

## Agenda Supplement – Legislation, Justice and Constitution Committee

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Meeting Venue:

Videoconference via Zoom

Meeting date: 28 November 2022

Meeting time: 13.30

For further information contact:

P Gareth Williams

Committee Clerk

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### Virtual – Supplementary pack

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Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

#### 6.4 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Organic Production (Amendment) Regulations (No. 2) 2022

(Pages 1 – 3)

Attached Documents:

LJC(6)–31–22 – Paper 25 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 25 November 2022

#### 7.5 Correspondence from the Minister for Climate Change: Legislative Consent Memorandum on the Levelling–up and Regeneration Bill

(Pages 4 – 19)

Attached Documents:

LJC(6)–31–22 – Paper 26 – Letter from the Minister for Climate Change, 25 November 2022

LJC(6)–31–22 – Paper 27 – Letter to the Minister for Climate Change, 2 November 2022

#### 9 Historic Environment (Wales) Bill: Draft report

(14.05 – 14.50)

(Page 20)

Attached Documents:

LJC(6)–31–22 – Paper 28 – Letter from the Counsel General and Minister for the Constitution, 25 November 2022



Lesley Griffiths AS/MS  
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd  
Minister for Rural Affairs and North Wales, and Trefnydd



Llywodraeth Cymru  
Welsh Government

Huw Irranca-Davies MS  
Chair  
Legislation, Justice and Constitution Committee  
Welsh Parliament  
Cardiff  
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huw.Irranca-Davies@senedd.wales

25 November 2022

Dear Huw,

I am writing to inform you of my consent for a Statutory Instrument which the UK Government intends to make on 6 December, which is within the competence of Welsh Ministers. This consent was requested on 24 October.

The Organic Production (Amendment) Regulations (No. 2) 2022 will be laid on 6 December, and will extend derogations for the use of non-organic pullets subsequently raised for organic egg production and for 5% of feed for pigs and poultry being non-organic to provide necessary protein. The proposed SI will also delay the restriction on the use of gellan gum in production of processed organic food, yeast and yeast products. The provisions are necessary due to the expiration of previous derogations for these products. No new organic sources of these products have become available.

This SI has been developed through the Organics Four Nations Working Group, following requests from the UK organic Control Bodies to the UK Government.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

My consent for this SI is based on the Secretary of State using powers conferred by Articles 22(1 and 2) and 38b(8) of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products. Article 22(1) allows the Appropriate Authority to grant exceptions to organic production rules, provided they are for one of the reasons set out in Article 22(2). The reason for the exception in this case is provided for in Article 22(2)(b), “where it is necessary in order to ensure access to feed, seed and vegetative propagating material, live animals and other farm inputs, where such inputs are not available on the market in organic form”. Article 38a(3)(a) of this regulation states the appropriate authority can be the Secretary of State in relation to Wales, provided the consent of the Welsh Ministers is given. Consent for these regulations is limited to the period of their implementation. Article 38(b) paragraph 8 provides powers for consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments) and to make different provision for different purposes. These derogations are implemented by REUL 889/2008. The derogations in this SI expire on 31 December 2025 for pullets and protein feed and delays the restrictions for gellan gum until 1 January 2026.

The derogations were first introduced when organic regulations had their last major overhaul with Council Regulation (EC) No. 834/2007 on organic production being implemented in 2008. While these derogations have to be time-limited, they have been extended consistently since this date because alternative products have not been available. Because these derogations have been in place since 2008, businesses have had no reason to invest in raising organic pullets, or producing organic gellan gum and pig & poultry feed. Therefore, these regulations are needed to maintain organic production and avoid disruption for businesses which rely on these products.

The European Commission has now replaced Regulation (EC) No. 834/2007 with Regulation (EU) 2018/848, but this only came into force after the UK left the EU, which is why REUL 834/2007 still applies in Wales. One of the policy aims of REUL 2018/848 has been to end the need for derogations and make organic farming wholly organic. The Expert Group on Organic Production is being established by the Four Nations to advise on the development of new organic regulations to replace 834/2007 and the role of derogations will form part of this review. This substantive update to organic policy will be made in Welsh legislation.

There are particular issues if the derogation for pig & poultry feed is not extended. There is a risk there will be no organic protein feed to replace the 5% non-organic feed allowed. Without this non-organic protein feed there is a risk of minor animal welfare issues for organic laying hens as these hens would not receive the correct nutrients they need.

Because of their minor and technical nature, it has been more expedient to make these regulations across Great Britain, rather than through a Welsh SI. Organic stakeholders have often pressed their desire for consistent regulation across Great Britain when it comes to organic standards, because of cross-border supply chains. It is in the interest of Wales to ensure these regulations be consistent and come into force at the same time across Great Britain.

