

LEGISLATIVE CONSENT MEMORANDUM

Environment Bill

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Environment Bill (“the Bill”) was introduced in the House of Commons on 30 January 2020. On 26 February 2021 the Bill was made subject to a motion to carry the Bill over into the next Parliamentary session which commenced on 11 May. The Bill was reintroduced to Parliament on 26 May 2021, when Commons Report Stage and Third Reading concluded.
3. The Bill as introduced at Lords Stage can be found at:
<https://bills.parliament.uk/publications/41652/documents/310>

Policy Objectives

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

Summary of the Bill

5. The Bill is sponsored by the Department for Environment, Food and Rural Affairs (DEFRA).
6. The Bill makes provisions about targets, plans and policies for improving the natural environment; for statements and reports about environmental protection; for the Office for Environmental Protection; about waste and resource efficiency; about air quality; for the recall of products that fail to meet environmental standards; about water; about nature and biodiversity; for conservation covenants; about the regulation of chemicals; and for connected purposes.
7. The clauses with particular relevance to matters within the legislative competence of the Senedd are:

- Part 1 – Environmental Governance - Clause 19 (Statements about Bills containing new environmental law) and Clause 45 (Meaning of environmental law) in so far as it relates to clause 19
- Part 3 – Waste and Resource Efficiency – clauses 49 and 50 (Producer Responsibility) and Schedules 4 and 5, clauses 51 – 54 (Resource efficiency), clause 57 (Electronic waste tracking: Great Britain), clause 59 (Hazardous waste England and Wales), clause 62 (Regulations under the Environmental Protection Act 1990), clause 63 (Powers to make charging schemes), clause 65 (Enforcement powers), clause 67 (Littering enforcement), clause 68 (Fixed Penalty notices), clause 69 (Regulation of polluting activities)
- Part 4 – Air quality and Environmental recall – clause 71 (Local air quality management framework), clause 72 (Smoke control areas: amendments of the Clean Air Act 1993)
- Part 5 – Water – clauses 77 and 78 (plans and proposals), clause 79 (Authority's power to require information), clause 81 (Electronic service of documents), clause 83 (Water quality: powers of Secretary of State), clause 84 (Water quality: powers of Welsh Ministers), clause 87 (Water quality: interpretation), clauses 89 – 91 (Land drainage),
- Part 6 – Nature and Biodiversity – clause 109 (Use of forest risk commodities in commercial activity),
- Part 8 – Miscellaneous and General Provisions – Clause 133 (Amendment of Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) legislation)

Provisions in the Bill for which consent is required

The Senedd's consent would be required for the following provisions:

Part 1 – Environmental Governance

Clause 19 (Statements about Bills containing new environmental law)

8. This clause requires Ministers of the Crown to make 'non-regression' statements on the introduction of Bills before Parliament. The process applies when a Minister of the Crown introduces a Bill before Parliament which, if enacted, would be considered 'environmental law' for the purposes of clause 45.

9. A statement under clause 19 is a statement the Bill contains provision which is environmental law and a statement either –

- to the effect in the Minister's view the Bill will not have the effect of reducing the level of environmental protection provided for by any existing environmental law; or

- the Minister is unable to give the above statement, but the Government nevertheless wishes Parliament to proceed with the Bill.

10. Unlike the rest of the Bill, 'environmental law' for the purposes of this clause includes devolved legislative provision. The effect of this is the above requirements apply equally to UK Bills involving 'environmental law' applying in Wales, in the same way as England.

11. UK Government are of the view this provision relates to Parliamentary processes. As 'Parliament' is broadly a reserved subject, the UK Government's position is the Senedd's consent is not required. The Welsh Government view is whilst the process is one delivered through an accountability procedure in Parliament, its purpose is truly an environmental one – a devolved subject matter.

12. For the above reasons, the Welsh Government considers clause 19 requires consent.

Clause 45 (Meaning of environmental law)

13. Clause 45 (Meaning of environmental law) in so far as it relates to clause 19.

Part 3 – Waste and Resource Efficiency

Clauses 49 and 50 (Producer responsibility) and Schedules 4 and 5

14. Clause 49 and Schedule 4 allows the relevant national authority to make regulations about producer responsibility obligations and the enforcement of those regulations. This is done through amendments to the Environment Act 1995.

15. Clause 50 and Schedule 5 allows the relevant national authority to make regulations requiring those involved in manufacturing, processing, distributing or supplying products or materials to meet, or contribute to, the disposal costs of those products.

16. The relevant national authority in Wales for both provisions is the Welsh Ministers, though the Secretary of State can legislate in relation to Wales with the consent of the Welsh Ministers (a 'concurrent plus' power).

