

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

28 September 2021

Dear Llyr,

Thank you for your report of 23 September on the Legislative Consent Memorandum for the UK Environment Bill.

I have provided a response to your recommendations at Annex A.

Yours sincerely

A handwritten signature in blue ink that reads "Julie James". The signature is written in a cursive, flowing style.

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

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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.

Annex A

Recommendation	Response
<p>Recommendation 1. The Minister should engage with the UK Government and the other devolved administrations to seek agreement to amend the UK Bill to replace the ‘concurrent-plus’ powers with powers for the UK administrations to make joint regulations when implementing UK-wide policies. These regulations should be subject to scrutiny by each of the UK legislatures.</p>	<p>Reject</p> <p>I have provided a detailed explanation to the Committee as to the appropriateness of taking concurrent plus powers within this Bill. We are taking these powers only in areas where a UK wide approach may be required.</p> <p>The inclusion of the carve out of Schedule 7B of the Government of Wales Act 2006 will ensure the Senedd can remove the Secretary of State’s functions relating to Welsh devolved matters without the need for the Secretary of State’s consent.</p> <p>I have committed to making regulations in the Senedd whenever possible and demonstrated that commitment by planning to bring forward Welsh legislation in respect of the Extended Producer Responsibility scheme for packaging and a Deposit Return Scheme for drink containers.</p> <p>Financial Implications – There are no financial implications as a result of responding to this recommendation</p>
<p>Recommendation 2. If the Minister cannot secure amendments to the UK Bill, she should:</p> <ul style="list-style-type: none"> • give a commitment that the ‘concurrent plus’ powers will be removed at the earliest opportunity; and • set out her position on establishing a formal procedure to govern Senedd involvement in consent decisions in respect of ‘concurrent plus’ powers in the UK Bill. 	<p>Accept</p> <p>Principle 7 of the guidance for Welsh Ministers on the taking of concurrent powers, stipulates that concurrent functions should be removed at the first opportunity.</p> <p>In line with this guidance, I will keep the requirement for these concurrent plus functions under review.</p> <p>I do not consider establishment of a formal procedure to govern Senedd involvement in consent decisions in respect of concurrent plus powers in UK Bills is required. We have established a commitment to write to the relevant policy committees to inform them of an intention to consent, and, where time allows, provide an opportunity for the Senedd to express a view before Ministers give consent.</p> <p>Financial Implications – Review, and any subsequent removal of the concurrent plus functions, will require policy and legal resources to make the necessary legislative changes.</p>

<p>Recommendation 3. The Welsh Government must commit to make time available for the Senedd environmental governance Bill in the second year of its legislative programme.</p>	<p>Accept in Principle</p> <p>Tackling the climate and nature emergencies are a priority for this Government.</p> <p>The Counsel General set out our ambitious first year legislative programme on 6 July and an announcement on future years will be made by the First Minister in due course. The Welsh Government has an in principle commitment to an Environmental Governance Bill but the timing of that Bill will be for the Government to determine.</p> <p>Financial Implications – There are no additional financial implications as a result of responding to this recommendation.</p>
<p>Recommendation 4. The Minister must report back to the Committee within six months of the publication of this report on progress made towards the development of the Senedd environmental governance Bill.</p>	<p>Accept</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 5. The Welsh Government must commit to introduce statutory biodiversity targets at the first available opportunity.</p>	<p>Accept in principle</p> <p>A decision will be informed by the conclusion of COP 15, currently scheduled for May 2022.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation in principle.</p>
<p>Recommendation 6. The Minister should clarify:</p> <ul style="list-style-type: none"> • whether the Senedd environmental governance Bill is the only suitable vehicle within the Welsh Government’s legislative programme for the Sixth Senedd to make provision for statutory biodiversity targets; and • if so, whether and how this will impact on the timing of the introduction of the Bill. 	<p>Reject</p> <p>A decision will be informed by the conclusion of COP 15, currently scheduled for May 2022.</p> <p>An announcement on future years of the programme will be made by the First Minister in due course.</p> <p>Financial Implications – There are no additional financial implications as a result of responding to this recommendation.</p>
<p>Recommendation 7. The Minister must set out what steps she intends to take to ensure there is</p>	<p>Accept in Principle</p>