If Wales were to use a Wales-only SI to extend these derogations, it may not be possible to have them in place before the current derogation expires. This would mean producers in Wales would not be able to comply with organics regulations for a time as the derogations would not be in place. As DEFRA acts as the competent authority for organic production on behalf of Welsh Ministers, they would then have to oversee the implementation of two differing standards for a time, one set in Wales and one for the rest of Great Britain.

Through the Four Nations Working Group, Welsh Government officials are able to closely monitor any proposed Great Britain-wide organics regulations and whether or not they are being made in Wales' interests. Officials from the Welsh Government will continue to attend both the Four Nations Working Group and the UK Organic Certifiers Group to monitor the implementation of this SI.

For these reasons, it is my view consent is consistent with the approach for consent for devolved provisions in UK legislation, as set out in the Counsel General's letter to the chair of the Legislation, Justice and Constitution Committee of 22 October last year.

Regards,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

**Lesley Griffiths AS/MS**  
**Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd**  
**Minister for Rural Affairs and North Wales, and Trefnydd**



Huw Irranca-Davies MS

Chair, Legislation, Justice and Constitution Committee

seneddLJC@senedd.wales

25<sup>th</sup> November 2022

Dear Huw

Thank you for your letter of 2 November regarding the Legislative Consent Memorandum (LCM) on the Levelling Up and Regeneration Bill (the Bill).

I too share your frustration over the lack of engagement from the UK Government on areas within the Bill prior to its introduction. Whilst engagement has improved it remains disappointing that there are areas in the Bill for which we have little detail and placeholder clauses remain. This has complicated not only the devolution assessment of the provisions and their effect upon Wales, but also negotiations over potential amendments. I acknowledge the importance of the Senedd's scrutiny role in the legislative consent process and accept that this in turn limited the ability of all four responsible committees to carry out meaningful scrutiny of the LCM.

I have provided a response to your questions in full where I can in the annex to this letter (**Annex 1**) and will lay a revised LCM on the Bill as soon as possible.

The responses to the letter have been based on the Bill as introduced, and I intend to lay a supplementary LCM to the same effect. This will provide a clear picture of my position on the Bill. Amendments to the provisions within the Bill during its passage through the House of Commons and Lords will be laid as a separate LCM in accordance with standing orders. I fully support your request for a revised deadline to assess the provisions and understand the Minister for Rural Affairs North Wales and Trefnydd will discuss with the Business Committee once the revised LCM has been laid/at the earliest opportunity.

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I am copying this letter to the Llywydd as Chair of the Business Committee, as well as the Chairs of the Climate Change, Environment and Infrastructure Committee, the Local Government and Housing Committee and the Economy, Trade and Rural Affairs Committee.

Yours sincerely



**Julie James AS/MS**

Y Gweinidog Newid Hinsawdd  
Minister for Climate Change

## Annex 1 – Response to Questions set out by the Legislation, Justice and Constitution Committee

**Note: Unless otherwise stated references to provisions in the Bill are to the version of the Bill as introduced.**

1. ***Can the Minister explain fully the divergence of opinion between the Welsh Government and the UK Government as to whether Part 1 of the Bill requires the consent of the Senedd? What discussions has the Minister had with the UK Government in this regard?***
  - 1.1 For over two decades the Welsh Government, in line with its devolved responsibilities for regional **economic** development, worked in partnership to help address the long-term structural economic challenges in Wales and reduce geographical disparities between different parts of the United Kingdom (UK) and the European Union (EU).
  - 1.2 While the UK Government has failed to meet its manifesto promises of replacing EU funds in full and no power being lost to Wales, Welsh Ministers continue to seek a co-decision-making role on agreeing the outcomes and how funds supporting the Levelling Up agenda – including the Shared Prosperity Fund (the replacement to EU funds) – should be spent; this helps to ensure policy coherence and avoid duplication. Our Framework for Regional Investment in Wales remains an important policy document for that purpose. Improving policy coherence
  - 1.3 The Welsh Government is of the view that Senedd Cymru could pass equivalent provisions to those contained within Part 1 and place on Welsh Ministers identical obligations to set out how they propose to “reduce geographical disparities” in economic, social or other opportunities across Wales; supported by identical reporting, scrutiny, review etc. obligations.
  - 1.4 This is because the objective of “levelling-up” to significantly reduce geographical disparity in the UK is not a reserved matter. Whilst the Welsh Ministers would not introduce legislation in respect of England, the Senedd would have legislative competence to legislate to achieve the same outcome of “levelling-up” for Wales.
  - 1.5 The “levelling-up” missions are described in the Explanatory Notes to Levelling-Up and Regeneration Bill (the Bill), however, they are not contained in the Bill itself in respect of which the Standing Orders require an assessment as to whether a Legislative Consent Memorandum (LCM) must be laid before the Senedd. The missions read as high-level aspirational outcomes linked to specific areas – education, health, transport, employment and economic development. etc. Areas regarded as within the legislative competence of the Senedd.
  - 1.6 UK Government are of the view that Part 1 of the Bill does not require the legislative consent of the Senedd via a Legislative Consent Motion. The UK Government state that Part 1 does not modify the executive competence of the Welsh Ministers or the legislative competence of the Senedd, but do not address whether or not Part 1 makes provisions ‘for any purpose within the legislative competence of the Senedd. The UK Government is of the view that the UK Parliament can legislate to place duties upon the UK Government Ministers to set missions for the whole of the UK.
  - 1.7 Welsh Government officials have met with officials from the Department for Levelling Up, Housing and Communities, and will continue this engagement as the Bill progresses.

