK Bill, which would permit the Welsh Ministers to deliver current and future Welsh policy (paragraphs 37 and 57 of the first report);
- the limited information available meant that the case for using a UK Bill to deliver Welsh environmental policy is weak and ill-defined (paragraph 43 of the first report).

**5.** The first report made 20 recommendations and the Welsh Government responded on 28 August 2020.<sup>4</sup>

## The Welsh Government's Supplementary Legislative Consent Memorandum

**6.** On 4 December 2020, Lesley Griffiths MS, the Minister for Environment, Energy and Rural Affairs (the Minister), laid a Supplementary Legislative Consent

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<sup>4</sup> Letter from Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs, [Legislation, Justice and Constitution Committee Report on the Legislative Consent Memorandum for the UK Environment Bill](#), 28 August 2020

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Memorandum (Memorandum No. 2) (LCM No. 2) in respect of the UK Bill.<sup>5</sup> The Business Committee agreed that the Legislation, Justice and Constitution Committee and the Climate Change, Environment and Rural Affairs Committee should report on LCM No. 2 by 4 February 2021.<sup>6</sup> The Business Committee subsequently extended the deadline to 25 February 2021,<sup>7</sup> following our request.<sup>8</sup>

**7.** We wrote to the Minister on 23 December 2020<sup>9</sup> about LCM No. 2 and received a response on 26 January 2021.<sup>10</sup>

#### Provision for which the Senedd's consent is required

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**8.** LCM No. 2 acknowledges that amendments have been made to the UK Bill to reflect the change in name from the 'National Assembly for Wales' to 'Senedd Cymru', pursuant to Part 2 of the *Senedd and Elections (Wales) Act 2020*.<sup>11</sup>

**9.** The UK Bill was also amended at Committee Stage in the House of Commons to insert a new clause 107 (Use of forestry risk commodities in commercial activity) and Schedule 16. LCM No. 2 states:

“The provision makes it illegal for businesses within scope to use, either in production or trade within the UK, forest risk commodities which have not been produced in accordance with relevant laws in the country where they are grown.

The provision places an obligation on businesses within scope to conduct due diligence to ensure that forest risk commodities which have not been legally produced do not enter their supply chain, and they should report on the exercise publicly.

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<sup>5</sup> Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\), Environment Bill](#), December 2020

<sup>6</sup> Business Committee, [Timetable for consideration of the Supplementary Legislative Consent Memorandum on the Environment Bill](#), December 2020

<sup>7</sup> Business Committee, [Revised timetable for consideration of the Supplementary Legislative Consent Memorandum on the Environment Bill](#), January 2021

<sup>8</sup> Letter to the Business Committee, [Scrutiny of the Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) on the UK Environment Bill](#), 25 January 2021

<sup>9</sup> Letter to Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs, [UK Environment Bill](#), 23 December 2020

<sup>10</sup> [Letter from Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs](#), 26 January 2021

<sup>11</sup> LCM No. 2, paragraph 8

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The provision further enables the UK Government to levy fines and other civil sanctions against businesses which continue to use forest risk commodities which have not been produced legally or which do not now have a robust system of due diligence in place.”<sup>12</sup>

**10.** While the Welsh Government supports the policy position provided by the provision,<sup>13</sup> there is disagreement between the Welsh Government and the UK Government as to whether the new provisions in clause 107 and Schedule 16 require the Senedd's consent.

**11.** The UK Government asserts that the provision relates to the reservation in section C1, paragraph 65 of Schedule 7A to *the Government of Wales Act 2006* (“the 2006 Act”): the creation, operation, regulation and dissolution of types of business association. The Welsh Government maintains that the provision relates primarily to the environment, the protection of forestry environments and tackling climate change, all of which are devolved.<sup>14</sup>

## Current position on the UK Environment Bill

**12.** On 26 January 2021, the House of Commons agreed to a carry-over motion for the UK Bill.<sup>15</sup> This motion will allow the UK Bill to continue its progress from the 2019-2021 UK parliamentary session into the 2021-22 session.<sup>16</sup> Without such a motion, the UK Bill would have fallen if it had not completed its passage.

