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Llywodraeth Cymru  
Welsh Government

Our Ref:

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

14 May 2020

Dear Mike,

Thank you for your letter of 17 April, regarding the Legislative Consent Memorandum for the Environment Bill. As you will be aware scrutiny of the Bill is currently paused and subsequently a revised reporting date has been agreed for the Committee's report. I am grateful for the Committee's understanding of the impact of the unprecedented circumstances we find ourselves in and for agreeing to allow me to submit my responses by correspondence. I have provided additional information as requested in the attached document.

Regards,

**Lesley Griffiths AC/AM**  
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Minister for Environment, Energy and Rural Affairs

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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.

## **Responses to Climate Change, Environment and Rural Affairs Committee questions on the Legislative Consent Memorandum for the UK Environment Bill**

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

The Environment Bill supports the UK's collective obligation to transpose the EU's Circular Economy Package (CEP). In addition to meeting the needs of the CEP provisions, the Bill will also support Wales's ambition to move to a more Circular Economy. It provides the legislative tools to support how we tackle waste crime, littering, improve recycling rates, incentivise resource efficiency and ensure producers pay for the end of life costs of the products and materials placed on the market.

In addition, the existing legislative provisions are within a single piece of legislation and to provide continuity and accessibility for users the Bill provides a single source to amend the existing legislation therefore reducing the number of amendments within the source legislation

In relation to air quality, clause 70 and Part 2 of Schedule 12 amend Part III of the Clean Air Act 1993, in relation to Wales. The effect of the proposed amendment to the Clean Air Act 1993 is to create a duty on Welsh Ministers to publish lists for recording authorised fuels and exempted classes of fireplace which can be lawfully used in Wales' Smoke Control Areas and to switch away from the making of subordinate legislation for achieving this goal. The rationale for using the UK Environment Bill is to bring about benefits for both manufactures and consumers as soon as possible. Businesses/manufacturers will benefit as the delay between obtaining a recommendation from the technical experts who recommend products for use and placing products on the market will be reduced; the adoption of published list will minimise the margin of error when recording and updating the lists of products which can be lawfully used; and a streamlined, more effective process will increase consumer choice as more products enter the market sooner. There will also be an environmental benefit as improvement to the operation of the smoke control regime in Wales will make it easier to identify products which can be lawfully used in smoke control areas.

The powers for Welsh Ministers in relation to water align with the commitments in the Welsh Government Water Strategy for Wales, including working with water companies, regulators and local authorities to introduce planning for waste water and sewerage management. Our aim is for sewerage and drainage systems to be resilient and well maintained both for present and for future generations, with sufficient capacity to manage the demand placed on them without causing pollution or sewer flooding of people's homes. This will enable us to move towards a preventative approach, another key principle of sustainable management of natural resources.

Land drainage powers are necessary to allow for the revision and update of the methodology of calculating the split of income between special levies and drainage rates. The Bill also makes provision 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.

The powers in the Environment Bill are necessary to deliver a functioning Chemicals regime. Certain changes which would help UK REACH function more effectively were outside of the scope of the powers within the Withdrawal Act. We are going from a system

designed for 28 member states to a single state with four nations. Therefore, some aspects of REACH are impracticable or overly burdensome on businesses. This is likely to require changes to the existing REACH regulations to ensure they are suitable for use on a UK-only scale. In addition, when we lose section 2(2) powers of the European Communities Act 1972, we will be unable to make any changes to REACH enforcement regulations.

Without these powers UK REACH would have to operate in the context of the EU Exit SIs. In this scenario we could quickly face a number of risks and issues, particularly in relation to the deadlines for registration and repeat animal testing. The powers may also be needed to mirror changes to the EU regime which we wish to maintain. REACH covers reserved matters such as workplace health and safety and product standards, as well as devolved areas like public health and the environment. In this respect, measures to restrict a chemical inflicting harm to human health as well as incurring environmental damage would require the same legislative instrument. Therefore, legislating for such powers in the Assembly would be difficult.