**2. *Is the Minister able to provide more information regarding the Welsh Government's policy regarding the content of clauses 1-6 and the substantive reasons for its recommendation that the Senedd does not consent to these provisions?***

- 2.1 This Bill, if passed as currently drafted, would require future UK Governments to set longer term missions across a wide range of devolved matters, and actions to deliver against these missions could materially interfere with the policy objectives of the Welsh Government.
- 2.2 The Welsh Government does not agree the need for Part 1 of the Bill. Improving the well-being of everyone in Wales and addressing inequalities is the core mission of this Government and underpins the approach taken to the Well-being of Future Generations (Wales) Act 2015 (the WFG Act) passed by the Senedd in 2015.
- 2.3 The Welsh Ministers published their Economic Mission last year, clearly outlining our values and priorities which shape the decisions we are taking in supporting our economy here in Wales.
- 2.4 We aim to work to ensure our country is more prosperous, fairer and greener than ever before. In particular, our ambition is to create the conditions where more people, particularly the disadvantaged and young people, feel confident about planning their futures in Wales. Further to this we have set out a vision of what makes Wales an attractive place to live, study, work and invest, including the quality of life in an inclusive, open and green nation.
- 2.5 Our [Regional Economic Frameworks](#) set out the opportunities and challenges we face to improve the lives of people across Wales. They put collaboration ahead of competition, showing how we will act to maximise fairness for all and eliminate inequality at every level of society. They are an essential part of our commitment to a more focussed model of economic development - developing the distinctive strengths of our regions, supporting inclusive and sustainable economic growth and maximising opportunities to address national, regional and local inequalities, contributing to the well-being goals for Wales.
- 2.6 In Wales, we have through the WFG Act, a legislative framework to improve the economic, social, environmental, and cultural well-being of the whole of Wales for current and for future generations. The seven well-being goals were developed through a national conversation with the people of Wales and shaped and agreed by the Senedd.
- 2.7 This framework extends beyond just government and captures 48 public bodies, including public services boards and town and community councils. It recognises that both Government and public bodies have a contribution to make to achieving the well-being goals which reflects their powers and duties.
- 2.8 The provisions in clauses 1-6 of the Bill contain some of the elements that are already provided for through the WFG Act. This includes annual reporting, indicators and milestones and the setting of objectives to shape delivery.
- 2.9 In addition, the definition of "geographical disparities" in the Bill, as introduced, only makes specific mention to economic and social opportunities or outcomes. This misses the environmental and cultural opportunities and outcomes that are the



foundation of the WFG Act and well-being goals, and the strong views of the Senedd at the time that cultural well-being is an essential part of improving Wales.

**3. Can the Minister confirm why the LCM makes reference to clause 96 (street votes) requiring consent in the view of the UK Government, when this view is not reflected in the Explanatory Notes to the Bill?**

3.1 The reference to clause 96 of the Bill requiring consent in the view of the UK Government was included in the LCM in error. However, it is my view that as the clause is a placeholder clause and is not currently limited to England, that it falls within the legislative competence of the Senedd. We anticipate amendments will be tabled to the Bill to limit the application of clause 96 to England, which is why the UK Government has not identified it as requiring consent. We will correct this in the revised memorandum.

**4. Is the Minister in a position to seek clarity as to why the UK Government included clause 78 as requiring consent in the Explanatory Notes, when clause 78 is entitled "Power to require use of approved planning data software in England". Is clause 78 intended to apply in Wales or has the UK Government erroneously noted that it applies in Wales?**

4.1 We have not had any discussions with the UK Government on this particular point, therefore I am unable to clarify the UK Government's position on this. As introduced, we consider the application of clause 78 to apply to England only and therefore Senedd consent is not required.

