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Y Gweinidog Newid Hinsawdd  
Minister for Climate Change



Llywodraeth Cymru  
Welsh Government

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

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Dear Huw,

Many thanks to you and the Legislation, Justice and Constitution Committee for its report on the Supplementary Legislative Consent Memorandum (Memorandum No. 4) on the Levelling-up and Regeneration Bill. I have provided a response to your recommendations below.

### **General observations on consent**

**Recommendation 1. The Minister should confirm whether amendments 175, 176, 177 and 178 as they apply to clause 84 of the Bill require the consent of the Senedd.**

Thank you for highlighting this issue. The references to the amendment numbers 175, 176, 177 and 178 within the subheading to Clause 84 at paragraph 34 of the SLCM (No.4) were included in error. I can confirm that these amendments do not require the consent of the Senedd.

**Recommendation 2. The Minister should explain why she has changed her position and is now recommending that the Senedd provides its consent for clause 230 of the Bill (clause 191 as introduced).**

Clause 230 (clause 191 as introduced) is the general power of the Secretary of State to make consequential provision. As introduced, the Bill took no account of devolved matters, the role of devolved authorities or the Senedd. As such it was necessary to withhold consent in respect of the power to make consequential provision.

Significantly, the Bill as introduced did not provide the Welsh Ministers with regulation making powers under Chapter 1 of Part 3 and Part 6 and made provision in devolved areas. As such, consequential amendments made under clause 230 linked to the subject matter covered by those regulations would have been within competence and therefore we were not recommending consent at that time.

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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.

The Bill as amended allows regulations to be made by the Welsh Ministers under Chapter 1 of Part 3 and Part 6. Any such regulations will be able to include necessary consequential amendments by virtue of clause 231.

Clause 230 will allow the Secretary of State to make consequential provision in respect of the Bill as a whole, which may include provisions in consequence of non-reserved matters. Therefore, consent is required. However, we envisage that the main amendments relating to Chapter 1 of Part 3 and Part 6 would be included in regulations made by the Welsh Ministers under those Parts. Where consequential amendments are made by the Secretary of State, the Statutory Instrument Consent Motion pursuant to Standing Order 30A would be engaged.

**Recommendation 3. The Minister should explain:**

- whether clause 231 of the Bill (clause 192 as introduced) requires the consent of the Senedd;**
- why clause 231, as amended by amendments 288, 291, 294 and 298, requires the consent of the Senedd.**
- why she is recommending that the Senedd consents to clause 231.**

Clause 231 (clause 192 as introduced) does require the consent of the Senedd. It enables the Welsh Ministers when making regulations to make different provision for different purposes or for different areas, and consequential, incidental, supplementary, transitional, transitory or saving provision. As we are recommending consent to the regulation making powers in Chapter 1 of Part 3 and Part 6 of the Bill, we also recommend consent is given to clause 231.

**Part 1 of the Bill**

**Recommendation 4. The Minister should explain why the Welsh Government has changed its position and is now recommending that the Senedd consents to Part 1 of the Bill.**

**Recommendation 5. The Minister should explain how the change in the Welsh Government’s position to Part 1 of the Bill came about and when the decision was made to recommend that the Senedd gives its consent, given the Counsel General’s Written Statement on 23 June 2023 and the tabling of relevant amendments in early July 2023.**

**Recommendation 6. The Minister should explain why she did not write to Senedd Committees as soon as her position on Part 1 of the Bill changed, not least given that Memorandum No. 4 was laid during the summer recess period on 16 August 2023, and around a month after the relevant amendments were tabled (and outside the normal requirements of Standing Order 29) in the UK Parliament.**

**Recommendation 7. The Minister should state whether it is still the Welsh Government’s view that Part 1 of the Bill “represents an inappropriate intrusion into the legislative competence of the Senedd”.**

Response to recommendations 4,5, 6 and 7

Following a meeting with the then Minister for Levelling Up, Dehenna Davison MP, on 22 March and letter of 27 March 2023, I wrote to the Minister for Levelling Up on 26 April 2023 which confirmed that it remained our preference for Part 1 to be amended, reflecting our

view that Part 1 of the Bill would require the consent of the Senedd. On 3 July I met with the Minister to discuss proposed UK Government amendments. The Minister for Levelling Up wrote to me (4 July) to confirm their position on their proposed amendments. The UK Government tabled amendments to Part 1 (Levelling Up Missions) on 4, 5 and 6 July for consideration at the House of Lords Report stage. These were debated on 11 July 2023.