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

With the loss of section 2(2) of the European Communities Act, which enables us to update secondary legislation, where appropriate we have taken enabling powers to update the legislation in some areas such as hazardous waste, water quality powers (priority substances) and REACH.

Under the transition agreement, the UK is obligated to transpose Article 8A amendments to the EU Waste Framework Directive as part of the EU's Circular Economy Package. The Extended Producer Responsibility provisions in the Bill are there to allow us, along with the other nations within the UK, to meet the general minimum requirements in relation to producer responsibility in the Circular Economy Package.

Powers in relation to REACH will need to be implemented shortly after the transition period. When we lose powers under section 2(2), we will be unable to make any changes to REACH enforcement regulations to enable us to keep pace with technical changes. By taking powers in this bill, Government will be able to respond promptly to any implementation issues arising and make workable what is a large and complex piece of EU-derived legislation.

The reason this is time sensitive is due to the fact that there are deadlines and activities/decisions to be made under REACH which are triggered by the end of the implementation period. The loss of the section 2(2) powers is less time critical compared to the need to potentially amend deadlines or to streamline the REACH process when it becomes operational. The section 2(2) powers relate to amending the REACH enforcement regulations. The rest of the REACH regulations were amended by EU law and applied to the UK without the need for domestic legislation. Without the powers included in the Bill, primary legislation would be necessary to address any teething issues with REACH (such as businesses being unhappy with the two year registration deadline).

More generally we would like to introduce all changes as soon as possible, given the benefits described in answer to question 1.

## **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?**

We have identified areas where there is a specific need to use the UK Bill and this has been based on consideration of a number of factors.

Firstly, some provisions in the Bill reflect current Welsh Government policy and therefore the Bill enables future Welsh policy to be delivered

Secondly, the Bill provides an appropriate legislative vehicle which:

1. Enables continued accessibility for users by continuing an England and Wales legislative approach;
2. Relates to a UK-wide system as in the case of the REACH provisions;
3. Allows for quicker delivery of Welsh policy, given the limitation on the capacity of the Senedd as we near the end of current term
4. Enables implementation of EU requirements

As noted above, powers in the Bill support the UK's collective obligation to transpose the EU's Circular Economy Package and provides the legislative framework for key elements of the circular economy along with the provisions to manage the hazardous waste legislative framework now we have left the European Union. More specifically, parts of the Bill are designed to assist the need to tackle waste crime, develop Extended Producer Responsibility, drive forward resource efficiency measures, allow us to charge for single use plastic items and introduce a drinks container deposit return scheme. It therefore also aligns with and supports our domestic policy and commitments set out in *Beyond Recycling: A strategy to make the circular economy in Wales a reality*. Their inclusion in a UK Bill also supports the work to collaborate across the UK and to take forward a UK wide approach where appropriate.

Should we not take forward these provisions in Wales the implications would be as set out below.

**Clauses 55:** The implication of not taking forward the provisions to allow for electronic waste tracking would mean Wales would be unable to play its part in the UK wide work to digitise waste tracking processes.

The main economic costs would be lost business revenues to the legitimate waste sector, loss of Landfill Tax through miscalculation of waste and costs to the public sector of clearing abandoned waste sites and fly-tipped waste.

In addition, the Welsh Government's intention for a mandatory electronic tracking system to be introduced to provide annual information on industrial and commercial waste produced in Wales cannot be taken forward without these provisions.

**Clause 61:**

Without the provisions under this Clause, NRW, if they are the appointed regulator for a producer responsibility scheme made under powers in section 93 of the EA 1995, will be unable to put in place appropriate charging schemes.

These charging schemes will allow NRW to recover their reasonable costs of appropriate investigation, intervention and enforcement of current producer responsibility schemes and, as and when they are established, new EPR schemes.

The Clause also allows NRW to apply existing environmental permitting scheme charges to exempt waste operations, including registration and subsistence charges where appropriate, to fund compliance monitoring of these operations.

