



Ein cyf/Our ref JJ/01758/23

Huw Irranca-Davies MS
Chair of the Legislation, Justice and Constitution Committee
Welsh Parliament

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27 June 2023

Dear Huw

Thank you and the Legislation, Justice and Constitution Committee members for considering the Supplementary Legislative Consent Memorandum (Memorandum No. 3) in respect of the UK Government's Levelling-up and Regeneration Bill (the Bill).

I welcome the report and note the Committee's ongoing concern in relation to the last-minute approach to drafting by the UK Government. I share that frustration.

Recommendation 1. The Minister should state when the Welsh Government first became aware of amendments to clause 139 and explain more fully the delay in laying Memorandum No. 3, particularly when the matters it contains are relatively narrow in scope.

The Welsh Government's attention was drawn to UK Government's amendments to clause 139 through correspondence received on 27 March, having not been raised at the ministerial meeting on 22 March. The letter from the Department for Levelling Up, Housing and Communities asked for the Welsh Government's view on their assessment of whether a long list of amendments fell within scope of needing a Legislative Consent Motion. While the amendments to clause 139 requiring the consent of the Senedd was relatively narrow in scope, it was necessary to review each amendment to confirm whether any other amendments fell within the scope of Standing Order 29, hence the delay in tabling the supplementary consent memorandum.

Recommendation 2. The Minister should confirm whether or not the Welsh Government has undertaken a detailed assessment of the extent to which a Welsh Government Bill seeking to make provision in relation to planning data and environmental outcomes reports would engage reserved matters. If not, the Minister should explain why she has not done so.

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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.

I can confirm that consideration has been given by my policy officials to the extent to which a Welsh Government Bill seeking to make provision in relation to Planning Data and Environmental Outcome Reports (EOR) would engage reserved matters, in the context of assessing the provisions for the purposes of preparing the Legislative Consent Memorandum for this Bill only.

A replacement framework for Environmental Impact Assessment (EIA) is not currently a policy priority within the current Programme for Government. A separate detailed analysis of wider system change has therefore not been undertaken, as it has not been necessary.

Recommendation 3. The Minister should publish any assessment undertaken of the extent to which a Welsh Government Bill seeking to make provision in relation to planning data and environmental outcomes reports would engage reserved matters.

See my response to recommendation 2.

Recommendation 4. The Minister should address more fully recommendation 6 in our original report and, in addition, explain what the impact would be for the Welsh Ministers of not being able to reverse the provision in clause 128(2) of the Bill as introduced and what action the Minister would take as a consequence.

The provision in clause 128(2) is contingent on whether the EOR approach is taken forward in Wales. Discussions between officials to date have therefore focused on the substantive provisions and have not repeated our opposition to the removal of this clause.

If it becomes necessary to remove Secretary of State regulation making powers in devolved areas, I would seek the provision in clause 128(2) to apply to England only.

Section 71A of the Town and Country Planning Act 1990 provides some limited regulation making powers to address EIA for town and country planning, but it does not provide for amending the whole of the EIA process. This is because since the introduction of the section by the Planning and Compensation Act 1991 the EIA system has evolved beyond the limits of the clause through the use of powers in the European Communities Act 1972. The loss of section 71A would therefore impact the ability of the Welsh Ministers to make regulations for the initial part of town and country planning EIA procedures prior to planning permission being granted.

The loss of section 71A would mean, in the absence of EOR regulation making powers, that EIA procedures for town and country planning in Wales would remain static like the other devolved consent regimes subject to EIA. No legislative change would be proposed to rectify this in the short term due to other policy priorities.

Recommendation 5. The Minister should provide an immediate update on her negotiations with the UK Government including whether, and if so when, the draft text providing for equivalent powers offered on the 22 March 2023 was provided.

Since the offer of equivalent powers was made at the meeting of the Minister for Social Justice and the Parliamentary Under Secretary of State (Levelling Up) on 22 March 2023, we have not received draft amendments providing for equivalent powers. Officials did receive, on 31 May, draft clauses for Planning Data and Environmental Outcome Reports providing for a concurrent plus approach for those matters within the legislative competence of the Senedd, so that the Welsh Ministers and the UK Government can legislate in devolved areas, but only if the UK Government obtains the Welsh Ministers' prior consent. There is also a requirement for the UK Government to consult the Welsh

Ministers for those matters which are reserved but where the Welsh Ministers have executive competence.

Officials have submitted a detailed response to the UK Government, suggesting changes to the proposed amendments that would better reflect Welsh Government policy and legislation. We are awaiting a response. The proposed amendments have not been formally tabled.

Recommendation 6. The Minister should explain what action she will take if she is:
(i) unable to secure agreement on existing provisions relating to planning data and environmental outcomes reports, and unable to secure agreement on applying these provisions to England only;
(ii) able to secure agreement on applying existing provisions relating to planning data and environmental outcomes reports to England only.

Environmental Outcome Reports will indirectly affect Welsh consent regimes even if the Secretary of State does not make regulations for Wales. This is because devolved statutory bodies, the lead example being Natural Resources Wales, will have to respond to consultations on reserved consent regimes such as the Nationally Significant Infrastructure Projects (NSIPs) that will be subject to the EOR approach.

In both scenarios there will be a need to work with the UK Government to minimise the effect on devolved consent regimes of any Planning Data and EOR regulations made by the Secretary of State. This will particularly be needed where there are likely to be more cross jurisdictional projects such as in marine areas. In the scenario where the UK Government retains the ability to legislate for devolved consent regimes without consent, I would continue to oppose such regulations.

Where the Welsh Ministers do gain regulation making powers for Planning Data and EOR, I do not propose to rush through regulations without stakeholders in Wales having had ample opportunities to engage in the design of an EOR approach appropriate for Wales.

Yours sincerely



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Y Gweinidog Newid Hinsawdd
Minister for Climate Change