17. The powers conferred in clause 49/Schedule 4 and clause 50/Schedule 5 are all exercisable through affirmative procedure before the Senedd, or before Parliament where exercised by the Secretary of State.

18. In so far as these provisions are for a purpose within the legislative competence of the Senedd (i.e. waste) the Welsh Government considers they require consent.

Clauses 51 - 54 (Resource efficiency)

19. Clause 51 (resource efficiency information) and Schedule 6 give the relevant national authority the power to make regulations setting out requirements for manufacturers and producers to provide information about the resource efficiency of their products. All regulations under Schedule 6 are subject to affirmative procedure.
20. Clause 52 (resource efficiency requirements) 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.
21. Clause 53 and Schedule 8 enable the relevant national authority to make regulations establishing deposit schemes. Regulations under Schedule 8 are generally subject to negative procedure, except for the situations specified in clause 53(5) in which case affirmative procedure applies.
22. The relevant national authority for Wales is defined in each of clauses 51 – 53 as the Welsh Ministers or the Secretary of State. The Welsh Ministers' power to legislate is limited to provision which, if contained in an Act of the Senedd, would be within legislative competence. The Secretary of State has power to legislate for Wales in cases outside of this competence, or generally if given consent by the Welsh Ministers (concurrent plus).
23. Clause 54 and Schedule 9 enable the relevant national authority to make regulations about charges for single use plastic items. The relevant national authority for Wales is the Welsh Ministers. Regulations under Schedule 9 are subject to negative procedure, except for the situations specified in clause 52(3), in which case affirmative procedure applies.
24. Clauses 51- 54 make provision for a purpose within the legislative competence of the Senedd (i.e. waste).

Clause 57 (Electronic Waste Tracking: Great Britain)

25. Clause 57 amends the Environmental Protection Act 1990, inserting new sections 34CA and 34CB, to create powers to introduce electronic (digital) waste tracking in England, Wales and Scotland, and to establish an electronic system for this purpose by regulations.
26. The powers conferred by inserted sections 34CA and s34CB apply to the Welsh Ministers in Wales.

27. Clause 57(3) makes amendments to section 160A(2) of the Environmental Protection Act 1990, as inserted by clause 62, to provide for the procedure for the new regulation making powers. Regulations under new sections 34CA and 34CB are subject to negative procedure, except for the situations specified in new section 160A(2), in which case affirmative procedure applies
28. In so far as they make provision for a purpose within the legislative competence of the Senedd (i.e. waste) it is the Welsh Government's view that consent is required.

Clause 59 (Hazardous waste: England and Wales)

29. This clause makes amendments to the Environmental Protection Act 1990 in respect of hazardous waste in England and Wales. The new section 62ZA also contains powers to make regulations about, or connected with, the regulation of hazardous waste. Powers are conferred on the 'relevant national authority' meaning the Welsh Ministers in Wales.
30. Regulations under new section 62ZA are subject to negative procedure, except for the situations specified in new section 160A(2) (as introduced by clause 60 and amended by clause 59), in which case affirmative procedure applies.
31. In so far as it makes provision for a purpose within the legislative competence of the Senedd (i.e. waste) it is the Welsh Government's view that consent is required.

Clause 62 (Regulations under the Environmental Protection Act 1990)

32. This provision amends the Environmental Protection Act 1990 relating to procedures for subordinate legislation in the Act. This consolidates the various new provisions inserted into the Act by this Bill
33. It is the Welsh Government's view, in so far provision is made for a purpose within the legislative competence of the Senedd (i.e. it is consequential to the provisions to which it relates, which are themselves environmental protection/waste in nature and so devolved), consent is required.

Clause 63 (Powers to make charging schemes)

34. Clause 63 amends section 41 of the Environment Act 1995 by inserting powers to allow the Environment Agency, Natural Resources Wales, and the Scottish Environment Protection Agency to make charging schemes as a means for recovering costs it incurs by performing functions.
35. In so far as it makes provision for a purpose within the legislative competence of the Senedd (waste and environmental protection), it is the Welsh Government's view that consent is required.

Clause 65 (Enforcement powers)

36. Clause 65 introduces Schedule 10 which amends legislation about enforcement powers in relation to waste and other environmental matters. In particular amendments include minor amendments to the Control of Pollution (Amendment) Act 1989; amendments to the Environmental Protection Act 1990 in relation to powers to search and seize vehicles in connection with waste offences, and amendments to the Environmental Protection Act 1990 to provide directions making powers in relation to waste.
37. In so far as this clause makes provision for purposes within the legislative competence of the Senedd (waste, air quality and environmental protection) the Welsh Government consider it requires consent.