**5. Has the Minister raised the inconsistency between the Explanatory Notes, immediately before paragraph 470, and the Bill at clause 77 regarding the title of clause 77, where the Explanatory Notes refers to England but the clause itself does not? Is the Minister confident that this clause applies in Wales?**

5.1 We have not had any discussions with the UK Government on this particular point. It is likely to be an error with the Explanatory Notes and we will raise it with the UK Government. The planning data provisions have the potential to apply to Wales in areas that are within the legislative competence of the Senedd. This is in a limited area in respect of regulations made under Part 5 (Environmental Outcome Reports). I am confident clause 77 has the ability to apply in Wales.

**6. Can the Minister provide further detail as to the new powers that are provided to the Secretary of State by Chapter 1 of Part 3, clause 96 and clause 112 and confirm what effect these powers would have in Wales, including any effect on the legislative competence of the Senedd and the executive competence of the Welsh Ministers?**

6.1 The planning data provisions in Chapter 1 of Part 3 of the Bill are intended to set approved data standards so that data held by relevant planning authorities is directly comparable. This would enable developers to work more efficiently across different authorities and, make it easier for the public to compare data across different authority areas. It would also facilitate growth and competition in the planning data software market through the creation of a common standard which suppliers would work to, enabling cross-boundary matters to be dealt with more efficiently.

6.2 The vast majority of 'relevant planning authorities', as defined in clause 81 of the Bill, capture bodies operating in England, or in non-devolved areas. The only area

within the legislative competence of the Senedd that will be affected by any planning data regulations will be in respect of any Environmental Outcomes Report Regulations made under Part 5 of the Bill. As drafted in the Bill as introduced, it would be the Secretary of State who would be making such Environmental Outcomes Reports Regulations (“EOR Regulations”), however negotiations are ongoing in respect of the Welsh Ministers having equivalent powers in devolved areas. We will ensure that the operation of these clauses relating to planning data are considered in the negotiations in respect of Part 5. As drafted in the Bill as introduced these provisions fall within the legislative competence of the Senedd to the extent they cover matters under Environmental Outcome reports. There is no effect on the legislative competence of the Senedd and no impact on the executive competence of the Welsh Ministers.

- 6.3 Clause 96 (Street Votes) is a placeholder clause which we anticipate will be replaced by substantive provisions during the passage of the Bill which will apply to England only. The clause provides very little information as to what the system would entail and we have not received any further information from the UK Government on this matter.
- 6.4 Clause 114 (Previously Clause 112) (regulations and orders under the Planning Acts) is merely a clarificatory amendment, providing an express power to make ancillary provision rather than having to rely on implied powers. There is therefore no substantive change. The provisions affect the executive competence of the Welsh Ministers to make regulations and orders under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990. However, as stated there is no change to the Welsh Ministers’ functions.

**7. *Can the Minister explain the reasoning behind her statement at paragraph 58 of the LCM that “Two areas, on planning data and environmental outcome reports, have potential benefits for Wales, but their current drafting means this benefit cannot be realised.” What are the potential benefits that are referred to? Why does their current drafting mean that such benefits cannot be realised?***

- 7.1 In respect of planning data, as explained in paragraph 6.1 above, common data standards would enable developers to work more efficiently across different authorities and, make it easier for the public to compare data across different authority areas. It would also facilitate growth and competition in the planning data software market through the creation of a common standard which suppliers would work to.
- 7.2 The repeal of the European Communities Act 1972 means the Welsh Ministers no longer have regulation making powers in respect of strategic environmental assessment and environmental impact assessment. The only exception to this is section 71A of the Town and Country Planning Act 1990 which this Bill would repeal. We are therefore unable to improve the operation of these regimes, for example, in respect of electronic communications, or the types of projects which should be subject to assessment.
- 7.3 The drafting in the Bill as introduced for both the planning data provisions and environmental outcome reports does not provide the Welsh Minister with regulation making powers. We will therefore be unable to make any changes to improve how the provisions work and there would remain the risk that the Secretary of State makes regulations affecting Wales that undermine the current approach in these areas, which are specifically tailored to the circumstances and needs of Wales.