## 2. Committee consideration

### Our view

#### Overall assessment

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**13.** As mentioned in paragraph 5 above, our first report made 20 recommendations: one asked for a timely response, two recommended that amendments be made to the UK Bill (relating to the inclusion of a sunset clause and a change of procedure for one regulation-making power), and 17 sought

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<sup>12</sup> LCM No. 2, paragraphs 15-17

<sup>13</sup> LCM No. 2, paragraph 19

<sup>14</sup> LCM No. 2, paragraph 12

<sup>15</sup> House of Commons, [Business of the House \(Environment Bill: Carry-over\)](#), Vol 688 col 209

<sup>16</sup> The first day of a new UK parliamentary session is marked with the State Opening of Parliament. The Queen's Speech sets out the UK Government's agenda for the coming session.

clarification or explanations for the approach adopted by the Welsh Government. In her letter to us of 28 August 2020, the Minister accepted 18 of our recommendations but rejected the two recommendations advocating amendments to the UK Bill.

**14.** The 18 recommendations accepted by the Minister required the Minister to provide certain information and explain specific issues (mainly because of a lack of information and clarity about the reasons for the approach adopted). We are not satisfied with some of the explanations received.

**15.** We are also dissatisfied with some of the responses contained in the Minister's letter to us of 26 January 2021.

**16.** In the consideration that follows, references to recommendations should be regarded as references to recommendations in our first report.

**17.** In her response to recommendation 3, the Minister stated:

“None of the clauses in the Bill, as they apply to Wales, are necessary to meet legal obligations arising from the UK's departure from the EU.”<sup>17</sup>

**18.** The Minister's response to recommendation 4 indicates that the majority of the clauses in the UK Bill relating to Wales for which legislative consent is being sought are not related to EU exit. As regards clause 52 (charges for single use plastic items), we note that the Minister's response to recommendation 14 states:

“... the Welsh Government sought the inclusion of powers via the UK Bill as this provided the most suitable vehicle at the time, to enable us to meet potential EU Directive obligations. Whilst the terms of the UK's exit currently mean we are no longer legally obligated to transpose the Directive or meet the required timescales, the Welsh Government still aims to match its ambitions in relation to single use plastic.”<sup>18</sup>

**19.** We note that the Minister's response to recommendation 5 indicates that the Welsh Government has based its approach on its own criteria for determining the

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<sup>17</sup> Letter from Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs, Legislation, Justice and Constitution Committee Report on the Legislative Consent Memorandum for the UK Environment Bill, 28 August 2020

<sup>18</sup> Letter from Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs, Legislation, Justice and Constitution Committee Report on the Legislative Consent Memorandum for the UK Environment Bill, 28 August 2020

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appropriateness of using UK Bills to legislate in devolved areas. While we are clearly not bound to conduct our scrutiny against the criteria mentioned by the Welsh Government, on this occasion and for the purpose of legislating on environmental matters, we do not share its view that:

“The interconnected nature of the relevant Welsh and English administrative systems mean it is most effective and appropriate for provision for both to be taken forward at the same time in the same legislative instrument.”<sup>19</sup>

**20.** As we suggested in our first report:

“The use of a UK Bill should not be regarded as a substitute for using devolved powers and an “England and Wales” approach should not be seen as the default for legislating on environmental issues.”<sup>20</sup>

**21.** Moreover, the criterion referred to in paragraph 19 appears to be being applied selectively given that the Welsh Government has committed to its own Welsh Environmental Principles and Governance Bill<sup>21</sup> and has sought views on a Clean Air Bill.<sup>22</sup> In launching its consultation paper on environmental principles and governance, the Welsh Government said:

“In Wales, ground breaking legislation such as the Well-being of Future Generations and Environment Acts have already placed sustainable development and the environment at the heart of decision-making across Government and we have introduced a number of environmental principles, drawn from international best practice.

As a result of our approach, which has put us at the forefront not only in the UK but also internationally, Wales is already more aligned to the

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<sup>19</sup> Letter from Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs, Legislation, Justice and Constitution Committee Report on the Legislative Consent Memorandum for the UK Environment Bill, 28 August 2020

<sup>20</sup> First report, paragraph 20

<sup>21</sup> Welsh Government response to recommendation 8 of our first report. See also Welsh Government **correspondence** with the Climate Change, Environment and Rural Affairs Committee, in January (question 2).