**Clause 63 and Schedule 10** amends legislation about enforcement powers and other environmental matters. Without the power to allow NRW to authorise the police to seize a vehicle without an NRW officer present, it would be considered to be done on behalf of the waste collection authority in whose area the seizure takes place, both increasing the overall cost and bureaucracy as NRW then have to re-seize it from the waste collection authority.

Powers of direction in relation to waste will allow Welsh Ministers to direct a waste carrier to collect waste from a specified site and take it to a specified site, including in cases where waste has been illegally dumped. It also ensures their costs and any fees and charges pertinent to the activity carried out on behalf of Welsh Ministers are appropriately compensated.

Power of entry in relation to pollution control etc – Without this power Natural Resource Wales officers will continue to only be able to take copies of documents and request them if they know they are there, but not search for or seize material which would assist them in investigating waste crimes.

**Clause 66:** the Welsh Government is committed to tackling fly-tipping and waste crime. In 2018/19, local authorities reported over 33,000 incidents of fly-tipping in Wales. It is estimated to have cost the Welsh taxpayer just under £2 million to clear<sup>1</sup>.

A number of Fixed Penalty Notices were introduced through secondary legislation using section 2(2) of the European Communities Act 1972. For example, the Household Waste Duty of Care (Fixed Penalties) Wales Regulations 2019 used this legislation to amend the Environmental Protection Act 1990.

Repeal of the ECA removes the current power to alter the levels of these penalties through secondary legislation, and so a new power is required to provide for the level of these penalties through secondary legislation, to enable the level of fines to be amended either up or down.

Without Clause 66 Welsh Ministers will be unable to amend existing penalties for the FPNs relating to fly-tipping and householder duty of care.

**Clause 67:** Regulation of waste operations sits within a shared Wales and England permitting framework in the Environmental Permitting Regulations 2016. Waste disposal and recovery operations are required to hold an environmental permit unless they are exempt from this requirement.

Without Clause 67 NRW will only be able to set conditions for exempt activities (ie. those not requiring a permit through regulations) and limit NRW's ability to ensure appropriate controls are in place as the waste market shifts.

Should the provisions under Clause 70, Schedule 12 not be enacted, the benefits described in the answer to question 1 would not materialise. We would not be able to achieve, in the shortest time possible, our aim of enabling manufacturers to sell their products without hindrance or to improve the operation of the smoke control regime in Wales.

Without the powers in relation to water, the ability of Welsh Ministers to align with the commitments in the Welsh Government Water Strategy for Wales and move towards a preventative approach will be compromised.

Land drainage powers are necessary to allow for the revision and update of the methodology of calculating the split of income between special levies and drainage rates.

The Bill also makes provision 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.

The powers in the Environment Bill are necessary to deliver a functioning Chemicals regime. Without these powers REACH would have to operate in the context of the EU Exit SIs. Certain changes which would help REACH function more effectively were outside of the scope of the powers within the Withdrawal Act. We are applying a system designed for 28 Member States to a UK-only context (it is anticipated that the system will eventually be applied on a GB-only basis, but as the legislation is currently drafted Northern Ireland has yet to be removed from the REACH SI). Therefore, some aspects of REACH are impracticable or overly burdensome on businesses. If REACH is unsuitable for a UK-only context, there may be an impact on our ability to protect human health, and maintain and enhance environmental standards in relation to chemicals.

In this scenario we could quickly face a number of risks and issues, particularly in relation to the deadlines for registration and repeat animal testing. The powers may also be needed to mirror changes to the EU regime which we wish to maintain. REACH covers reserved matters such as workplace health and safety and product standards, as well as devolved areas like public health and the environment. Therefore, legislating for such powers in the Assembly would be extremely complex. In addition, when we lose section 2(2) powers, we will be unable to make any changes to REACH enforcement regulations.

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

The remit of the OEP is for England and reserved matters. There are few areas of reservation, one particular example is INSPIRE (Infrastructure for Spatial Information in Europe), which is specifically reserved in the Government of Wales Act 2006. However, the remit of the OEP has been extended to include climate change, which is closely connected to energy, which is, bar some exceptions, a reserved matter. Other matters, such as CITES, so far as it concerns for example, the prohibition and regulation of the import and export of certain endangered plants and animals is reserved, which also applies to the trans-frontier shipment of waste.