- 8. Can the Minister provide further information in relation to the statement at paragraph 59 of the LCM that “the current drafting of powers on digital data does not accord with our desire to legislate for Wales.” In what way does the current drafting have this effect? Is the reference to “digital data” a reference to planning data?**
- 8.1 The drafting in the Bill as introduced for the planning data provisions in Chapter 1 of Part 3 enables the Secretary of State to make regulations in respect of planning data requirements for environmental outcome reports. In line with our principles for consenting to UK Bills, I consider the Welsh Ministers should have equivalent powers to make regulations in respect of environmental outcome reports for devolved plans and projects, which would consequentially require similar powers in relation to planning data. The Bill, as introduced, does not give the Welsh Ministers those powers.
- 8.2 The reference to “digital data” should be a reference to “planning data” and I will correct this in the revised LCM.
- 9. The LCM does not clearly conclude whether it is appropriate for each of the clauses in Chapter 1 of Part 3, clause 96 or clause 112 to be included in the Bill, nor does it provide a clear recommendation as to whether or not consent should be given to these provisions. Can the Minister confirm the position in this regard?**
- 9.1 I recommend consent should be withheld to those clauses of Chapter 1 of Part 3 that are within the legislative competence of the Senedd (clauses 75, 76, 77, 79, 80 and 81) because they directly relate to the operation of environment outcome reports provided for in Part 5 of the Bill. I cannot support the current approach in Part 5 because of the risk of regulations affecting Wales that undermine the current approach in these areas, which are specifically tailored to the circumstances and needs of Wales.
- 9.2 I also recommend consent should be withheld to clause 96 as it is likely to introduce an unnecessarily bureaucratic approach to public engagement. We are committed to ensuring public involvement in shaping the places in which they live. This needs to be done in a strategic and coordinated manner, which reflects the plan-led system in Wales.
- 9.3 Finally, I recommend Senedd consent should be given to clause 114 (previously clause 112) as the provision only seeks to clarify the extent of general powers to make statutory instruments, which is an issue common to England and Wales. Paragraphs 22 and 23 of the LCM explain this technical legal amendment. While it is possible for the Senedd to make this change, the minor technical nature of the change to make the existing legal position clearer, means in my view the benefit of effecting the change through this Bill outweighs the policy presumption against doing so.
- 9.4 I will make this clear in the revised LCM.
- 10. Can the Minister confirm the specific clauses that are referred to in paragraphs 58 and 59 of the LCM?**

10.1 The reference to planning data refers to the clauses identified at paragraphs 14 to 19 of the LCM (Clauses 75, 76, 77, 79, 80 and 81 of the Bill). The reference to the area of environmental outcome reports refers to the clauses identified at 24 to 35 of the LCM (clauses 116 to 130 of the Bill). I will make this clear in the revised LCM.

**11. Can the Minister confirm which clauses are referred to as “the clauses in relation to planning” in paragraph 64 of the LCM? Does this include clause 112?**

11.1 The reference to the clauses relating to planning included those identified at paragraphs 14 to 38 of the LCM and include clause 112. I will make this clear in the revised LCM.

**12. Can the Minister seek confirmation from the UK Government as to how the planning provisions will work in practice, to include providing an analysis of the clauses in relation to planning and explaining how Welsh authorities will be impacted by the provisions of the Bill in real terms? Can the Minister confirm who, in Wales, is considered a ‘relevant planning authority’ for the purposes of this Chapter?**

12.1 The provisions in Chapter 1 of Part 3 of the Bill as introduced primarily apply in relation to England and only apply in Wales in two limited circumstances. Firstly, in relation to the Secretary of State acting in non-devolved areas, for example National Strategic Infrastructure Projects (NSIPs). Secondly, in respect of the Secretary of State’s functions under Part 5 of the Bill (Environmental Outcome Reports).

12.2 The provisions in Part 5 are currently being negotiated with UK Government. As such, we are unable to confirm who, in Wales, could be considered a ‘relevant planning authority’ for the purposes of this Chapter, as this will depend on the outcome of those negotiations.

12.3 Similarly, it is difficult at present to outline how the provisions will work in practice. This is dependent on the type of regulation the UK Government proposes to bring forward, by way of tabled amendment, of which we have no detail at this current time.

12.4 I will update this Committee and the other scrutiny Committees as appropriate once I have more information.

**13. Can the Minister confirm which provisions in Part 5 of the Bill relate to reserved matters and which relate to devolved matters, as referred to in paragraph 49 of the LCM?**

13.1 The provisions that could be included in EOR Regulations cover a wide range of areas, both in terms of defining ‘relevant consents’ and ‘relevant plans’. Examples of existing regulations relating to environmental impact assessments which apply solely in Wales include agriculture (e.g., the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017) and planning (e.g., the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017). Other examples of existing provisions are listed in clause 130 of the Bill as “existing environmental protection legislation”. We will work with the UK Government to ensure all relevant Wales only legislation is also included.