<sup>22</sup> First report, paragraphs 78-80

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structure at the EU level and is at a different starting position to the rest of the UK.”<sup>23</sup>

**22.** The approach adopted by the Minister as regards the UK Bill would therefore appear irregular when considered against these comments, and the Welsh Government's more ambitious approach to recycling policy, which we highlighted in the first report.<sup>24</sup>

**23.** As such, we are faced potentially with a situation where there is even more complexity and a lack of accessibility surrounding environmental law as it applies in Wales, particularly when considered against the backdrop of legislating to deal with EU exit and the potential impact of the *United Kingdom Internal Market Act 2020*.

**24.** Our report on the Welsh Government's Legislative Consent Memorandum on the Animal Welfare (Service Animals) Bill also expressed concern about legislating on an England and Wales basis. We also said:

“... legislating on a Wales-only basis would have also added to, and supported, the Welsh Government's aim of developing and supporting a bilingual body of Welsh law.”<sup>25</sup>

**25.** The responses to recommendations 3 and 5 are also used to respond to recommendation 15.<sup>26</sup> Recommendation 15 asked the Minister to explain why she is taking regulation-making powers in the UK Bill without a clear indication of when she intends to use them and, therefore, why they could not have been included in a Welsh Environmental Bill brought forward in the Sixth Senedd.

**26.** The Minister has not explained her position. Simply referring to the reasons why the UK Bill is being used does not address recommendation 15 in a satisfactory matter. For example, if the regulation-making powers were not to be used until 2023, this would reduce even further the justification for using the UK Bill to obtain these powers.

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<sup>23</sup> Welsh Government Press Release, [Consultation on environmental principles and governance post-Brexit launched](#), 18 March 2019

<sup>24</sup> First report, paragraph 66

<sup>25</sup> Constitutional and Legislative Affairs Committee, [The Welsh Government's Legislative Consent Memorandum on Animal Welfare \(Service Animals\) Bill](#), February 2019, paragraph 13

<sup>26</sup> Letter from Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs, Legislation, Justice and Constitution Committee Report on the Legislative Consent Memorandum for the UK Environment Bill, 28 August 2020

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**Conclusion 1.** The Minister has not explained when she intends to use the regulation-making powers contained in the UK Environmental Bill and, therefore, on this basis, not justified her approach of using a UK Bill to obtain these powers rather than a Welsh Government Bill.

**27.** We set out below an extract from the Minister's response to our letter of 23 December 2020, which includes our question 1:

**"1. We note that you consider new clause 107 and new Schedule 16 to be within the legislative competence of the Senedd. Given this view, please can you say if you have:**

**a. requested that the UK Government table an amendment to the Bill to give the Welsh Ministers the same powers as the Secretary of State in relation to Wales?**

**b. pursued with the UK Government any amendments to the Bill to ensure the Welsh Ministers' involvement in the making of regulations that relate to Wales under Schedule 16?**

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

**28.** We are gravely concerned by the Minister's response to this question. If the Minister believes that clause 107 and Schedule 16 are within legislative competence, it is very disappointing that she does not appear to have attempted, in the interests of the Welsh Government and the Senedd, to seek amendments to the UK Bill to provide the Welsh Ministers with either equivalent powers or a say in how the powers given to the Secretary of State by clause 107 and Schedule 16 may be exercised.

**29.** We share the view of the Minister that clause 107 and Schedule 16 of the UK Bill are within the competence of the Senedd. In our view, the Secretary of State now has the power to make regulations in a devolved area of policy, without any say for the Welsh Government or the Senedd. We find that unacceptable. We regret that the Minister has decided against making a case for pursuing amendments to the UK Bill. The Welsh Government adopted a similar approach to powers in the UK Trade Bill, a situation which we also said was unacceptable.<sup>27</sup> This approach is becoming a worrying trend.

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<sup>27</sup> Legislation, Justice and Constitution Committee, [The Welsh Government's Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) on the Trade Bill](#), December 2020, paragraph 30



**30.** In our first report we said:

“On the basis of the information before us, the case made for using a UK Bill to deliver Welsh environmental policy is weak and ill-defined.”

**31.** On the basis of the new information provided to us, we can only reiterate those views and add that we are more convinced that a case for using the UK Bill has not been made.