Whilst there will be very few areas in which the OEP will have oversight of environmental matters in Wales, where this does occur it is vital the OEP works with the relevant body responsible for environmental governance in Wales to ensure areas of intersection between reserved and devolved issues are fully explored. For this reason, I am seeking a strengthening of the current consult duty contained in clause 24(4) of the Bill, which requires the OEP to consult devolved environmental governance bodies.

#### **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?**

Clause 41 relates to provisions captured in Part 1, which do not relate to Wales but to England. For example to the targets and the natural improvement plans set out in Chapter 1 and to the remit of the OEP. As such, the definition of natural environment relates to the natural environment in England. It also relates to the remit of the OEP and therefore in relation to England and reserved areas and would therefore only apply to those aspects of Welsh Marine areas not within the legislative competency of the Senedd.

**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?**

Clause 24(4) places a duty on the OEP to consult a devolved environmental governance body if it considers a particular exercise of its functions may be relevant to the exercise of a devolved environmental governance function.

It has long been the Welsh Government's view the respective environmental governance bodies in England and Wales will need to work closely together to identify and act on complaints which may be cross border in nature or touch on both reserved and devolved matters.

Citizens in both countries also need to have ease of access to a complaints process with the onus being on the environmental governance bodies to facilitate rather than citizens having to navigate the reserved/devolved landscape.

The proposed duty to consult falls short of providing for this cooperative approach, as it does not allow for early identification of where the bodies may need to work together and for the Welsh body to inform the determination of whether an investigation is of relevance to it. Moreover, it does not allow for joint investigations to be undertaken and for the sharing of best practice and expertise between the bodies. Accordingly, we are seeking an amendment to the Bill to enable cooperative arrangements.

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

Discussions have continued with Defra on how the bodies can cooperate to consider complaints together, share information and, where appropriate, undertake joint investigations.

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

I am confident we have made a strong case for the need for the OEP to work closely with the Welsh body responsible for environmental governance and I await the Secretary of State's response.

**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 Stakeholder Task Group finalised their recommendations in April and I have been provided with a copy of their report. I will now be asking my officials to undertake a full analysis of the recommendations as part of a wider options appraisal. This will ensure the approach we take is clearly aligned to our existing approach to the environment and to the wider Welsh Government programme. Once this work is complete, I will provide CCERA with an update.

I will be asking stakeholders to continue to work with policy officials on the detailed policy development.

- **the time frame you are working towards for the introduction of a Welsh environmental principles and governance Bill; and**

We have been clear in our commitment to legislate to place our approach to environmental principles and governance on a statutory footing.

The current legislative programme is coming under considerable pressure both from the need to introduce urgent legislation to address Covid-19 and the substantial programme of secondary legislation to deliver a functioning statute book for the end of the Transition Period later this year. This has obviously had impacts on our legislative timetable and is impacting on the Bills currently within the legislative programme.

In light of all of this, the Welsh Government cannot provide any guarantees on any new Bills being introduced later this year.

- **how any gaps arising following the end of the implementation period will be addressed in the absence of a Welsh Bill?**

I have instructed my officials to consider options to address any interim gaps until we can implement our own legislation.

Work is currently ongoing to develop and prepare interim measures for receiving complaints about environmental governance in Wales to take effect by the end of the transition period for leaving the EU on 31 December 2020. The Stakeholder Task Group will be asked to work with officials to further progress these interim measures.

In relation to principles, whilst we, of course, have a set of environmental principles in our Environment Act, the Welsh Government has already committed to continue to apply the four EU environmental principles in policy making until we include these in legislation.