Clause 67 (Littering enforcement)

38. Clause 67 amends Part 4 of the Environmental Protection Act 1990 in relation to enforcement against littering and the unauthorised distribution of free printed material.
39. Clause 67 confers a new power on the Welsh Ministers (as ‘appropriate person’ in Wales) to prescribe conditions by regulations which must be met by an authorised officer operating on behalf of a litter authority, and to make provision requiring a litter authority to revoke an officer’s authorisation if the officer fails to meet the prescribed conditions. The new powers are subject to negative procedure.
40. Clause 67 also confers guidance making powers on the Welsh Ministers. Any guidance issued under these powers would be subject to no procedure.
41. As this clause makes provision for waste/environmental protection, a purpose within the legislative competence of the Senedd, the Welsh Government considers it requires consent.

Clause 68 (Fixed penalty notices)

42. Clause 68 amends sections 33ZA, 33ZB, 34ZA and 34ZB of the Environmental Protection Act 1990 to allow the level of fixed penalty notices (FPNs) under those sections, and the time period under which a lesser amount may be treated as payment of the fixed penalty, to be varied. Sections 33ZB and 34ZB are of application to Wales, whilst 33ZA and 34ZA are of application to England.
43. The amendments in clause 68 allow the Welsh Ministers to be able to make regulations which substitute the penalty amounts currently specified

in the above mentioned application sections. These powers are subject to the negative procedure in accordance with section 160A of the 1990 Act (as inserted by clause 60).

44. As this clause makes provision for waste/environmental protection, a purpose within the legislative competence of the Senedd, the Welsh Government considers it requires consent.

Clause 69 (Regulation of polluting activities)

45. This clause amends Schedule 1 to the Pollution Prevention and Control Act 1999, which sets out the purposes for which the Secretary of State can make regulations under Section 2 of the Act. Subsection (2) inserts a new sub-paragraph into paragraph 4 of Schedule 1, setting out a new purpose for which regulations can be made. This allows the Secretary of State to prohibit an activity unless it meets conditions determined by the Environment Agency and/or Natural Resources Wales in accordance with the regulations.

46. The functions under 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 Welsh Ministers' powers.

47. As this clause makes provision for waste/environmental protection, a purpose within the legislative competence of the Senedd, the Welsh Government considers it requires consent.

Part 4 – Air Quality and Environmental Recall

Clause 71 (Local air quality management framework)

48. Clause 71 introduces Schedule 11 which makes amendments to the Environment Act 1995 relating to air quality.
49. Schedule 11, paragraph 2 amends section 80 (national air quality strategy) of the Environment Act 1995 ("the 1995 Act"). This paragraph omits section 80(3) of the 1995 Act as well as makes provision for the review of the national air quality strategy. As a result of the omission of section 80(3), it is put beyond doubt 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.
50. Paragraph 2(3) of Schedule 11 makes further provision in relation to the review of the national air quality strategy. As the publishing of the strategy in relation to Wales, it is a function of the Welsh Ministers. Should the Senedd wish to legislate to provide such a provision in Wales, it would be within their competence to do so and, therefore, consent is required.

51. In so far as relating to paragraphs 2(3) of Schedule 11, clause 71 makes a provision for a purpose within the legislative competence of the Senedd and the Welsh Government consent is required.

Clause 72 (Smoke control areas: amendments of the Clean Air Act 1993)

52. This clause introduces Schedule 12 which makes various amendments to the Clean Air Act 1993.

53. Part 2 of Schedule 12 amends sections 20 and 21 of the Clean Air Act 1993 in relation to Wales to allow Welsh Ministers to publish a list of authorised fuels and exempt fireplaces for use in smoke control areas, rather than having to produce Regulations and Orders annually for the same purpose. 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 resource intensive. The list system is already in place in England and Scotland and therefore these provisions bring Wales in line with the rest of the UK.

54. This part makes provisions in relation to air quality and relates to Wales only. Therefore they require consent.

55. Paragraphs 14 and 15 amend sections 20 and 21 of the 1993 Act in consequence of the changes in Part 2 of Schedule 2. They are therefore consequential on devolved provision, and require consent.

Part 5 – Water

56. Clauses 77, 78, 79, 81, 83, 84 and 87 are concerned with water quality.

Clauses 77 – 78 (plans and proposals)

57. Clause 77 amends the Water Industry Act 1991 in relation to general duties of water undertakers to prepare joint proposals and plans. This includes a regulation-making power for the Welsh Ministers to make provision about the procedure for preparing and publishing water resources management plans, drought plans, and joint proposals. These regulations are subject to the negative resolution procedure.

