

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/JJ/2328/23

Elin Jones MS
Llywydd

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

Llyr Gruffydd MS
Chair, Climate Change, Environment and Infrastructure Committee.

Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

1 September 2023

Dear Elin, Huw and Llyr,

I am writing in relation to the Energy Bill (the Bill) which was introduced to the UK Parliament, the House of Lords, on 6 July 2022. As you know I laid the Legislative Consent Memorandum on the Bill as introduced on 29 June 2023.

On 25 July I laid a supplementary Legislative Consent Memorandum (sLCM) on the Offshore Wind Environmental Improvement Package (OWEIP) clauses in the Bill. Those clauses were tabled as amendments to the Bill in the House of Lords on 9 January 2023, with further amendments tabled against the Bill by the UK Government on 7 June 2023.

Further supplementary legislative consent memoranda

I am now writing as I lay a second sLCM to cover the other amendments to the Bill since introduction and covers the Bill as it left the House of Commons Committee Stage as published on 11 July 2023. The amendments which relate to matters within the competence of Welsh Ministers and the Senedd relate to Parts 1, 2, and 11.

The Welsh Government welcomes a number of the amendments to the Bill as they provide useful clarifications and additional detail on how the measures first introduced in the Bill will operate. However, as with the Bill as introduced, in a number of areas, the amendments

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

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.

made to the Bill do not sufficiently respect the competence of the Senedd. Specifically, the Welsh Government recommends the Senedd withhold consent on clauses 9, 73, 106-126, 127 and 259. Here we are seeking a requirement for the Secretary of State to seek the consent of Welsh Ministers before new regulations can come into effect rather than a process of consultation as is in the current draft of the Bill.

The Welsh Government remains in discussion with the UK Government on the Bill, but to date I have not had an acceptable offer of amendments to address the points raised in the LCM or sLCM laid to date. I maintain the Welsh Government's position that we are supportive of the policy intent set out in the Bill and I also agree with the need for many of the regulations proposed to operate effectively on a pan UK basis. I remain of the view that there is no reason why the UK Government cannot work with us to deliver cross-border regulation in a way that avoids regulatory divergence through a process that requires the consent of Welsh Ministers in areas of devolved competence.

As with the other LCMs I appreciate that we are outside the normal two-week Standing Order 29 deadline for the laying of this supplementary LCM. This has been in part due to handling of the Bill by the UK Government but also due to the complexity of the issues under consideration.

Legislative consent motion debate

Presently Commons Report Stage and Third Reading for the Bill is scheduled for 5 September. House of Lords consideration of amendments is expected to commence on 12 September.

I am incredibly concerned that the current scheduling of this Bill will leave insufficient time to resolve concerns at an intergovernmental level, and the Senedd with no meaningful opportunity to consider their position on consent. I have asked that UK Ministers take immediate steps to postpone the scheduling of final Commons' Stages to enable further time for discussions, and to enable the Senedd to consider this Bill at a meaningful stage.

Based on the current timetable I am left in the regrettable position of seeking the Senedd debates the Legislative Consent Motion for the Bill at its earliest opportunity, 12 September 2023. I appreciate that this will mean that relevant Senedd Committees would be afforded no scrutiny opportunity for the sLCMs laid during recess, and will likely not have reported on the LCM laid on 29 June 2023. However, holding the debate on this date will enable the Senedd's position to be made clear to UK Government and Parliament as soon as possible.

Of even greater concern is the possibility that this Bill will be pushed through Parliament regardless of the potential lack of Senedd consent. Constitutional convention is that Parliament will not normally legislate with regard to devolved matters without the consent of the Senedd. There is absolutely no reasonable rationale that can be presented that this legislation is 'not normal'. I have therefore sought unequivocal assurance that, should the Senedd not consent to this Bill, the UK Government will commit to their stated respect for the Sewel Convention, and not legislate in relation to Wales.

Standing Order 29 and reporting implications

I am aware that Business Committee has previously set a reporting deadline of 15 September for the original LCM. Should either the Legislation, Justice and Constitution Committee or the Climate Change, Environment and Infrastructure Committee be in a position to issue a report prior to the debate on 12 September, I will respond accordingly in the Senedd debate and in writing as required.

I recognise, however, the significant difficulty this is likely to cause and the reality that this may prove unworkable. I will therefore also take steps to table a motion to suspend Standing Order 29.8 to enable the debate to take place on 12 September, along with relevant suspensions for Standing Orders 11.16 and 12.20(i).

I greatly respect and appreciate the role of the Senedd's Committees within the legislative consent process, and deeply regret this situation. However, as previously stated, I believe the current trajectory of this Bill makes it essential that the Senedd's position can be articulated with urgency.

I am copying this letter to the Counsel General and Minister for the Constitution, Mick Antoniw MS and the Minister for Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths MS.

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