### **Part 3 – Waste and Resource Efficiency**

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

The powers would be used to implement the requirements within the Circular Economy Package, such as the introduction of an Extended Producer Responsibility scheme for packaging materials and a drinks container Deposit Return Scheme. The powers would also be used to tackle waste crime, such as the electronic tracking of waste. The Welsh Government and Natural Resources Wales officials are working with their counterparts in the other UK nations on how we can digitise waste tracking processes. In particular, how we record what happens to waste as it moves from production to recovery or disposal.

#### **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?**

The provisions in the Bill are important as they will allow us to take forward many of the commitments and ambitions set out in *Beyond Recycling: A strategy to make the circular economy in Wales a reality* by providing an essential set of legislative levers. They are therefore fully in line with our existing policy and also provide the powers to bring forward regulatory changes post EU exit. In doing so, they provide the tools to make regulatory provisions to help to reduce illegal waste activity and the loss of valuable recoverable material from the circular economy.

**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?**

The consultation on a new circular economy strategy to replace Towards Zero Waste ended on 24 April 2020. The consultation sought views and ideas on how we can take an approach which keeps resources in use for as long as possible, avoids waste and makes a key contribution to decarbonisation.

In doing so, it included a set of proposed themes and actions to support delivery of the long term aim of zero waste and net zero carbon emissions by 2050 whilst taking advantage of the opportunities which come from transitioning to a more circular economy.

Prior to the current pandemic, we set out our intention to publish the final strategy later this year and our aim is still to do so.

Guidance already exists in terms of incineration. It can be found in Planning Policy Wales and in TAN21, including a technical annex which looks at different waste treatment technologies in detail.

As Beyond Recycling sets out, the aim is to keep resources in use for as long as possible. However, it also recognises Wales has a responsibility to deal with the waste we generate during transition. Therefore, in the interim there is a need to deal effectively with our non-recyclable waste in a way which prevents it from either polluting the environment or sees the problem being exported. Facilities which can use this waste to recover energy and heat provide an important transitional way of dealing with this waste, in line with the waste hierarchy.

**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?**

The provisions in the Bill provide key legislative tools to support the delivery of our commitments. This includes the initial introduction of Extended Producer Responsibility for Packaging which will incentivise the use of more recycled and recyclable packaging materials including plastics. The Deposit Return Scheme will support the collection of drinks containers (many of which are plastic) with expected high levels of material capture.

Other provisions such as charges for single use plastic items, eco-design standards and resource efficiency information are also valuable legislative tools which can be used. However, our aims such as sending zero plastic waste to landfill cannot be achieved through the provisions in the Bill alone and this is therefore a part of the wider delivery of the actions within Beyond Recycling.

*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 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?**

Adopting a concurrent plus approach has the effect of Welsh Ministers unless consent is provided carrying out the functions in Wales. However, there is of course considerable benefit for the consumer in working with the other nations on a UK wide scheme. Work continues on a joint programme with Scotland, England and Northern Ireland to develop an EPR scheme. At this stage no decision has been taken as to the route by which the regulations to enact EPR will be introduced.

Welsh Ministers will comply with the process as per Standing Order 30.

**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?**

The Extended Producer Responsibility scheme as outlined in Schedule 4 will lead to the reduction of the amount of or prevention of a product or material becoming waste; as well as securing an increase in the re-use, redistribution, recovery or recycling of products or materials, all of which will reduce the consumption of virgin materials.

We recognise the importance of overall resource efficiency to reducing the environmental impact during the entire life cycle of a product. With this in mind, provision for resource efficiency for products has been included in the Bill under Schedule 7. This allows for requirements, including reference to a specific standard, to be imposed relating to the materials from which a product is manufactured in relation to the impact on the natural environment.

It is also worth noting the UK wide plastic packaging tax will encourage the use of recycled plastic instead of new plastic within packaging. It will create greater demand for recycled plastic, and in turn stimulate increased levels of recycling and collection of plastic waste, diverting it away from landfill or incineration. The latest consultation round comes to a close in August – we are encouraging views and evidence from key Welsh plastics industry stakeholders.