58. Clause 78 amends the Water Industry Act 1991 in relation to drainage and sewerage management plans. This includes a providing the Welsh Ministers with a regulation-making power to amend the period within which an undertaker must prepare and publish a revised plan. These regulations follow the negative resolution procedure.

59. Clauses 77 and 78 relate to water and sewerage but do not relate to any of the reserved matters in Schedule 7A of the Government of Wales Act. These clauses confer powers on the Welsh Ministers in relation to water

and sewerage undertakers whose areas are wholly or mainly in Wales and therefore are not caught by the reservations in paragraphs 92 and 93 of Schedule 7A. As these provisions therefore fall within legislative competence of so far as they apply in relation to Wales and could be made by a Senedd Bill, they require consent.

Clause 79 (Authority's power to require information)

60. Clause 79 amends the Water Industry Act 1991 to provide Ofwat with a power to require information from water or sewerage undertakers or water supply or sewerage licensees for the purpose of monitoring.

61. Clause 79 relates to water and sewerage, and in so far as the Senedd could provide for the same provision in relation to Wales, requires the Senedd's consent.

Clause 81 (Electronic service of documents)

62. Clause 81 amends the Water Industry Act 1991 and makes provision about the electronic service of documents to Ofwat.

63. As clause 81 does not fall within reserved matters and could be made by a Senedd Bill, it is the Welsh Government's view that it requires consent.

Clause 83 (Water quality: powers of Secretary of State)

64. Clause 83 provides the Secretary of State with a regulation-making power to make provision about the substances to be taken into account in assessing the chemical status of surface water or groundwater, and to specify standards for those substances or in relation to the chemical status of surface water or groundwater. Regulations under this provision are subject to the negative resolution procedure and consultation requirements.

65. Regulations under this clause may be made by the Secretary of State in relation to Wales, either—

- when the Welsh Ministers do not have the executive competence to make regulation under clause 84 (i.e. the exercise of the power is beyond legislative competence see clause 84(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 section 84.

66. As the above is a 'concurrent plus' power, consent is required in so far as the provision is 'relevant provision' under SO29.1(ii).

Clause 84 (Water quality: powers of Welsh Ministers)

67. Clause 84 confers a regulation-making power, broadly comparable with clause 83, on the Welsh Ministers and provides the Welsh Ministers must consult certain bodies before making regulations under this provision. Regulations made under clause 84 will follow the negative resolution procedure. Regulations under this provision can only make provision for matters within the legislative competence of the Senedd.

68. In so far as clause 84 makes provision for water quality, a purpose within the legislative competence of the Senedd, consent is required.

Clause 87 (Water quality: interpretation)

69. To the extent this provision applies to the above provisions, it requires consent.

Clauses 89 - 91 (Land drainage)

70. Clause 89 amends section 83 of the Environment (Wales) Act 2016 and provides a regulation-making power 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 the regulations. Regulations made under this section follow the affirmative procedure. This clause applies in relation to Welsh internal drainage districts only and, therefore, falls within the legislative competence of the Senedd and requires consent.

71. Clause 90 amends the Land Drainage Act 1991 and provides the Welsh Ministers with a regulation-making power to make provision for the annual value of each chargeable property in a Welsh internal drainage district to be determined by the drainage board for the district in accordance with the regulations. Regulations made under this provision follow the affirmative procedure.

72. Clause 91 amends the Land Drainage Act 1991 and makes provision about the disclosure of revenue and customs information by HMRC to a qualifying person, including NRW and the Welsh Ministers, for a purpose specified in section 37A. New section 37A also includes a regulation-making power for the Welsh Ministers, so far as Welsh internal drainage districts are concerned, to specify a person as a qualifying person for the purpose of this section. Regulations made under this section follow the affirmative procedure and may only be made with the consent of the Commissioners for HMRC.

73. As clauses 89, 90 and 91 make provision in relation to land drainage, a purpose within the legislative competence of the Senedd, the Welsh Government considers it requires consent.

Part 6 – Nature and Biodiversity

Clause 109 (Use of forest risk commodities in commercial activity),

74. Clause 109: ‘Use of forest risk commodities in commercial activity’ which requires large businesses to ensure the ‘forest risk’ commodities they use, those which can cause wide-scale deforestation, have been produced legally.
75. 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.
76. 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.
77. 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 have a robust system of due diligence in place.
78. The UK Government consider the provision relates to the creation, operation, regulation and dissolution of types of business association which is reserved under section C1, paragraph 65 of Schedule 7A to GOWA 2006.
79. It is our view that the purpose of these provisions is to protect forest environments and tackle climate change and therefore, as a matter of environmental protection, they fall within the legislative competence of the Senedd. The clauses would be *relevant provision* for the purposes of Standing Order 29.1.

