

Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair of the Legislation,
Justice and Constitution Committee

26 January 2021

Dear Mick

Thank you for your letter of 23 December regarding the Supplementary Legislative Consent Memorandum laid before the Senedd on 4 December 2020. Please accept my apologies for the delayed response.

I have responded to the Committee's questions below:

1. **We note that you consider new clause 107 and new Schedule 16 to be within the legislative competence of the Senedd. Given this view, please can you say if you have:**
 - a. requested that the UK Government table an amendment to the Bill to give the Welsh Ministers the same powers as the Secretary of State in relation to Wales?
 - b. pursued with the UK Government any amendments to the Bill to ensure the Welsh Ministers' involvement in the making of regulations that relate to Wales under Schedule 16?

We do not intend to pursue any amendments to this provision.

2. **Please can you elaborate on why you consider that new clause 107 and new Schedule 16 relate to matters within devolved competence when DEFRA say that it relates to the reservation in section C1, paragraph 65 of Schedule 7A to the *Government of Wales Act 2006* (the creation, operation, regulation and dissolution of types of business association)?**

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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 officials' analysis of clause 107 is it relates to the protection of forestry environments and tackling climate change and thus makes provisions within areas of devolved competence. The UK Government's interpretation suggests the provisions are caught by the paragraph 65 reservation under Schedule 7A for "the creation, operation, regulation and dissolution of types of business associations", because they regulate certain activities of business associations. This interpretation has the possibility of having wide-ranging effects on the devolved settlement and could effectively bring any business-facing regulation within scope of the reservation. I do not agree this is the correct interpretation of the reservation.

3. Are there ongoing discussions between the Welsh and UK Government to try resolve the dispute as regards new clause 107 and new Schedule 16? If so, please can you provide the detail of such discussions?

I wrote to the lead Minister for the Bill, Minister Pow, on 4 December to inform her of my intention to lay a Supplementary Legislative Consent Memorandum in respect of clause 107.

4. Please can you provide us with all copies of correspondence between the Welsh and UK Governments about section 107 and Schedule 16 of the Bill (including any responses to your letters of 8 September and 4 December 2020)?

I have not yet responded to Minister Pow's most recent correspondence; I will seek to provide the committee with the requested copies as soon as possible and in line with relevant GDPR rules.

5. If an agreement on the dispute as regards new clause 107 and new Schedule 16 cannot be reached, what further action do you intend to take?

I do not intend to take any further action beyond laying the Supplementary Legislative Consent Memorandum which states my view the UK Government, in this regard, is legislating in an area of Welsh devolved competence.

6. In relation to the concurrent plus functions in the Bill, we note that the Environment Bill is not covered by the Government of Wales Act 2006 (Amendment) Order 2021 that was laid before Senedd Cymru on 10 December 2020. Can you provide an update on how the Welsh Government intends to address the issues around the concurrent plus functions in the Bill?

You are correct to note the Order did not cover the UK Environment Bill. Due to the suspension of the Bill proceedings at the onset of the Covid-19 pandemic, the Bill fell outside the scope of the Order. Officials have since secured confirmation an amendment will be brought forward to ensure the concurrent functions within the UK Bill are not caught by the restrictions of Schedule 7B to the Government of Wales Act 2006 relating to Minister of the Crown functions. I have received correspondence from Minister Pow reiterating this commitment.

7. Please could you explain in respect of your response to the first bullet of recommendation 20:

- The precise nature of the agreement between officials i.e. what has been agreed and the status of the agreement?
- Whether the agreement between officials, and its content, has been signed of by Ministers of both the Welsh and UK Governments?
- Why it was considered appropriate to not discuss a concurrent plus power with UK Ministers?

Clause 83 (previously Clause 81) does not establish any new policy, instead it provides powers needed to replace those under section 2(2) European Communities Act 1972 in this policy area. As such, there is no specific agreement required as to policy approach.

These powers are required to address legislative gaps so as to enable the revision and updating of the list of priority substances for surface water, groundwater and environmental quality standards. As previously stated in my response, subsection 4 of the provision provides the Secretary of State may only exercise such functions in respect of Wales' cross-border river basins, available to Welsh Ministers under Clause 84 (previously Clause 82), with the consent of Welsh Ministers.

Concurrent plus powers were covered in the official level inter-Governmental discussions concerning the legislative carve out, and these clauses did not require specific Ministerial inter-governmental discussion in particular.

With reference to your second point, I am not sighted on what UK Government Ministers may have signed off. I was briefed and agreed the concurrent approach in February 2020.

The issue surrounding the appropriate carve out of Schedule 7B of GOWA was present in all concurrent plus functions across the UK Bill; therefore we had no need to conduct specific discussions on each specific policy area. The reason these water provisions appear at face value differently, with separate clauses for the UK Administrations, is due to the various complexities of the area by reference to cross-border river basins and differing legislative regimes for the separate jurisdictions.

Regards

A handwritten signature in cursive script that reads "Lesley Griffiths". The signature is written in black ink and is positioned centrally below the "Regards" text.

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