13.2 The reservations that may be relevant when considering the provision that could be made under Part 5 of the Bill include reservation 184 of Schedule 7A to Government of Wales Act 2006 (GOWA) (planning), although provision could be

made in relation to other planning matters and infrastructure projects that fall below the thresholds for nationally significant infrastructure projects NSIPs. Other examples of relevant reservations include reservation 97 (oil and gas) and reservation 99 (nuclear energy). Despite the existence of relevant reservations, substantive provision could still be made in devolved areas including planning, transport, water, agriculture, land drainage and others.

**14. With reference to paragraph 58 of the Bill, can the Minister confirm the detail of the potential benefits that she envisages to an improved system of environmental planning reports and whether discussions have taken place with the UK Government with a view to realising these benefits in the Bill? Can the Minister also confirm what is meant by “planning outcome reports” in paragraph 58?**

14.1 Planning outcome reports” should be a reference to “environmental outcome reports” and I will correct this in the revised LCM. Discussions have taken place between my Officials and their counterparts in the UK Government with a view to realising the benefits explained in my answer to your question seven.

**15. Can the Minister explain how the current provisions mean that the Welsh Ministers have lost their ability to make Welsh regulations in relation to environmental outcome reports?**

15.1 Clause 130 (2) omits section 71A of the Town and Country Planning Act which is the current executive power of the Welsh Ministers to make provision in respect of the consideration of the likely environmental impacts of proposed development.

**16. Can the Minister state whether or not support is given to the provisions in Part 5 being included in the Bill, as is required by Standing Order 29.3(iii), and whether or not consent should be given?**

16.1 I recommend consent is withheld for the provisions in Part 5 as introduced for the reasons set out in my answer to your question 7. I will update the LCM accordingly.

**17. Can the Minister provide an update as to any discussions that have taken place with the UK Government regarding clauses 96 and 187?**

17.1 No discussions have taken place with the UK Government regarding clause 96.

17.2 My officials have been proactively and regularly liaising with their counterparts in the UK Government to understand the UK Government’s intentions for Clause 187.

**18. Has the Minister discussed clauses 80 and 121 of the Bill with the UK Government and sought to amend the provisions to require that, at the very least, the UK Government has to obtain the consent of the Welsh Ministers before making planning data regulations or environmental outcome report regulations containing provision which is within Welsh devolved competence? What has been the outcome of these discussions?**

18.1 Discussions between officials are exploring the possibility of equivalent powers for the Welsh Ministers to make EOR Regulations in general for devolved plans and projects from the starting point the Bill as introduced is unacceptable in relation to the Secretary of State being able to make regulations in devolved areas. Discussion on possible alternative clauses for clauses 80 and 123 (previously 121) to overcome these objections has not taken place. I await sight of any proposed replacement

clauses that better reflect Welsh devolved competence. Unless and until such new clauses are produced, my recommendation remains that legislative consent should be withheld to the provisions on planning data regulations and environmental outcome reports.

**19. Does the Minister have any views on the inclusion of the Henry VIII powers at clauses 129 and 191 of the Bill? Has the Minister discussed clause 129 and/or clause 191 with the UK Government to seek their amendment or removal? What has been the outcome to date of such discussions?**

19.1 Clause 129 is unacceptable in my view, in that it is part of the environmental outcome report provisions on which I have provided my view above (see paragraph 9.1). There has been no ministerial discussion about these provisions to date. Now that the rearrangement of portfolios within UK Government has settled, I will be seeking to meet my counterpart at the earliest opportunity.

19.2 Consent should similarly be withheld in relation to clause 191 due to the lack of equivalent powers for the Welsh Ministers to make regulations in respect of devolved matters.

**20. Can the Minister provide any view on the financial implications of this Bill for Wales?**

Clause 1 - 6 (Levelling up missions)

20.1 The effect of the provisions is to place a duty on the UK Government to set, and report annually on progress towards achieving, levelling up missions to reduce geographical disparities across the UK. The requirement to report on the delivery of levelling up missions, and the parliamentary scrutiny of progress against these missions is a cost to the UK Government and will have no effect on Wales. The effect of the levelling up actions undertaken by the UK Government to deliver these missions is outside of the scope of the Bill.

Placeholder clauses:

Clause 96 (Street votes) and Clause 187 (Vagrancy and begging)

20.2 Where provisions are placeholder provisions the clause does not contain the necessary detail for me to identify whether there will be any financial implications on Wales. I will update the Senedd as appropriate once the substantive provisions are tabled.