Part 8 – Miscellaneous and General Provisions

Clause 133 (Amendment of REACH legislation)

80. Clause 133 introduces Schedule 20 which gives the Secretary of State the power to amend the Articles of the REACH Regulation. This power is exercisable subject to the consent requirement in Article 4A of the REACH Regulation.
81. Schedule 20 also gives power to the Secretary of State to amend the REACH Enforcement Regulations. The Welsh Ministers are also given power in relation to amending the REACH Enforcement Regulations under this provision, to the extent the exercise of the power would be within legislative competence. Such regulations would be subject to the

affirmative procedure. This power is exercisable concurrently with the Secretary of State.

82. These provisions contain provision within the legislative competence of the Senedd such as environmental protection and human health. The provision therefore requires consent.

83. In addition to the above, the creation of concurrent plus functions in relation to the power to amend the REACH Enforcement Regulations are also considered to require consent.

Concurrent plus powers

84. The Bill includes concurrent plus powers in relation to clauses 49 -53 and associated schedules, Clause 83 and Clause 133. As currently drafted, the inclusion of these 'concurrent plus' functions in the Bill also leads to the clauses requiring consent as the provisions arguably 'modify the legislative competence of the Senedd' (and in turn would be 'relevant provisions' for the purposes of SO29.1(ii)).

85. Amendments have been tabled which will have the effect of 'carving out' the aforementioned concurrent plus functions from the requirement for a Minister of the Crown to consent to their repeal in paragraph 11 of Schedule 7B to GoWA 2006. The amendments achieve this by adding the Bill to the list of exceptions to Schedule 7B restrictions in paragraphs 9 and 11 of that Schedule. The amendments modify a protected provision in GoWA 2006 in accordance with paragraph 7 of Schedule 7B, thus they are not within the legislative competence of the Senedd, and are therefore not 'relevant provisions' for the purposes of SO29.1.

Reasons for making these provisions for Wales in the Environment Bill

86. We follow the principle that primary legislation in devolved areas should be enacted by Senedd Cymru. However, 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.

87. In relation to provisions being made for extended producer responsibility clauses 49 to 54 allow the Welsh Government to realise the policy intention of developing a regulatory approach to EPR which allows, if needed, for consistent schemes to operate between Wales, England, Scotland and Northern Ireland for a range of products and items. The ability to have the option to develop consistent schemes is important for market reasons including the way many retailers operate their distribution systems.

88. This is particularly important for businesses operating across the UK and for those businesses which straddle the border or transfer waste within the UK. Operating different EPR systems between Wales and England could incentivise fraud and would be confusing for both retailers and the public. These provisions allow for the delivery of key actions to deliver EPR for packaging and a deposit return scheme for drinks containers commitments in *Beyond Recycling*, the circular economy strategy 2021.
89. Due to the nature of the integrated economies and supply chains that operate across the four nations, including in respect of imports, businesses will wish to see common requirements for product resource efficiency information and resource efficiency standards set across all four nations.
90. For single use plastics, this provision provides a legislative tool which will help us meet our commitment in *Beyond Recycling*, the circular economy strategy, to phase out unnecessary single-use items, especially plastic. This includes a key action to develop options for a tax or charge on disposable plastic cups and food containers in Wales.
91. Amending the Clean Air Act 1993 (Clause 72) will make the process of publishing the list more efficient by allowing for online publication. In addition, manufacturers will benefit from this proposal in reduced delay between obtaining a recommendation (to use a fuel or fireplace) from the existing contracted technical experts and the placing of the product on the market. It will also minimise the risk of error in recording and updating the lists of authorised fuels and exempted fireplaces.
92. This provision will also increase consumer choice by enabling more products to be placed on the market sooner. The provision contributes towards the Welsh Government commitment in *Prosperity for All* in working to reduce emissions and deliver vital improvements to air quality. The provision will improve the operation of the smoke control regime in Wales.
93. Clause 72 was considered appropriate for inclusion in a UK Bill as it is a minor and non-contentious provision. Welsh Government decided to include the published lists provision in the UK Environment Bill in order to achieve, in the shortest time possible, the benefits described above for both manufacturers and consumers.
94. With reference to the regulation of water, the powers sought will update and streamline the regulatory process for water resource management plans. These powers also introduce new regulatory requirements on the water companies to prepare drainage and sewerage management plans. The framework for these plans was prepared under a Water UK programme (21st century drainage) to ensure a common approach across the UK. The plans will set out the investment required over a 25 year

period to ensure drainage and sewerage assets can adapt to climate change and manage additional pressures from population growth.