**Conclusion 2.** We remain concerned with the approach that has been adopted by the Welsh Government to use the UK Environment Bill to legislate on environmental matters devolved to the Senedd. Neither the response to our first report nor to our letter of 23 December 2020 convince us that the approach adopted by the Welsh Government is the correct one.

**32.** We note that the UK Bill is now being carried over to the next session of the UK Parliament.

**33.** We believe that such a situation raises an important constitutional point. A Welsh Government Bill that has not been passed at the end of a Senedd falls.<sup>28</sup> However, it would appear that our Standing Orders are silent on what happens to Legislative Consent Memoranda that relate to UK Bills that have not been passed in the UK Parliament before the end of a Senedd.

**34.** As a matter of principle, if a new Welsh Government chooses to continue to seek the Senedd's consent for provisions in a UK Bill that has not been passed in the UK Parliament prior to a Senedd general election, we believe the new Welsh Government should lay a new legislative consent memorandum covering all provisions for which consent is being sought. This approach would enable all Members of the Sixth Senedd and relevant committees, once established, to consider the matter of consent afresh and to reach an informed decision based on all relevant information.

**35.** In her response to recommendation 5, the Minister indicates that one of the criteria for using a UK Government Bill is:

“The UK Government’s legislative proposal would also be appropriate for Welsh circumstances but there is no time available for similar

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<sup>28</sup> Standing Order 26.77

provisions to be brought forward in the Assembly”.<sup>29</sup>

**36.** At the start of the Sixth Senedd, a new Welsh Government is in control of its new legislative programme and the time restriction the Minister identifies will no longer apply. Time would be available to bring forward a Welsh Bill and so using a UK Bill would no longer meet the criterion identified in paragraph 35.

**37.** Furthermore, the Welsh Government has committed to bring forward its own Welsh Environmental Principles and Governance Bill to create an environmental governance body equivalent to the Office for Environmental Protection in England. Including in that Bill provisions within devolved areas of competence currently within the UK Bill, as well as giving effect to other relevant policy matters, would enable a single bilingual Bill to be introduced. The Senedd would then be in a position to scrutinise such a Bill fully, taking advantage of the opportunities provided by the Senedd's legislative procedures for engagement with stakeholders.

#### Concurrent plus powers

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**38.** Clauses 49 to 53 and associated Schedules, clause 83 and clause 131 of the UK Bill include concurrent plus powers. A concurrent plus power is a power that can be exercised in relation to Wales by the Welsh Ministers or by the Secretary of State acting independently of each other. However, before the Secretary of State can exercise the power, the consent of the Welsh Ministers is required.

**39.** Under Schedule 7B to the 2006 Act, the Senedd cannot remove or modify the Secretary of State's side of a concurrent plus function, unless the Secretary of State consents. Therefore, the more concurrent plus functions that are created, the more things that are outside the legislative competence of the Senedd (because the Senedd cannot modify or remove the Secretary of State's side of those concurrent plus functions).

**40.** The Welsh Government's LCM of February 2020 explained that:

“There was insufficient time prior to the introduction of the Bill to include a ‘carve out’ for the concurrent plus provisions from the associated Schedule 7B restrictions. A Ministerial commitment has been made by the Parliamentary Under-Secretary of State for the

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<sup>29</sup> Letter from Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs, Legislation, Justice and Constitution Committee Report on the Legislative Consent Memorandum for the UK Environment Bill, 28 August 2020

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.”<sup>30</sup>

**41.** The Minister’s letter to the Committee dated 14 May 2020 indicated that a section 109 Order<sup>31</sup> would be brought forward that would address the concurrent functions issue.<sup>32</sup> However, such issues caused by the UK Bill are not covered by the Government of Wales Act 2006 (Amendment) Order 2021 (the section 109 Order) that was approved by the Senedd on 2 February 2021 and which will be considered for approval by the Privy Council in due course.

