

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

Hannah Blythyn AM

Deputy Minister for Housing and Local Government

17 April 2020

Dear Lesley and Hannah,

I hope this letter finds you both well.

As you know, in view of the current Coronavirus Covid-19 pandemic, the Climate Change, Environment and Rural Affairs Committee meeting on 25 March, at which you were due to give evidence on the Legislative Consent Memorandum ('LCM') for the Environment Bill, was cancelled.

Given that Assembly committees are not currently meeting as normal, we are unlikely to be in a position to rearrange your evidence session, at least for the foreseeable future. The Committee has therefore agreed that, as an alternative, we would welcome a written response to the questions set out below.

At present, the Business Committee has set us a reporting deadline for the LCM of 1 May 2020, which we are currently working towards. However, we understand that the Bill's progress through the UK Parliament has been delayed. It would be helpful if you confirm, at the first available opportunity, whether you intend for the Plenary debate to go ahead, as planned, or whether you are working towards a revised timetable.

The need for legislation and the approach taken

The LCM sets out the Welsh Government's rationale for including provisions for Wales (for example on waste, resource efficiency, water and local air quality) in the UK Environment



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Bill ('the UK Bill'). Reasons given include a lack of time within the Assembly's legislative programme to bring forward a Welsh Environment Bill, interconnected administrative systems, and the need for a cross-border approach.

1. Can you expand on your rationale for including provisions for Wales in the UK Bill, beyond that set out in the LCM?

2. Can you clarify which of the provisions for Wales are time critical, and why?

3. What are the implications for future Welsh policy within the relevant subject areas if the provisions for Wales are not included in the UK Bill?

Part 1 – Environmental governance

Part 1 of the UK Bill aims to provide a new framework for environmental governance and principles post-Brexit. It includes the establishment of a new environmental governance body, the Office for Environmental Protection ('the OEP'). The OEP will apply across the UK, but in Wales only in respect of environmental matters that are non-devolved.

Shortly after the UK Government's draft Environment (Principles and Governance) Bill was published in December 2019, we wrote to you asking you to provide details of the non-devolved environmental matters over which the OEP would have responsibility in Wales. You told us that "no clarity has been provided by the UK Government on what it believes will or will not constitute a reserved matter in terms of the environment".

4. Can you provide an update on the non-devolved environmental matters of which the OEP will have oversight in relation to Wales?

Concern has been raised in evidence that the meaning of "natural environment" in Clause 41 (which defines the term for the purpose of Part 1 of the UK Bill) does not sufficiently capture the marine environment.

5. In so far as any provisions about the natural environment apply in relation to Wales, to what extent are you satisfied that the marine environment is sufficiently captured within the meaning of "natural environment" in Clause 41?

- **If the marine environment is not captured, how do you intend to address this?**

The UK Bill (Clause 24(4)) provides that the OEP must consult a "devolved environmental governance body" if the work it is undertaking would be of relevance to such a body. According to the Explanatory Notes accompanying the UK Bill, this could include instances



where, during an investigation, the OEP becomes aware of a transboundary environmental issue that may have involved a breach of devolved legislation outside of its remit, but that would be within the remit of the devolved environmental governance body.

Concerns were raised in evidence that this consultation requirement is not strong enough to ensure that the OEP works cooperatively with a devolved environmental governance body, for example, where a complaint may relate to reserved and devolved matters. According to the LCM, this is also an outstanding issue of concern for the Welsh Government, which is “currently under discussion with Defra”.

6. Can you expand on your outstanding concerns in relation to Clause 24(4)? In particular, can you clarify whether you are seeking an amendment to the UK Bill to ensure cooperative and/or collaborative working between the OEP and any new Welsh environmental governance body?

7. Can you update us on your discussions with the UK Government in relation to your concerns about Clause 24(4), including any outcome?

8. What is your position if this matter cannot be resolved ahead of the debate on the Legislative Consent Motion?

Concerns have been raised in evidence that, while the UK Government is seeking to address gaps in environmental principles and governance in England via the UK Bill, the Welsh Government will not be in a position to legislate to address gaps in Wales before the end of the implementation period.