<p>sufficient resource and capacity within her department, and the Welsh Government’s legal department, to deliver on current legislative commitments.</p>	<p>There are robust processes in place through which the resourcing and progress of legislative commitments are regularly reviewed in order to identify and mitigate risks to delivery.</p> <p>Financial Implications – There are no financial implications as a result of responding to this recommendation.</p>
<p>Recommendation 8. The Minister must report back to the Committee on any discussions she has had, or intends to have, with the UK Government on using UK Bills in the 2021-22 Parliamentary session to legislate for Wales on matters that fall within her portfolio.</p>	<p>Accept in Principle</p> <p>We would normally engage committees once white papers and consultations on UK legislation are published.</p> <p>Financial Implications – There are no financial implications as a result of responding to this recommendation.</p>
<p>Recommendation 9. The Minister should report back to the Committee on the outcome of the March 2021 consultations on EPR for packaging and a DRS, and the July 2020 consultation on reducing single use plastics, as soon as practicable.</p>	<p>Accept</p> <p>I will be publishing the Summary of Responses, including the next steps, from the July 2020 consultation on reducing single use plastics in October. I can advise the Committee the responses were overwhelmingly in favour of introducing a ban on these items.</p> <p>On EPR for packaging and DRS for drink containers, we are currently working with Defra and the other devolved nations in finalising our response to the consultations. We will be publishing joint responses in due course and will advise the committee when they are available.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 10. The Welsh Government must commit to introducing an ‘all-in DRS’ in Wales, regardless of whether the UK Government and Northern Ireland Executive decide to introduce a scheme narrower in scope.</p>	<p>Accept in principle</p> <p>The Welsh Government’s preference is for an ‘all in’ Deposit Return Scheme (DRS) covering containers up to 3lt in size: glass and PET plastic bottles, steel and aluminium cans.</p> <p>The UK Government and the Northern Ireland executive have yet to decide on the preferred scope for a DRS in their nations.</p> <p>We remain committed to working in partnership with the UK Government and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland so that the scheme is as consistent as possible across Wales, England and Northern</p>

	<p>Ireland. We are also looking carefully at how the scheme will need to interact and operate with the Scottish DRS. This is in recognition of:</p> <ul style="list-style-type: none"> • The challenges to business that will be obligated under the deposit return scheme with integrated cross border supply chains. • The practical challenges of implementation. • The need to minimise confusion for consumers living near the boundaries of Wales/England and England/Scotland. <p>If England and Northern Ireland decide on a different scope for the DRS in their nations, we will need to assess the implications of this in terms of implementation and overall scheme design.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation in principle. The financial implications of DRS schemes will be considered as part of scheme development. Implementation costs will be borne by those businesses obligated under the reforms.</p>
<p>Recommendation 11. The Minister should provide the Committee with an update on the work that is being undertaken to assess the evidence base for a tax or a charge on single-use plastics. She should also clarify when the Welsh Government is likely to be in a position to make a definitive decision on its preferred option.</p>	<p>Accept</p> <p>This work is currently on hold due to resource constraints. At this time, I am not able to clarify timescales for this work. My current focus is on delivering our Programme for Government commitment to ban the most commonly littered single use plastics found in the marine environment.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 12. The Minister should explain why she believes it is appropriate to take the powers to charge for single-use plastics in the UK Bill when it is unclear whether those powers will be needed.</p>	<p>Accept</p> <p>In our Circular Economy Strategy, Beyond Recycling, we have committed to exploring the use of the new charging powers for single use plastic disposable cups and food containers. Taking powers in the UK Bill allows us to keep this option open as a tool to meet our commitment to reducing the environmental impact of single use plastics</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 13. The Welsh Government should press the other UK administrations to agree</p>	<p>Accept</p>