**42.** On 14 December 2020, in evidence to us, the Counsel General explained why the UK Bill is not captured in the section 109 Order:

“So, whilst there are issues around the current functions in the Bill, the Bill itself isn’t sufficiently settled to persuade the Government that it’s appropriate to list it in that way. However, what that also means is, because the Bill is still in progress, if you like, there is also an opportunity to put the actual carve-outs on the face of the Bill, so in that sense it can be dealt with through the Bill itself rather than the Order that’s intended to tackle the issue otherwise.”<sup>33</sup>

**43.** In our report on the section 109 Order, we indicated that we would consider this issue in our report on LCM No. 2.<sup>34</sup>

**44.** In our letter of 23 December 2020, we therefore asked the Minister for an update on how the Welsh Government intends to address the concurrent functions issue in the Bill. In response she said:

“You are correct to note the Order did not cover the UK Environment Bill. Due to the suspension of the Bill proceedings at the onset of the Covid-19 pandemic, the Bill fell outside the scope of the Order. Officials

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<sup>30</sup> Welsh Government, [Legislative Consent Memorandum, Environment Bill](#), February 2020, paragraph 77

<sup>31</sup> Section 109 of the *Government of Wales Act 2006* (“the 2006 Act”), provides a mechanism, through an Order in Council, to amend Schedules 7A and 7B to the 2006 Act. An Order in Council made under section 109 can enhance, restrict or change the Senedd’s legislative competence to pass Acts.

<sup>32</sup> [Letter from Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs](#), 14 May 2020

<sup>33</sup> Legislation, Justice and Constitution Committee, RoP [31], 14 December 2020

<sup>34</sup> Legislation, Justice and Constitution Committee, [Proposed Order in Council:](#)

[The Government of Wales Act 2006 \(Amendment\) Order 2021](#), January 2021, paragraph 43

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

**45.** We note this position.

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#### Observations on recommendations in our first report and outstanding matters

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**46.** Recommendation 9 asked the Minister to explain how she will seek amendments to the UK Bill to reflect the outcome of relevant Welsh Government consultation exercises that closed after the UK Bill's introduction to the UK Parliament. In response, the Minister said that if consultation outcomes result in a need to change the proposed provisions in the UK Bill, she would request the UK Government seeks the necessary amendments on its behalf.<sup>35</sup>

**Recommendation 1.** The Minister should advise the Committee whether the outcome of Welsh Government consultation exercises has resulted in her seeking any amendments to the UK Bill. If so, the Minister should explain the reasons for her proposed amendments.

**47.** Recommendation 12 sought information justifying why it is appropriate to take each of the delegated powers for the Welsh Ministers contained within the UK Bill, and the choice of procedure for each power. In her response, the Minister said that she has provided the information required by Standing Order 29.3(iv) but will collate everything and publish it separately. However, information on the procedure applied for each regulation-making power is not included in her letter of 14 May 2020 (included as an Annex in our first report) and it remains unclear whether it has been included in the collated document because the location of its publication is difficult to discern from the Welsh Government's website.

**Recommendation 2.** The Minister should provide the Committee with the collated document referred to in her response to recommendation 12 of our first report.

**48.** We note that, in response to recommendation 13, the Minister said that she *agreed* the scrutiny procedure to be used for the relevant regulations, rather than

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<sup>35</sup> Letter from Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs, Legislation, Justice and Constitution Committee Report on the Legislative Consent Memorandum for the UK Environment Bill, 28 August 2020

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requesting the procedure to be applied to regulation-making powers given to the Welsh Ministers.

**49.** In response to recommendation 17, the Minister said:

“... the rationale for using the UK Environment Bill is to bring about benefits for both manufacturers and consumers as soon as possible.”<sup>36</sup>

**50.** However, we note that the Minister did not respond to the second part of recommendation 17, which asked when the Welsh Ministers would next be due to amend regulations relating to smoke control areas using their powers under the *Clean Air Act 1993*. If the Minister has no intention to use these powers until, for example 2023, they could have been included in a future Welsh Bill (such as the Clean Air Bill being proposed by the Welsh Government<sup>37</sup>) without impacting on the timeliness of benefits for both manufacturers and consumers.

**51.** While the Minister has addressed some of the matters we raised in recommendation 18, in her response she makes reference to clause 75(7) inserting a new Section 39F into the *Water Industry Act 1991*, and says it “essentially re-enacts most of the powers currently contained in Section 37B to make regulations and directions”.<sup>38</sup> There are therefore some provisions on the face of primary legislation in section 37B of the *Water Industry Act 1991* which are removed and will now be dealt with by secondary legislation.