9. Can you update us on progress you have made in developing proposals for new environmental governance arrangements in Wales, including:

- **the findings of the Stakeholder Task Group, which was due to report at the beginning of 2020;**
- **the time frame you are working towards for the introduction of a Welsh environmental principles and governance Bill; and**
- **how any gaps arising following the end of the implementation period will be addressed in the absence of a Welsh Bill?**

Part 3 - Waste and Resource Efficiency

Part 3 confers extensive regulation making powers on the Welsh Ministers. These include powers to make provision for a revised extended producer responsibility scheme, to



regulate for eco-design standards and resource efficiency information across a wide range of products, and to introduce a deposit return scheme, and to introduce charges for single use plastic items.

10. How and when do you intend to use the powers being conferred on the Welsh Ministers in Part 3 of the UK Bill?

11. How do the provisions in Part 3 align with existing Welsh Government waste and resource efficiency policy, and with the proposals set out in its circular economy strategy consultation?

12. When does the Welsh Government intend to publish its new waste strategy (to replace its 2010 Towards Zero Waste strategy)?

- **Can you clarify whether the new waste strategy will include guidance in relation to incinerators?**

13. To what extent are you satisfied that the provisions in Part 3 will enable the Welsh Government to achieve its ambition that Wales will become the first country to send zero plastic to landfill?

Producer responsibility

Clause 47 and 48, and Schedules 4 and 5 make provision about producer responsibility and associated obligations. They provide powers for the 'relevant national authority' (including the Welsh Ministers) to make regulations to introduce a revised Extended Producer Responsibility scheme ('EPR scheme'). The Secretary of State can legislate in relation to Wales in this area with the consent of the Welsh Ministers (a 'concurrent plus' power).

In 2019, the Welsh Government and UK Government jointly consulted on proposals for extended producer responsibility. The Welsh Government is currently consulting on its circular economy strategy, which includes producer responsibility proposals. The consultation states that the Welsh Government will "work with other governments in the UK in developing legislation for an Extended Producer Responsibility (EPR) scheme...".

14. Can you confirm that you intend for Wales to be part of a UK level EPR scheme? If so, will the revised EPR scheme in so far as it relates to Wales be established by the Secretary of State under its concurrent plus powers, and what opportunity will the Assembly have to scrutinise regulations made under these powers?



15. The Committee has received evidence to suggest that the general power in Part 1 of Schedule 4 should be extended to enable regulations to make provision for imposing producer responsibility obligations for the purpose of “reducing the consumption of virgin materials”. How do you respond to this?

16. The Committee has received evidence to suggest that the general power in Part 1 of Schedule 5 should be amended to ensure that producers meet, or contribute to, the full life-cycle costs of products or materials. How do you respond to this?

Deposit schemes

Clause 51 and Schedule 8 provide powers for the ‘relevant national authority’ (including the Welsh Ministers) to make regulations establishing deposit schemes. The Secretary of State can legislate in relation to Wales in this area with the consent of the Welsh Ministers (a ‘concurrent plus’ power).

In February 2019, the Welsh Government, UK Government and Department of Agriculture, Environment and Rural Affairs in Northern Ireland jointly consulted on proposals for introducing a Deposit Return Scheme (‘DRS’). You previously told us that the outcome from the consultation “indicated widespread support for the introduction of a scheme” and that, in taking this forward, “[you] will be working to ensure that the final approach is right for Wales”.

17. Can you clarify whether you intend for Wales to be part of a DRS with England and Northern Ireland? If so, will the DRS in so far as it relates to Wales be established under the Secretary of State’s concurrent plus powers, and what opportunity will the Assembly have to scrutinise regulations made under these powers?

- **What are the practical considerations for being part of a DRS with Northern Ireland?**
- **If a DRS cannot be agreed with England and Northern Ireland do you still intend to introduce a scheme in Wales?**

The joint consultation included proposals for an independent industry/trade association-led organisation to manage the implementation and day to day running of the scheme, known as the Deposit Management Organisation (DMO).

18. Who will be responsible for operational management of the DRS in Wales?



The joint consultation included proposals for a separate monitoring and enforcement body, which would be independent from the DMO, producers and those involved in the operation of the DRS. It suggested that the Environment Agency(ies) could perform the monitoring and enforcement role.

19. Can you clarify whether it is your intention for Natural Resource Wales ('NRW') to be responsible for monitoring and enforcement of the DRS in Wales? If so, what discussions have you had with NRW in this regard?

Charges for single use plastic items

Clause 52 and Schedule 9 provide regulation making powers for the Welsh Ministers to make provision about charging for single use plastic items.