Part 3 (Planning)

20.3 The changes to the planning system under Part 3 will all have familiarisation costs associated with the change. This one-off cost will be experienced by local authorities, businesses (including small and medium sized enterprises), and the Third Sector where they engage in the system.

Clause 75,76,77,79,80,81 (Planning data)

20.4 The changes to the provision, processing and requirements of planning data will have financial costs for Welsh local authorities and those engaged in specific parts of the planning system in Wales. The provision as currently drafted only has effect in Wales on two limited areas. Firstly, in relation to the Secretary of State acting in non-devolved areas, for example for NSIPs. Secondly, the provisions currently apply in respect of the Secretary of State's functions under Part 5 of the Bill (Environmental Outcome Reports).

20.5 Therefore, where a NSIP, or Environmental Outcome Report is triggered they will be subject to the requirements. In other areas the standards do not apply. This will create a potential dual system of planning data in Wales that will create inconsistency, increasing costs for users of the planning system. It would therefore not fully realise the benefits identified in the Bill through a transition to digital planning system as it will not apply to the whole system in Wales.

Clause 112 (Regulations and Orders under the Planning Acts)

20.6 This clause concerns technical legal amendments to the general powers to make statutory instruments contained in The Town and Country Planning Act 1990, The Planning (Listed Buildings and Conservation Areas) Act 1990 and The Planning (Hazardous Substances) Act 1990. The amendment is a minor technical legal amendment aimed at making the legal position clear. There are no financial consequences as a result of the change.

Clause 116-130 (Environment outcomes report)

20.7 The provisions in the Bill currently provide for one overarching power to make provisions in respect of environmental outcome reports to accompany both strategic plans, and relevant project consents. The new system of environmental outcomes reporting has potential for efficiency savings through the simplification of consenting.

Clause 186 (Review of governance etc of Royal Institution of Chartered Surveyors (RICS))

20.8 This clause will enable the Secretary of State to commission periodic reviews of RICS that will give government information about the governance and performance of RICS, in order to satisfy itself that RICS performs in the public interest. There are no costs to Wales.

Julie James MS  
Minister for Climate Change

2 November 2022

Dear Julie

### Legislative Consent Memorandum: Levelling Up and Regeneration Bill

I am writing regarding the above Memorandum, which we considered at our meeting on 24 October 2022.

We note the Memorandum refers at paragraph 3 to the letter you wrote to the Llywydd and explains that:

*"...due to the very limited engagement by the UK Government prior to the Bills' introduction and the complexity of the Bill, it has taken time to fully consider the devolution consequences of what is being proposed and consequently it has not been possible to lay this LCM within the normal two-week SO29 deadline."*

We are disappointed with the lack of engagement by the UK Government to explain its proposals and acknowledge the difficult position for the Welsh Government as a result.

Nevertheless, we are concerned that some four months after the Bill's introduction into the UK Parliament, the content of the Memorandum laid before the Senedd is severely lacking in necessary detail that we do not believe it would enable the Senedd to reach an informed view on the matter of whether or not to give consent.



We highlight 20 questions in the Annex to this letter which seek clarification on a range of matters. In our view, the responses to most of these questions need to be addressed in a revised Memorandum.

I would be grateful to receive a response to this letter as soon as possible, together with confirmation that a revised Memorandum has been laid or will be laid before the Senedd as a matter of urgency.

The current deadline for reporting is 8 December 2022 but our ability to meet that deadline is constrained by the situation we and other Committees are now facing. In laying a revised Memorandum we believe therefore that the deadline should be re-visited. .

I am therefore copying this letter to the Llywydd as Chair of the Business Committee, as well as the Chairs of the Climate Change, Environment and Infrastructure Committee, the Local Government and Housing Committee and the Economy, Trade and Rural Affairs Committee.