**Recommendation 3.** The Minister should provide full and detailed information about all of the provisions in section 37B of the *Water Industry Act 1991* that are being removed by the UK Environment Bill and what is happening to them.

**52.** In response to recommendation 19, it remains unclear exactly which powers of direction the Minister is referring to when she says “they largely replicate the

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<sup>36</sup> Letter from Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs, Legislation, Justice and Constitution Committee Report on the Legislative Consent Memorandum for the UK Environment Bill, 28 August 2020

<sup>37</sup> First report, paragraphs 78-80

<sup>38</sup> Letter from Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs, Legislation, Justice and Constitution Committee Report on the Legislative Consent Memorandum for the UK Environment Bill, 28 August 2020

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powers of Direction currently conferred on the Minister by section 37 which the Bill repeals and do not provide additional powers.”<sup>39</sup>

**Recommendation 4.** The Minister should clarify which powers of direction are being replicated by virtue of proposed sections 39F and 39G of the *Water Industry Act 1991* (to be inserted by clause 75 of the UK Environment Bill).

**53.** Part of recommendation 20 of our first report asked the Minister to explain why she has not discussed clause 81 with UK Ministers given that it contains a concurrent plus power that impacts on Wales. In her response, the Minister said that:

“Engagement at Official level has been sufficient to secure agreement on these clauses. Welsh Government and Defra officials have discussed both the standalone Clause 82 and concurrent Clause 81.”<sup>40</sup>

**54.** The seventh question of our letter of 23 December 2020 therefore asked about the precise nature of the agreement between officials and whether it had been signed off by Ministers of both the Welsh and UK Governments.

**55.** In response the Minister said:

“Clause 83 (previously Clause 81) does not establish any new policy, instead it provides powers needed to replace those under section 2(2) European Communities Act 1972 in this policy area. As such, there is no specific agreement required as to policy approach ...

Concurrent plus powers were covered in the official level inter-Governmental discussions concerning the legislative carve out, and these clauses did not require specific Ministerial inter-governmental discussion in particular.

With reference to your second point, I am not sighted on what UK Government Ministers may have signed off.”<sup>41</sup>

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<sup>39</sup> Letter from Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs, Legislation, Justice and Constitution Committee Report on the Legislative Consent Memorandum for the UK Environment Bill, 28 August 2020

<sup>40</sup> Letter from Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs, Legislation, Justice and Constitution Committee Report on the Legislative Consent Memorandum for the UK Environment Bill, 28 August 2020

<sup>41</sup> Letter from Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs. 26 January 2021

**56.** Our purpose in asking this question was to ascertain what was being agreed and who by, particularly given that clause 81 includes a concurrent power that may be exercised by both the Welsh Ministers and the Secretary of State. That being the case, we would expect Ministers of both governments to know and understand what was being signed off in each case, not only as a matter of good governance but because the Senedd needs to understand the basis on which consent is being given. As our first report stated:

“Seeking the consent of the Senedd to permit the UK Parliament to legislate significantly in areas of environmental policy that have been devolved for over 20 years should be accompanied by full and transparent information. This is because, in adopting this approach, the ability of Members of the Senedd to hear expert evidence, listen to the views of stakeholders in Wales and table amendments to test, challenge and influence the Welsh Ministers—a key tool of scrutiny—ceases to be available. Any case made by the Welsh Government for the UK Parliament to legislate in devolved areas should be fully justified and not approached as a matter of routine business.”<sup>42</sup>

**57.** In the fourth question of our letter of 23 December 2020, we requested copies of correspondence between the Welsh and UK Government's related to clause 107 and Schedule 16 of the UK Bill. In response the Minister said she would seek to provide this information as soon as possible.<sup>43</sup>

**Recommendation 5.** The Minister should provide copies of correspondence between the Welsh and UK Government's related to clause 107 and Schedule 16 of the UK Bill, as requested in our letter of 23 December 2020, by 4 March 2021.

#### Response to the report on LCM No. 2

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**58.** The issues we raise in this report are of considerable importance. For that reason, our report warrants a full and timely response from the Minister so that we may give proper consideration to any further action that may be needed.

**Recommendation 6.** The Minister should respond to all the conclusions and recommendations contained in this report by 4 March 2021.

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<sup>42</sup> First report, paragraph 19

<sup>43</sup> Letter from Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs. 26 January 2021