

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



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair, Legislation, Justice and Constitution Committee

28 September 2021

Dear Huw,

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

I am pleased to provide additional information as requested below.

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.

Recommendation	Response
<p>Recommendation 1. A future environmental Bill introduced by the Minister should address devolved issues contained within the UK Government's Environment Bill, following appropriate consultation with stakeholders.</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 of the legislative programme will be made by the First Minister in due course.</p> <p>Financial Implications - There are no financial implications arising as a result of responding to this recommendation</p>
<p>Recommendation 2. The Welsh Government should seek an amendment to the Bill removing concurrent plus regulation-making powers</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 arising as a result of responding to this recommendation</p>
<p>Recommendation 3. If recommendation 2 is not accepted, or the concurrent plus powers are not removed from the Bill by amendment, the Minister must explain the reasons why they have not been removed, and clarify:</p>	<p>Accept in principle</p> <p>As above, I have previously set out detailed rationale for the appropriateness of taking concurrent plus powers within this Bill.</p> <p>The use of concurrent plus powers will be exercised in so far as is necessary to</p>

<ul style="list-style-type: none"> - the specific circumstances and timetable for the use of concurrent plus powers; - when she expects the concurrent plus powers to be removed from the Bill in accordance with principle 7 of the Welsh Government guidance referred to in paragraph 35 above. 	<p>achieve a specific policy aim. We will only consent to the Secretary of State legislating on our behalf where it is absolutely necessary. In all cases we will consider the potential to deliver outcomes through bringing forward regulations before the Senedd in the first instance.</p> <p>The nature of the powers sought mean there is not a clear timetable for when they will be used. Policy development is underway on a range of products where Extended Producer Responsibility could be applied, including packaging and a deposit return for drink containers. As future schemes are developed, we will consider the legislative approach, with particular consideration of the practical nature of how specific products are marketed and traded across the UK and Wales,</p> <p>For water quality it will be as the requirement for cross border regulation arises for the Rivers Severn, Wye and Dee.</p> <p>For REACH, concurrent plus powers will be used when the enforcement arrangements for chemicals require change in a way that cannot be achieved through Welsh powers alone or where it is more efficient to regulate jointly. This re-establishes the powers Welsh Ministers held prior to EU Exit in relation to REACH enforcement powers.</p> <p>In line with the guidance, I will keep the requirement for these concurrent plus functions under review.</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 4. The Minister should, in advance of the Senedd’s debate on the relevant consent motion, explain why the provisions noted in paragraph 51 of this report were not identified in Memorandum No 2 and confirm that the Senedd’s consent is required for their inclusion in the Bill.</p>	<p>Accept</p> <p>New Clause 137 (Amendments of Schedule 7B to the Government of Wales Act 2006) (now clause 144) was referenced in Memorandum 1 to ensure Members were aware of the proposal for its inclusion in the Bill. However it was not considered to</p>

require consent as, by virtue of paragraph 7 of Schedule 7B to GOWA 2006, the Senedd cannot make amendments to GOWA 2006. Therefore this provision was considered outside the competence of the Senedd.

In light of the Committee's report I have asked officials to look again at this issue. As the provision falls within the Standing Order subsection 29.1(ii), in that it modifies the legislative competence of the Senedd, I agree consent is required and accordingly the amendment should have been included in Memorandum 2.

The amendments to schedules 4, 5, 6, 7 and 11, relate to powers for the relevant national authority to make regulations. Memorandum 1 advised that the National Authority in relation to Wales is the Welsh Ministers and outlined the need for the consent of the Senedd to the powers within these Schedules. I consider the amendments added to those provisions were covered by the general requirement for consent outlined in Memorandum 1. Officials took the view that the amendments to clause 68 (litter enforcement – previously clause 67) were sufficiently substantive to include in Memoranda 2 as they were to the clause itself and placed additional requirements on the Senedd.

The motion for the Legislative Consent Debate on the Bill captures any provision that would fall within the legislative competence of the Senedd, not just those included in Memoranda 1 & 2. I will advise the Senedd of the requirement for consent to New Clause 137 (now clause 144) in my opening remarks to the debate and of the amendment to the schedules.