In March 2020, the Welsh Government announced its intention to bring forward proposals to ban a range of single use plastic items, including plastic straws, cutlery and polystyrene food and drink containers.

20. How do the powers for the Welsh Ministers to make provision about charging for single use plastic items align with the Welsh Government's proposals to ban certain of these items in 2021?

21. Can you clarify whether it is your intention to use the powers to charge until such time as a ban on single use plastic items can be introduced?

22. The Committee has received evidence to suggest that the powers to charge for single use items should be extended beyond plastics to other materials. According to stakeholders, this would help avoid incentivising producers from replacing plastic with other environmentally harmful materials for single use items. How do you respond to this?

Part 4 - Air Quality

In December 2019, the Welsh Government published its Clear Air Plan consultation. The Welsh Government has committed to prioritising a Clear Air Bill and, according to the consultation, will be publishing a White Paper in this Assembly term.

23. Given the current uncertainties arising from the Coronavirus Covid-19 pandemic, and the potential impact on Government business in the medium term, can you confirm whether you still intend to publish a White Paper in this Assembly term?



The Clean Air consultation, among other things, includes a proposal “to amend existing primary legislation to move from updating [lists of authorised fuel and exempt fireplaces for use in smoke control areas] through Statutory Instrument to online published lists”. Part 2 of Schedule 12 of the UK Bill makes provision for this. The UK Bill was published when the consultation on the Clear Air Plan was ongoing. The outcome of the consultation has yet to be published.

24. Why you have chosen to take forward the above proposal through the UK Bill, given the outcome of the Clean Air Plan consultation is not yet known and the Welsh Government’s commitment to prioritise a Clear Air Bill?

Part 5 – Water

In January 2019, the UK Government sought views on the substance of the majority of the provisions in relation to water in its consultation on improving management of water in the environment. It does not appear that the Welsh Government has undertaken a public consultation to inform the relevant provisions in Part 5 of the UK Bill.

25. Can you provide details of any consultation you have undertaken with Welsh stakeholders on the provisions for Wales in Part 5 of the UK Bill, and the outcome?

26. How and when do you intend to use the powers conferred on the Welsh Ministers in Part 5 of the UK Bill?

Water companies in England and Wales have legal responsibilities under Part 4 of the Water Industry Act 1991 for ensuring effective drainage of wastewater and sewerage. However, there is no statutory requirement on them to prepare long-term plans in relation to this. Clause 76 of the UK Bill seeks to address this by placing a requirement on sewerage companies in England and Wales to prepare and publish a ‘drainage and sewerage management plan’.

Concern has been raised in evidence that the term ‘drainage and sewerage management’ used in the UK Bill is narrower in scope than ‘drainage and wastewater management’. Stakeholders pointed out that the term ‘drainage and wastewater management’ has already been adopted by the industry in Water UK’s 21st Century Drainage Programme and in plans currently being prepared by water companies.

27. Can you explain the rationale for using the term ‘drainage and sewerage management’ in this context?



28. How do you respond to the concern in evidence that the term 'drainage and sewerage management' is narrower in scope than 'drainage and wastewater management' – the term already adopted by the industry?

- **What water comes under the term 'drainage and wastewater' that that does not come under the term 'drainage and sewerage management', and how will it be dealt with?**

29. What work have you undertaken to assess the potential cost for water and/or sewerage companies of meeting the requirements for joint proposals, water resources management drought plans, and drainage and sewerage management plans?

Financial implications of the provisions in Wales

The Explanatory Notes accompanying the UK Bill state that the costs from the Bill will include, but are not limited to additional activities for public bodies, such as local authorities and arms-length bodies; additional resources to support the delivery of activities, such as enforcement officers and policy makers; and infrastructure and other assets, including enhanced IT systems to deliver certain measures. As such, the UK Bill will require a money resolution, and a ways and means resolution.

According to the LCM, "there are currently no additional financial implications for the Welsh Government or the Assembly as a result of taking these powers in this bill".

30. Can you provide details of any work you have undertaken to assess the costs of the provisions for Wales for the Welsh Government and other relevant bodies on who costs will fall?

I should be grateful if you could respond to the above by 28 April 2020 at the latest. Should you have any difficulty in meeting this deadline, I would ask that your officials liaise with the Clerking team.

Yours sincerely,



Mike Hedges AM
Chair of Climate Change, Environment and Rural Affairs Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