95. The plans will link in to the water companies business planning process. Ofwat is the economic regulator for the water industry in England and Wales and applies a common approach across all companies. If there was a delay in the introduction of these provisions, where the policy is aligned, there could be risks for the water companies in Wales in securing funding via the Ofwat model and addressing issues such as CSOs and ageing assets to enable housing and development in Wales.
96. Moreover, the concurrent power under clause 83 for water regulation is sought following the repeal of the European Communities Act 1972 which has removed the power to alter the approach to priority substances. A new power is required to enable the Welsh Ministers to have a framework in place to assess the chemical status of our waters.
97. In respect of land drainage, clauses 89 – 91 are sought to provide for powers to update the apportioning of expenses through secondary legislation. These revisions are important for the Internal Drainage Board, which is Natural Resources Wales in Wales, to collect revenue.
98. Fees are set for all Drainage Boards and administered by NRW in Wales. Therefore 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
99. In regards to REACH provisions, 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.

Financial implications

100. There are currently no additional financial implications for the Welsh Government or the Senedd as a result of taking these powers in this bill.

Conclusion

101. In the view of the Welsh Government 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.

Julie James MS
Minister for Climate Change
18 June 2021

Annex A: Summary of powers to make subordinate legislation in the UK Environment Bill

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Clause 49 Schedule 4 Producer responsibility obligations	Welsh Ministers (Concurrent plus powers)	Regulations	Confers a power to make Regulations to impose producer responsibility obligations on specified persons and in relation to specified products or materials	Affirmative procedure with the exception of the regulations under 47(4) which make provision for variation of targets and are subject to the negative procedure	Provides the flexibility to state, in regulations, which producer or business to impose producer responsibility obligations on and on what products or materials and what steps are required in order to achieve those obligations.
Clause 50 Schedule 5 Producer responsibility for disposal costs	Welsh Ministers (Concurrent plus powers)	Regulations	Confers a power to make Regulations that require those involved in manufacturing, processing, distributing or supplying products or materials to meet, or contribute to, the	Affirmative procedure	Facilitates the making of separate provision about enforcement for Wales. It will also provide flexibility to make different provision in relation to particular types of products, for example by specifying different bodies as enforcement authorities in different cases.

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			disposal costs of those products.		
Clause 51 Schedule 6 Resource efficiency information	Welsh Ministers (Concurrent plus powers)	Regulations	Confers a power to make regulations that set requirements for manufacturers and producers to provide information about the resource efficiency of their products.	Affirmative procedure	Allows the Welsh Government to develop policy proposals for, and make separate regulations for each type of product regulated. It will also provide flexibility to make different provision in relation to particular types of products, for example by specifying different bodies as enforcement authorities in different cases.
Clause 52 Schedule 7 Resource efficiency requirements	Welsh Ministers	Regulations	Confers a power on the relevant national authority to make regulations that set resource efficiency requirements that products	Affirmative procedure	Product-specific information requirements may be detailed and technical and thus more suitable for inclusion in regulations than in primary legislation.

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			are required to meet.		
Clause 53 Schedule 8 Deposit schemes	Welsh Ministers	Regulations	Confers a power on the relevant national authority to make regulations establishing deposit schemes	Affirmative procedure if these are the first regulations to: a) establish deposit schemes under paragraph 1, or with regards to enforcement under paragraph 5; (b) provide for conduct to be a criminal offence which is not a criminal offence under existing regulations; (c) provide for conduct to be subject to a civil sanction; (d) increase the amount or	Allows Welsh Government to develop policy proposals for, and make, separate regulations for each product group regulated.

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
				<p>maximum amount of a fine or monetary penalty, or change the basis on which such an amount or maximum is to be determined.</p> <p>Otherwise, regulations under Schedule 8 are subject to the negative procedure.</p>	
<p>Clause 54 Schedule 9 Charges for single use plastic items</p>	<p>Welsh Ministers</p>	<p>Regulations</p>	<p>Regulation making power to make provision about charging by sellers of goods for the supply of single-use items.</p>	<p>Affirmative procedure if they—</p> <ul style="list-style-type: none"> (a) are the first regulations made by the authority under that Schedule; (b) contain provision about charging for a new item; (c) provide for 	<p>Having this devolved power allows Welsh Ministers to define items subject to any charge, the amount charged and the requirements and the appointment of any administrator to oversee the charge which reflect Welsh priorities.</p>