Yours sincerely,

*Huw Irranca-Davies*

Huw Irranca-Davies  
Chair

## Annex 1 – Questions to the Minister for Climate Change

1. Can the Minister explain fully the divergence of opinion between the Welsh Government and the UK Government as to whether Part 1 of the Bill requires the consent of the Senedd? What discussions has the Minister had with the UK Government in this regard?
2. Is the Minister able to provide more information regarding the Welsh Government's policy regarding the content of clauses 1-6 and the substantive reasons for its recommendation that the Senedd does not consent to these provisions?
3. Can the Minister confirm why the LCM makes reference to clause 96 (street votes) requiring consent in the view of the UK Government, when this view is not reflected in the Explanatory Notes to the Bill?
4. Is the Minister in a position to seek clarity as to why the UK Government included clause 78 as requiring consent in the Explanatory Notes, when clause 78 is entitled "Power to require use of approved planning data software in England". Is clause 78 intended to apply in Wales or has the UK Government erroneously noted that it applies in Wales?
5. Has the Minister raised the inconsistency between the Explanatory Notes, immediately before paragraph 470, and the Bill at clause 77 regarding the title of clause 77, where the Explanatory Notes refers to England but the clause itself does not? Is the Minister confident that this clause applies in Wales?
6. Can the Minister provide further detail as to the new powers that are provided to the Secretary of State by Chapter 1 of Part 3, clause 96 and clause 112 and confirm what effect these powers would have in Wales, including any effect on the legislative competence of the Senedd and the executive competence of the Welsh Ministers?
7. Can the Minister explain the reasoning behind her statement at paragraph 58 of the LCM that "Two areas, on planning data and environmental outcome reports, have potential benefits for Wales, but their current drafting means this benefit cannot be realised." What are the potential benefits that are referred to? Why does their current drafting mean that such benefits cannot be realised?
8. Can the Minister provide further information in relation to the statement at paragraph 59 of the LCM that "the current drafting of powers on digital data does not accord with our desire to legislate for Wales." In what way does the current drafting have this effect? Is the reference to "digital data" a reference to planning data?
9. The LCM does not clearly conclude whether it is appropriate for each of the clauses in Chapter 1 of Part 3, clause 96 or clause 112 to be included in the Bill, nor does it provide a clear recommendation

as to whether or not consent should be given to these provisions. Can the Minister confirm the position in this regard?

10. Can the Minister confirm the specific clauses that are referred to in paragraphs 58 and 59 of the LCM?

11. Can the Minister confirm which clauses are referred to as “the clauses in relation to planning” in paragraph 64 of the LCM? Does this include clause 112?

12. Can the Minister seek confirmation from the UK Government as to how the planning provisions will work in practice, to include providing an analysis of the clauses in relation to planning and explaining how Welsh authorities will be impacted by the provisions of the Bill in real terms? Can the Minister confirm who, in Wales, is considered a ‘relevant planning authority’ for the purposes of this Chapter?

13. Can the Minister confirm which provisions in Part 5 of the Bill relate to reserved matters and which relate to devolved matters, as referred to in paragraph 49 of the LCM?

14. With reference to paragraph 58 of the Bill, can the Minister confirm the detail of the potential benefits that she envisages to an improved system of environmental planning reports and whether discussions have taken place with the UK Government with a view to realising these benefits in the Bill? Can the Minister also confirm what is meant by “planning outcome reports” in paragraph 58?

15. Can the Minister explain how the current provisions mean that the Welsh Ministers have lost their ability to make Welsh regulations in relation to environmental outcome reports?

16. Can the Minister state whether or not support is given to the provisions in Part 5 being included in the Bill, as is required by Standing Order 29.3(iii), and whether or not consent should be given?

17. Can the Minister provide an update as to any discussions that have taken place with the UK Government regarding clauses 96 and 187?

18. Has the Minister discussed clauses 80 and 121 of the Bill with the UK Government and sought to amend the provisions to require that, at the very least, the UK Government has to obtain the consent of the Welsh Ministers before making planning data regulations or environmental outcome report regulations containing provision which is within Welsh devolved competence? What has been the outcome of these discussions?

19. Does the Minister have any views on the inclusion of the Henry VIII powers at clauses 129 and 191 of the Bill? Has the Minister discussed clause 129 and/or clause 191 with the UK Government to seek their amendment or removal? What has been the outcome to date of such discussions?

20. Can the Minister provide any view on the financial implications of this Bill for Wales?

# Agenda Item 9

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad  
Counsel General and Minister for the Constitution



Llywodraeth Cymru  
Welsh Government

Huw Irranca-Davies, Chair  
Legislation, Justice & Constitution Committee  
Senedd Cymru  
Cardiff Bay  
Cardiff  
CF99 1SN

25 November 2022

Dear Huw,

## **HISTORIC ENVIRONMENT (WALES) BILL**

At the Committee's meeting on 14 November, I was asked about CLA Cymru's suggestion of amending the Bill to include written representations in both Schedule 8 and 10 of the Historic Environment (Wales) Bill.

As I explained, I am supportive of the suggestion. Ideally, if we were reforming historic environment legislation in Wales, then this is a matter we would have looked to include.

However as this is a consolidation Bill I recognise it would be a change from the existing legal position and one which some might consider to be more than a minor technical change. I would therefore welcome the Committee's view on this and whether it would be appropriate for the consolidation of the historic environment law to include this change.

Yours sincerely,

### **Mick Antoniw AS/MS**

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad  
Counsel General and Minister for the Constitution

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.