<p>a way forward which would enable it to introduce a ban on single use plastics that delivers its full policy ambition.</p>	<p>Intergovernmental discussions are continuing in relation to the bans as part of the post-Brexit Common Framework Agreements. All options are being explored. We are committed to delivering our policy ambition on plastic in full.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation</p>
<p>Recommendation 14. The Minister should provide an update to the Committee, within two months of the publication of this report, on progress made in taking forward proposals for a ban on single use plastics.</p>	<p>Accept</p> <p>We intend to publish our summary of responses in October. This will set out in detail the next steps on this matter. The committee will be aware of the complexities in delivering this policy because of the UK Internal Market Act.</p> <p>I am committed to delivering our policy ambition to abolish the use of the mostly commonly littered single use plastics.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 15. The Minister should report back to the Committee on the outcome of the Welsh Government’s consultation on the White Paper on the Clean Air (Wales) Bill as soon as practicable. The report should include an indicative timetable for the remaining phases of the Bill’s development.</p>	<p>Accept in principle</p> <p>Officials are completing the analysis of the consultation responses in relation to the White Paper proposals for a Clean Air Bill for Wales. There has been positive support for the proposals and we aim to publish the summary of responses by the end of October 2021.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation in principle.</p>
<p>Recommendation 16. The Welsh Government should commit to introducing the Clean Air (Wales) Bill in the second year of its legislative programme.</p>	<p>Accept in Principle</p> <p>Tackling the climate and nature emergencies are a priority for this Government.</p> <p>The Counsel General set out our ambitious first year legislative programme on 6 July and an announcement on future years will be made by the First Minister in due course. The Welsh Government has an in principle commitment to legislate in this area but the timing of that Bill will be for the Government to determine.</p>

	<p>Financial Implications – There are no financial implications as a result of responding to this recommendation.</p>
<p>Recommendation 17. The Minister should commit to consulting stakeholders before making regulations using powers under Part 5.</p>	<p>Accept</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 18. The Minister should explain why the powers of direction in Part 5 are necessary, and set out the criteria the Welsh Government will use to determine whether these powers should be exercised.</p>	<p>Accept</p> <p>The powers of Direction in Part 5 enable the Welsh Ministers to issue a direction to sewerage undertakers to specify the planning period to be covered by the plans. They further direct a new plan to be prepared if the annual review of the plans indicates a material change of circumstances.</p> <p>They also give the Ministers powers to require the plans to address any specific issues not listed in the primary legislation, and the form a plan must take. Before issuing any directions we would consult with the water and sewage undertakers NRW, and other key stakeholders.</p> <p>Part 5 also gives Minister powers to direct two or more water undertakers to prepare and publish a joint proposal for the purpose of improving the management and development of water resources. There are no current plans to issue such a Direction, and would only do so after consulting the affected water undertakers, NRW and Ofwat.</p> <p>Financial Implications – There are no financial implications as a result of accepting this recommendation.</p>
<p>Recommendation 19. The Minister should further explain why she believes it is appropriate for a non-binding informal agreement to be used to resolve the dispute with the UK Government over legislative competence in respect of the provisions in relation to the use of forestry commodities</p>	<p>Accept</p> <p>We put our case for competence strongly to Defra but they rejected our argument and maintain consent is not required. It follows that they do not recognise we have a formal role in developing the subordinate legislation. However, despite this we have negotiated policy involvement on the development of the subordinate legislation and received written confirmation that this commitment will be maintained.</p> <p>In light of this, Welsh Government officials have been meeting with the Defra policy team on a regular basis and Defra discussing the development of a UK-wide public consultation in the second half of this year on the regulations. Next steps will be to</p>

work with Defra as the consultation develops and advise on appropriate consultees within Wales.

Financial Implications – There are no financial implications as a result of accepting this recommendation.