

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: JJ/PO/294/2023

Llŷr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

30 August 2023

Dear Llŷr,

Thank you for your letter of 18 July regarding the Legislative Consent Memorandum (LCM) for the UK Energy Bill where you ask for information on how the Bill's provisions in relation to Wales will impact on the Welsh Government's ability to develop future energy/climate change policy that meets Wales' needs.

As I set out in the LCM you will be aware the Bill is structured around three pillars: Leveraging investment in clean technologies; reforming the UK's energy system and protecting customers; and maintaining the safety, security and resilience of the energy system across the UK. The Bill as introduced has 13 parts and 19 schedules but has since been amended to include 15 Parts and 22 schedules. In this reply I will cover the Bill as introduced and the new part introduced covering the offshore wind provisions. This then covers the LCM laid on 29 June 2023 and the supplementary LCM laid on 25 July 2023.

The Welsh Government is supportive of the broad policy intent of the Energy Bill. The Bill provides the required regulatory basis for a number of key technologies that are important for our energy security and for achieving net zero. In the areas of the Bill dealing with devolved matters, the Bill is generally aligned with our strategic policy position. However, there are some key differences in approach between governments which could not be exercised if the Bill were to proceed as currently drafted.

Part 1 of the Bill establishes an economic regulation and licensing regime for CO₂ transport and storage with the Office of Gas and Electricity Markets (Ofgem) as the economic regulator. Part 2 enables the Government to implement and administer carbon capture business models. I am in agreement that Carbon Capture Usage and Storage (CCUS) is likely to play a significant part in decarbonising industry in particular. This is in line with the conclusions of international studies undertaken by organisations including the Climate

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.

Change Committee (CCC), Intergovernmental Panel on Climate Change (IPCC) and the International Energy Agency (IEA).

However, the Bill as drafted provides for broad regulation making powers to the Secretary of State with a requirement to only consult with Welsh Ministers if regulations contain provisions that would be within the legislative competence of the Senedd. As a matter of devolved competence, the requirement to consult should be amended to be a requirement to seek the consent of Welsh Ministers. While both governments are aligned on the need to have a regulatory basis for CCUS, it is the Welsh Government's view that emissions must first be reduced at source with CCUS being taken forward where alternatives to decarbonise are not possible. I am keen to ensure that the scale of CCUS in Wales is the minimum required and that CCUS is not in itself deemed as a new industrial opportunity that could risk locking the UK into continued and avoidable use of fossil fuels.

In addition, as the detailed regulations are developed, the approach to CCUS will need to manage the balance between protecting marine habitats and developing CCUS projects. The Bill as drafted does not provide the Welsh Ministers or the Senedd the ability to shape a policy, apply the checks and balances that we would wish to apply should UK Ministers not require our agreement.

I have similar concerns to the new provisions introduced covering offshore wind electricity generation. My overall position on those clauses is covered in the supplementary LCM laid on 25 July 2023. From a policy perspective I agree that we need to streamline and accelerate offshore wind consenting and I am also committed to working in partnership to ensure there is a level playing field across the UK. I also agree that the new powers enabling strategic compensation measures to be used are sensible. We support the push to enable more offshore wind development to respond to the need to transition to a net zero energy system and our work on renewable energy targets shows the role that offshore wind is expected to play in Wales.

However, we have set out our position that the Senedd has legislative competence to make a Senedd Bill for a fund for all infrastructure projects below 350MW in the Welsh inshore region. This will not be possible for offshore wind should the Energy Bill comes into force as currently drafted. In addition, while we will have the power to amend the environmental assessment regulations where we have legislative competence, the UK Government intend their regulations to extend across both the consenting (where Welsh Ministers are limited to decision making 350MW and below) as well as Marine Licensing (where Welsh Ministers are not limited to 350MW and below where developments are wholly in the inshore region) regimes. While we accept there is a policy rationale to support this so we do not create different assessment processes for the same development, this would introduce a 350MW threshold in making assessments for marine licences which wasn't there before. We have stated we want to align processes as far as possible, but also want to see the devolution settlement respected insofar as it is in our executive competence to ensure those assessments are aligned.

While I am supportive of the policy intent set out in the Energy Bill, each country in the UK has our own set of environmental policies and emissions reduction plans, delivering against the specific set of challenges and priorities faced. The ability of Welsh Ministers to use all the appropriate levers within our competence at the right time to forge a path to net zero is limited by the Bill as is currently drafted.

Finally, I wanted to update the Committee on the current status of the Energy Bill. It is my intent to lay a supplementary LCM as soon as possible to cover the changes made to the Bill since introduction up until the Bill left the House of Commons Committee Stage at the end of June 2023.

The Welsh Government continues to discuss required amendments to the Bill in line with the positions I have already set out in the LCMs laid in the Senedd. I have made it clear to the UK Government that there is no reason why we cannot work together 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.

I have also repeated my deep concern that this Bill will be pushed through Parliament regardless of the potential lack of Senedd consent. With report stage scheduled for 5th September 2023, 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. 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 made the point that legislating without consent in such circumstances would be unconstitutional and would fuel the arguments of those who would seek to undermine our United Kingdom.

Yours sincerely,



Julie James AS/MS

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