

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

Environment Bill

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Environment Bill (the “Bill”) was introduced in the House of Commons on 30 January 2020 and consideration at House of Commons committee stage completed on 26 November. The Bill, as amended at Commons Committee stage can be found at:

<https://publications.parliament.uk/pa/bills/cbill/58-01/0220/200220.pdf>

Policy Objectives

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

Summary of the Bill

4. The Bill is sponsored by the Department for Environment, Food and Rural Affairs (Defra).
5. The Bill makes provisions about targets, plans and policies for improving the natural environment; for statements and reports about environmental protection; for the Office for Environmental Protection; about waste and resource efficiency; about air quality; for the recall of products that fail to meet environmental standards; about water; about nature and biodiversity; for conservation covenants; about the regulation of chemicals; and for connected purposes.
6. The clauses with particular relevance to matters within the legislative competence of the Senedd are:
 - Part 1 – Environmental Governance - Clause 19 (Statements about Bills containing new environmental law) and Clause 43 (Meaning of environmental law) in so far as it relates to clause 19

- Part 3 – Waste and Resource Efficiency – clauses 47 and 48 (Producer Responsibility) and Schedules 4 and 5, clauses 49 – 52 (Resource efficiency), clause 55 (Electronic wastes tracking: Great Britain), clause 57 (Hazardous waste England and Wales), clause 60 (Regulations under the Environmental Protection Act 1990), clause 61 (Powers to make charging schemes), clause 63 (Enforcement powers), clause 65 (Littering enforcement), clause 66 (Fixed Penalty notices), clause 67 (Regulation of polluting activities)
- Part 4 – Air quality and Environmental recall – clause 69 (Local air quality management framework), clause 70 (Smoke control areas: amendments of the Clean Air Act 1993)
- Part 5 – Water – clauses 75 and 76 (plans and proposals), clause 77 (Authority’s power to require information), clause 79 (Electronic service of documents), clause 81 (Water quality: powers of Secretary of State), clause 82 (Water quality: powers of Welsh Ministers), clause 85 (Water quality: interpretation), clauses 87 – 89 (Land drainage),
- Part 8 – Miscellaneous and General Provisions – Clause 125 (Amendment of Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) legislation)

Update on position since the publication of the first Legislative Consent Memorandum

7. We laid a legislative consent memorandum on 26 February 2020, based on the Bill as introduced 30 January 2020.
8. On 26 November, the Bill concluded its Commons Committee stage having been through 21 sessions where none of the 261 [non-government] amendments tabled were conceded. 77 Government amendments were made to the Bill, the majority of which were technical in nature, such as amendments to update the name change of the legislature in Wales from ‘Welsh Assembly’ to ‘Senedd Cymru’ following the coming into force of the name change provisions of the Senedd and Elections (Wales) Act 2020. Other Government amendments did not relate to the legislative competence of the Senedd.
9. A Government amendment for a provision covering ‘Use of forestry risk commodities in commercial activity’ was tabled on 11 November 2020.
10. Minister Pow wrote to me on 17 August 2020 to inform me of consultation taking place on proposals to establish a due diligence requirements on companies trading in the UK, to reduce the risk of illegal deforestation and land conversion within their supply chains. The UK Government sought to consider how and when to introduce such a provision before COP26.
11. In my response of 8 September 2020 I indicated that we are supportive of such a policy and recognised the risks of failure to shift to more

sustainable production of key commodities. I confirmed that we consider this provision is within competence.

12. Defra assert the provision relates to the reservation in section C1, paragraph 65 of Schedule 7A to GOWA 2006 – the creation, operation, regulation and dissolution of types of business association. However, we maintain the provision relates primarily to the environment, the protection of forestry environments and tackling climate change, all of which are devolved.
13. In correspondence dated 4 December, I confirmed my intention to lay a supplementary legislative consent memorandum.

Changes to the Bill since the publication of the first Legislative Consent Memorandum for which consent is required.

14. Clause 107: 'Use of forest risk commodities in commercial activity' which requires large businesses to ensure the 'forest risk' commodities they use, those which can cause wide-scale deforestation, have been produced legally.
15. The provision makes it illegal for businesses within scope to use, either in production or trade within the UK, forest risk commodities which have not been produced in accordance with relevant laws in the country where they are grown.
16. The provision places an obligation on businesses within scope to conduct due diligence to ensure that forest risk commodities which have not been legally produced do not enter their supply chain, and they should report on the exercise publicly.
17. The provision further enables the UK Government to levy fines and other civil sanctions against businesses which continue to use forest risk commodities which have not been produced legally or which do not have a robust system of due diligence in place.

Welsh Government position on the Bill as amended.

18. We acknowledge the amendment made at Commons Committee stage.
19. We support the policy position provided by the provision but disagree with Defra's contention that this provision falls within reserved competence as set out in Schedule 7A GOWA.
20. It is our view that these provisions, as drafted, make provision in relation to Wales for a purpose within the legislative competence of the Senedd. The clauses would be *relevant provision* for the purposes of Standing Order 29.1.

Financial implications

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

Conclusion

22. In our view it is appropriate to use this Bill as a vehicle to take forward initiatives likely to be required to progress the circular economy strategy, particularly where these require a joined up approach with other UK administrations. Similarly, the effective management of water quality and the regulation of chemicals post EU Exit are appropriate matters to be taken forward in this Bill. The proposed legislative changes in air quality and land drainage allow for the clarification of the Welsh Ministers' responsibilities or are administrative in nature and the Bill provides a timely opportunity to take these forward.

23. We are of the view that the additional provision relating to 'Use of forest risk commodities in commercial activity' falls within the competence of the Senedd and thus is a relevant provision for the purposes Standing Order 29.1 requiring a legislative consent memorandum.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
December 2020