**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?**

The objective of Schedule 5 is to ensure obligated producers can be charged for the end of life disposal costs of their products. In relation to full life cycle costs, Schedule 7 Resource Efficient Requirements allows measures to be introduced to address the impact a product has on the natural environment during its life. This covers aspects such as the expected life of a product, ease of maintenance and repair, end of life recycling, the materials from which

a product is manufactured, manufacturing techniques and resources consumed during its production and use.

### *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).*

**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?**

Work continues on a joint basis with England and Northern Ireland to develop a Deposit Return Scheme. This work is currently on going with preparations being made for a second consultation on the detailed design and preferred workings of the scheme. At this stage a decision has yet to be made as to the route by which the regulations to enact DRS will be introduced and as stated previously, it is important the final approach is right for Wales.

Welsh Ministers will comply with the process as per Standing Order 30.

The DRS work programme is considering a range of practical implications in relation to the design and implementation of any DRS. This has included learning from other countries within Europe and elsewhere which have implemented similar schemes over the years.

There are potential benefits from a joint scheme, but equally it is important it reflects the needs of Wales. If a joint scheme will not achieve this, then a Welsh only DRS will be considered.

**18. Who will be responsible for operational management of the DRS 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). Work is on-going on the development of governance arrangements and any joint arrangements will need to meet Welsh needs.

**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?**

As per the previous question, the detailed form of the regulatory oversight of the DRS has not been finalised and this work is ongoing. NRW formally responded to the DRS consultation and there have been officer level discussions on the potential role for NRW in the regulation of a DRS. These discussions will continue as we develop the proposals for regulation and governance of a DRS.

**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?**

The proposed ban on single use plastic items is focused on a defined list of items often found in the marine environment throughout the European Union, for which non-plastic alternatives are readily available. These powers will allow us, if needed, to bring in charges for other problematic single use plastic items where outright bans or restriction of sale may be less feasible. The single use carrier bag charge is an example of how a levy applied at the point of sale has helped to drive positive behaviour change and has raised awareness of their impact on the environment.

**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?**

The proposed ban on certain single use plastic items is to be brought in using existing legislative powers contained in Section 140 of the Environmental Protection Act 1990, whereas the introduction of any charges for single use plastic items will rely on powers contained in the Bill which are not yet in place, meaning such charges cannot be taken forward at the same pace.

Within the consultation document *Beyond Recycling: A strategy to make the circular economy in Wales a reality* we have made the commitment to work on proposals for a tax or charge on disposable plastic cups and food containers. It is also the case a charge may also allow for either recycling or manufacturing technologies to develop in order to allow single use plastic items to be replaced by something less environmentally damaging.

Welsh Treasury officials are continuing to develop the evidence base in relation to a tax or charge on single use plastic cups, specifically the possible impact on retailers. Should it be determined a tax – rather than a charge - is an effective route to drive positive behaviour change, this proposal would need to be first approved by UK Government through the mechanism provided for under the Wales Act. It is worth noting the process for introducing a tax is separate to the powers to introduce a charge provided for under the UK Environment Bill.

**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?**

The HM Treasury call for evidence on “tackling the plastic problem” published in March 2018 focused on single use items made from plastic, and specifically examined how changes to the tax system or the introduction of new charges could change the behaviour of companies and consumers to become more sustainable. Whilst the UK Government considered extending this power to other materials, the tight timescale required to develop the Bill and lack of wider evidence made this approach unfeasible. However, once these powers are in place the Welsh Government could, in due course, consider amending the legislation so it extends other items if it were considered to be appropriate to do so.

Other provisions in the Bill, particularly Schedule 4 Extended Producer Responsibility and Schedule 7 Resource Efficiency Requirements, provide other useful mechanisms which can be applied to other environmentally damaging materials or products.

## Part 4 - Air Quality

**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?**

We still intend to publish a White Paper on a Clean Air Bill as soon as reasonably practical. Officials are currently engaged in policy development and engaging with stakeholders.