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
				<p>conduct to be subject to a civil sanction which is not subject to a civil sanction under existing regulations made by the authority under that Schedule;</p> <p>(d) 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.</p> <p>Otherwise, regulations under Schedule 9 are subject to the negative procedure.</p>	
Clause 57 Electronic waste tracking: Great	Welsh Ministers	Regulations	Confers powers on Welsh	Clause 55(3) makes	The waste tracking regulations will provide essential data to help

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Britain			Ministers to introduce electronic (digital) waste tracking and to establish an electronic system for that purpose by regulations	amendments to section 160A(2) of the Environmental Protection Act 1990 (as inserted by clause 60), to provide the procedure for the new regulation making powers included in s.160A. Regulations under new sections 34CA and 34CB are subject to negative procedure, except for the situations specified in new section 160A(2), in which case affirmative procedure applies	develop a circular economy and future waste policy. Gathering data on wastes and those who are managing it will make it easier to determine who is (or was) responsible for the waste at any given time. This will support regulation of wastes and help identify those responsible for any illegal waste. Aligns waste tracking legislation with legislation for waste management, which is currently controlled through secondary legislation

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Clause 59 Hazardous waste: England and Wales	Welsh Ministers	Regulations	Confers a power to make regulations to make provision about, or connected with, the regulation of hazardous waste.	Regulations under new section 62ZA of the Environmental Protection Act 1990 are subject to negative procedure, except for the situations specified in new section 160A(2) of that Act (as inserted by clause 60 and amended by clause 57), in which case affirmative procedure applies.	Aligns with the current regulatory system for hazardous waste, which is currently controlled through secondary legislation.
Clause 67 Littering enforcement	Welsh Ministers	Regulations Guidance	Amends Part 4 of the Environmental Protection Act	Negative procedure. Any guidance	Welsh Ministers will need the flexibility to be able to change or update the prescribed conditions an authorised officer of a litter

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			<p>1990 in relation to enforcement against littering, and other offences of littering from a vehicle and the unauthorised distribution of free printed material.</p> <p>Confers a new Regulation making power on the Welsh Ministers in section 88 of the 1990 Act to prescribe conditions that must be met by an authorised officer operating on behalf of a litter authority, and to make provision</p>	<p>issued under these powers would be subject to no procedure.</p>	<p>authority must meet to reflect changing needs and developments within the sector, meaning primary legislation would not be an appropriate vehicle for this power.</p> <p>Whilst the existing regulations to deal with littering operate on an England & Wales basis and our guidance is broadly the same, there are some differences in how we implement our policies which warrants Welsh Ministers having delegated powers. For example, the Welsh Government works very closely with Local Authorities and the Third Sector to help develop and implement the educational and behavioural change aspects of tackling littering. We may, therefore, wish to have the flexibility to incorporate this type of approach into any new enforcement guidance we develop.</p> <p>The power to issue statutory guidance is necessary to ensure</p>

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			<p>requiring a litter authority to revoke an officer's authorisation if that officer fails to meet the prescribed conditions.</p> <p>Also confers guidance making powers on the Welsh Ministers.</p>		the various litter authorities undertake littering enforcement functions in a consistent and proportionate way.
Clause 68 Fixed Penalty Notices	Welsh Ministers	Regulations	Amends sections 33ZA, 33ZB, 34ZA and 34ZB of the EPA 1990 to provide powers to vary Fixed Penalty Notice levels and how payment can be made	Negative procedure	Taking a power to amend penalties in secondary legislation, allows for them to be kept under review, see if they are working effectively and amend them if needed.
Clause 69	Welsh	Regulations	Regulation of	Negative	Allows for the detailed conditions

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Regulation of polluting activities	Ministers		polluting activities	procedure	for any exemption (from the prohibition on carrying out an activity without a permit) to be set and amended by the regulator.
Clause 77 Water resources management plans, drought plans and joint proposals	Welsh Ministers (in relation to water undertakers wholly or mainly in Wales)	Direction	Newly inserted section 39E allows Welsh Ministers to give a direction to two or more water undertakers to publish a joint proposal. Newly inserted section 39F gives Welsh Ministers a power to make Regulations about the procedure for preparing and publishing water resources management	Negative procedure	Allows flexibility to consider which undertakers should be directed to prepare joint proposals and when.