**24. Why you have chosen to take forward the above 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) 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?**

In the Clean Air Plan, where we outlined and sought views on the work we propose to undertake in relation to domestic burning (such as the regulatory and non-regulatory actions listed in the consultation), we referred to existing work which was being undertaken through the UK Environment Bill to exemplify actions taken to date. 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 in the answer to question 1. This is enabling manufacturers to sell their products without hindrance, increasing consumer choice and improving the environment by making it easier to identify fuels and fireplaces which can be lawfully used in smoke control areas. It is worth noting this provision is an improvement to the operation of the smoke control regime in Wales rather than a change of policy. It is directly linked to the Programme for Government aim of improving air quality. In this case, through reducing emissions of PM2.5 from domestic burning. Welsh Government also needed more time to undertake developmental thinking about the proposals within the Clean Air Plan which will, in turn, inform the provisions within a Clean Air Bill. This is why the published lists provision within the UK Environment Bill is not concurrent with the work on the Clean Air Plan and the Clean Air Bill

## Part 5 – Water

**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?**

Part 5 introduces a range of measures to strengthen the resilience of water and wastewater services by enhancing the water industry’s long-term planning regime to modernise the regulation of water and sewerage companies to make it more flexible and transparent.

The 21<sup>st</sup> Century Drainage Programme was set up by Water UK (a national body consisting of water and sewage undertakers across the UK and Ireland), to consider how to ensure water company planning, investment, delivery and regulatory policy relating to the design of the UK’s sewerage infrastructure can be improved and updated to meet the needs of current and future generations.

It undertook research and developed tools to better understand the current and long term issues facing the drainage sector. The aim of the Programme was to understand the current and long term requirements of our drainage networks and to develop an evidence based, transparent and collaborative planning framework to ensure the provision of resilient and affordable drainage services. It adopted a partnership-based approach, working with

water companies, regulators, local authorities, and NGOs. Welsh Government and Natural Resources Wales are members of the Programme Steering Group.

The programme recommended putting planning for drainage and wastewater services on a statutory footing, following a similar approach already in place for water resources planning. The approach taken by the project, and the proposals strongly aligned with commitments in the Welsh Government Water Strategy for Wales, including the following;

- We will work with water companies, regulators and local authorities to introduce planning for waste water and sewerage management. Long term collaborative planning for wastewater and sewerage management is critical to address urban flood risk and deliver Water Framework Directive and Urban Waste Water Treatment Directive outcomes.
- Our aim is for sewerage and drainage systems to be resilient and well maintained, with sufficient capacity to manage the demand placed on them without causing pollution or sewer flooding of people's homes. This will enable us to move towards a preventative approach, another key principle of sustainable management of natural resources.
- The water company planning and regulatory framework for water and sewerage should include:
  - Embedding and aligning Water Company planning with our National natural resource policy and relevant area-based natural resource planning processes to ensure planning for water services both informs and takes account of our priorities for natural resources management.
  - Collaborative catchment management plans and investment.
  - Resilience measures, such as climate change projections, population growth and new development.
  - A presumption in favour of sustainable solutions, and evidence of their use in preference to expanding or renewing existing infrastructure capacity.
  - A strategy for engaging with stakeholders.
  - Evidence sustainable waste water and treatment solutions have been considered, strong justification where they are not used.
  - Robust, up to date and credible evidence to demonstrate compliance with our mandatory domestic and European obligations.

The Water Strategy was extensively consulted on and laid before the National Assembly.

Putting Drainage and Wastewater Management Plans (DWMPs) on a statutory basis can ensure other planning processes have regard to the DWMP, and require the relevant stakeholders to engage with and share information with the undertakers for the purposes of preparing DWMPs and Ofwat taking them into account as part of the price review process and the development of the regulatory framework of the industry. It can ensure undertakers keep to their commitment to prepare and consult on DWMPs, enable the Welsh Government to ensure they align with Welsh Government policies and priorities, and provide a clear and transparent process and timetable for the plans. It can also give Natural Resources Wales a clear role to participate in the engagement of the development of the plans, to provide technical guidance to the undertakers and advise the Welsh Government on the quality and robustness of the plans. Without putting them on a statutory footing there

is a risk NRW may not allocate or be provided with the resources to give the DWMP's a similar level of engagement as they do Water Resource Management Plans.