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			<p>plans, a drought plan and a joint proposal.</p> <p>Newly inserted section 39G says that the Regulation making power under section 39F may confer on the Minister powers to make provisions by direction.</p> <p>Newly inserted section 39H makes various miscellaneous supplementary provision about the aforementioned regulation making powers.</p>		

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
<p>Clause 78 Drainage and sewerage management plans</p>	<p>Welsh Ministers (in relation to water undertakers wholly or mainly in Wales)</p>	<p>Direction</p>	<p>This clause makes provision in relation to drainage and sewerage management plans and the preparation and review of such.</p> <p>The newly inserted section 94A(7) includes a power for Welsh Ministers to issue directions specifying the form in which a drainage and sewerage management plan must take or the planning period to which such a plan must relate.</p>	<p>Negative procedure</p>	<p>Allows Welsh Ministers to intervene to ensure drainage and sewerage management plans address emerging challenges which may arise and therefore remain efficacious.</p>

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			<p>Further, newly inserted s.94B includes a power for Welsh Ministers to, by Order, amend the period of time by which a sewerage undertaker must publish a plan (that provision is in s.94A(6)(c))</p> <p>The newly inserted section 94C gives Welsh Ministers a regulation making power to make provision about the procedure for preparing and publishing drainage and sewerage management</p>		

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			<p>plans. This includes allowing provision to be made for information sharing, consultation on draft plans and responses to such, circulation of draft plans, and a provision conferring a power on Ministers to make any (further) provision by directions- see s.94C(8).</p> <p>The newly inserted section 94D makes supplementary provision for the regulations</p>		

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			made under s.94C. Newly inserted section 94E make provision regarding the form of any directions made under s.94C(8).		
Clause 84 Water quality: powers of Welsh Ministers	Welsh Ministers	Regulations	Power to amend legislation to make technical updates in the field of water quality, following the departure from the EU.	Negative procedure	Required to ensure substances and standards in relation to those substances or in relation to the chemical status of surface water or groundwater do not remain fixed after the UK withdraws from the EU. The power would enable action to be taken legislatively to tackle those new priority substances most accurately representing harm to the water environment.
Clause 89 Valuation of other land in drainage district: Wales	Welsh Ministers	Regulations	Amendment to the Environment (Wales) Act 2016 which amends the	Affirmative procedure	It is necessary to revise and update the methodology of calculating the split of income between special levies and drainage rates. The provisions

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			<p>Land Drainage Act 1991. Restates existing Regulation making powers in light of amendments to the 1991 Act, including the related regulation making power introduced in clause 88.</p>		<p>within the Bill would allow the value of other land to be calculated via an alternative methodology (as IDBs will be able to make use of alternative data for these calculations), which will be set out in secondary legislation subject to the affirmative procedure. Setting out the valuation calculation in regulations is appropriate and proportionate, because these provisions deal with details of a subsidiary and technical matter.</p>
<p>Clause 90 Valuation of agricultural land in drainage district: England and Wales</p>	<p>Welsh Ministers</p>	<p>Regulation</p>	<p>Confers power to make regulations providing an alternative methodology for the calculation of drainage rates</p>	<p>Affirmative procedure</p>	<p>The Bill makes provision to allow the secondary legislation to provide an alternative methodology for calculation of the value of chargeable land (agricultural land and buildings) to avoid the potential distortion of the apportionment calculation. Setting out the valuation calculation in regulations is appropriate and proportionate,</p>

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
					because these provisions deal with details of a subsidiary and technical matter.
Clause 91 Disclosure of Revenue and Customs information	Welsh Ministers	Regulation	This provision amends the Land Drainage Act 1991 to allow HMRC to share information to qualifying persons for qualifying purposes. A regulation making power is conferred to enable the list of 'qualifying persons' to be added to.	Affirmative procedure	The power to add to the list of qualifying persons set out under new section 37A(3)(h) is needed in order to ensure other persons requiring access to HMRC information for a qualifying purpose, who are identified at a later date, may be added to the list in secondary legislation, in circumstances where the framework of regulatory bodies operating in this area changes.
Schedule 20 para 1(1) Amendment of the REACH regulation	Welsh Ministers (Concurrent powers)	Regulation	Confers a power on Welsh Ministers in relation to amending the REACH	Affirmative procedure.	Section 1 of the European Union (Withdrawal) Act 2018 repeals the European Communities Act 1972. This means after exit day the only way to amend the REACH Enforcement Regulations 2008

Section or schedule of the Bill	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			Enforcement Regulations under this provision to the extent that the exercise of that power would be within legislative competence.		and REACH EU Exit Regulations would be through primary legislation. This power is needed to ensure the REACH EU Exit Regulations can be kept up to date.
Schedule 20 2(1) Amendment of the REACH Enforcement Regulations 2008 (S.I. 2008/2852).	Welsh Ministers (Concurrent plus)	Regulation	Confers a powers on Welsh Ministers to amend the REACH Enforcement Regulations 2008 (S.I. 2008/2852) under this provision to the extent that the exercise of that power would be within legislative competence.	Affirmative procedure	This power is needed to ensure the REACH Enforcement Regulations 2008 can be kept up to date.