The Bill gives the Welsh Ministers powers to make regulations in respect of the content and procedures to be followed on the preparation and publication of the DWMP's. Before using the powers the Welsh Ministers would consult with stakeholders on proposed regulations.

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

The UK Bill gives the Welsh Ministers powers to make regulations in respect of DWMP's, Water Resource Management Plans, Drought Plans, joint proposals and to amend certain aspects of legislation in respect of water quality. It also gives the Welsh Ministers powers to require two or more water companies to prepare joint proposals for improving the management and development of water resources.

The Welsh Government has no timetable for the use of these powers, and it will consult with stakeholders on all proposed regulations. It has no current plans to require water companies to produce joint proposals, and would consult with stakeholders before making such a Direction.

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

In practical terms 'drainage and sewerage management' means the same as "drainage and wastewater management". The term sewerage management aligns the phrase and definition with the terminology used in the Water Industry Act 1991

**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 does not come under the term 'drainage and sewerage management', and how will it be dealt with?**

Water companies have a number of statutory duties in relation to drainage and sewerage. They have a specific duty to "effectually drain" within their areas of operation, to provide and maintain sewer systems and to adopt new sewers if certain conditions are met. However, they have no specific, statutory duty to plan for the management of drainage and wastewater networks.

**The use of the term drainage:** In practical terms 'drainage and sewerage management' means the same as "drainage and wastewater management". Sewerage is a type of wastewater - as phrased in the Bill it aligns with the water company's duties and the assets it owns as set out in the Water Industry Act 1991. Local authorities, as the lead local flood authorities are generally responsible for the management of surface water and flooding.

**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?**

The costs referred to in the explanatory notes refer to the Bill as a whole and not specifically to Section 5. With the exception of statutory Drainage and Wastewater Management Plans

there should be no additional costs as water companies already prepare statutory water resource management and drought plans.

The Bill gives the Welsh Ministers powers to require the water companies to produce joint water resource management plans but there are no current plans to use this power. If a need to do so became apparent, we would consider any resource implications with the water companies and regulators.

The water companies in England and Wales have already undertaken to prepare drainage and wastewater management plans on a non statutory basis by 2022. The costs of this are met via the price review mechanism undertaken by Ofwat every 5 years. There may be some additional costs to Natural Resources Wales but these would be subject to the extent of their role in regulating and evaluating the plans which has not yet been determined. This will be a matter for more detailed consultation and discussion.

### **Financial implications of the provisions in Wales**

#### **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?**

The joint programmes developing DRS and EPR will include a regulatory impact assessment which sets out the costs of implementing and running these schemes. This will be refined as the preferred options emerge and the details of both schemes are worked up.

Broadly speaking, EPR and DRS should be cost neutral to public finances with the schemes looking to recover their costs through the fees and charges which will be payable by industry. This will include costs to cover regulatory oversight through compliance monitoring and enforcement. However, we do recognise there are start-up costs to both schemes, to support this the HM Treasury budget on 11 March 2020 allocated £700,000 for initial ICT work on EPR for Packaging.

In relation to clause 70 and Part 2 of Schedule 12, officials will undertake further work in relation to cost estimations but a preliminary assessment indicates costs will be minimal with no ongoing costs other than translation costs.

The amendments land drainage rates & levies strengthen the positions of Welsh Government and NRW who administer Internal Drainage Boards in Wales, thus providing mechanism for applying correct levies and drainage rates.

There are no financial implications arising from the powers given to Ministers by the chemicals provisions as Ministers do not have to exercise them. The provisions do not create new obligations but give powers to amend the existing REACH regulations. When Ministers decide to exercise these powers an assessment of the financial implications would be made at the time. This could result in financial costs or savings.

Please refer to question 29 in respect of costs for water and/or sewerage companies of meeting the requirements for joint proposals, water resources management drought plans, and drainage and sewerage management plans.