We received information on proposed amendments to the Bill from the UK Government at short notice and therefore we needed to assess the implications of these amendments from both a legal and policy perspective in order to lay a supplementary Legislative Consent Motion which we did at the earliest opportunity. The SLCM (No.4) confirmed the Welsh Government's position on the amendments.

The amendments proposed by the UK Government clearly indicate a recognition of the role of Senedd Cymru and the Welsh Government in the devolved areas covered by the Levelling Up Missions and respond to the concerns we have consistently expressed to UK Government on this Bill.

The amendments place several consultation and due regard obligations on the UK Government when setting, reporting, revising, and reviewing the statement of Levelling Up Missions and associated methodology. The amendments also require a Minister to report to Parliament on how they have had regard to the role of Senedd Cymru and Welsh Government which will be subject to scrutiny.

In operation, the UK Government would be required to take account of the role of the Senedd and Welsh Government requiring them to carry out appropriate consultation and give due regard. I recognised that this was a much-needed improvement to the Bill, creating a necessary fetter on the relevant Minister of the Crown in devolved matters, and create a report open to scrutiny on how they have given due regard.

I am content that the amendments tabled by the UK Government on 4 July 2023 improve upon the position set out in the original revised LCM laid on this Bill on 25 November 2022.

**Recommendation 8. The Minister should state whether, and if so when, she intends to bring forward a Welsh Government Bill covering matters related to Part 1 of the Bill to enable scrutiny by the Senedd and its Committees, as well as engagement with Welsh stakeholders.**

**Recommendation 10. The Minister should explain:**

- **the extent to which provisions in the Bill are already provided for in the Well-being of Future Generations (Wales) Act 2015 and whether any conflict or overlap exists between the two pieces of legislation;**
- **how the Bill and the 2015 Act will operate alongside each other;**
- **if there are any implications arising from the Bill for the Welsh Government's obligations under the 2015 Act, given her comments in the revised Memorandum.**

Response to recommendations 8 and 10

Part 1 of the Bill places duties on the UK Government. We already have a more comprehensive legislative framework for long term systemic policy making through the Well-being of Future Generations (Wales) Act 2015. Improving the well-being of everyone in Wales and addressing inequalities is the core mission of this Government and underpins the approach taken to the WFG Act. Through the WFG Act, we have a legislative framework to improve the economic, social, and environmental and cultural well-being of the whole of Wales for current and for future generations.

The provisions in clauses 1-6 of the Bill contain some of the elements that are already provided for through the WFG Act. The WFG Act provides for a suite of long-term well-being goals for Wales which are designed to address the key economic, social, environmental, and cultural challenges. It places duties on Welsh Government and devolved public bodies in Wales to set and achievement well-being objectives that are designed to maximise their contribution to each of the well-being goals. This includes 48 public bodies (including the regional Corporate Joint Committees) and Public Services Boards and some Town and Community Councils. The WFG Act also includes annual reporting through a well-being of Wales report, establishing national well-being indicators and milestones and the setting of objectives by Government and public bodies and associated reporting.

The LUR Bill does not have any direct implications for the duties on the Welsh Government in WFG Act. It does however result in a potentially confusing policy landscape given we have set out the long-term well-being goals for Wales with associated indicators and national milestones looking ahead to 2050. Public bodies have a legal duty under the WFG Act and we would expect them to discharge their legal duties and design and deliver well-being objectives that contribute to the achievement of Wales' well-being goals.

For example, despite the Welsh Government being denied any role in the design and delivery of the UK Shared Prosperity Fund, which should be devolved to Wales, the Minister for Economy wrote (June 2022) to local authorities to emphasise the importance of their investment plans and interventions aligning with Welsh Government delivery, policies and ways of working through our *Well Being of Future Generations Act* in order to achieve better value for money and better outcomes for Wales.

**Recommendation 9. The Minister should state what discussions she has had with the Secretary of State about the delivery of, and reporting on, each of the levelling-up missions relevant to Wales under Part 1 of the Bill.**

**Recommendation 11. The Minister should state how the Welsh Government's approach to policy-making on matters related to levelling-up will be changed should the Bill be passed by the UK Parliament and enacted.**

**Recommendation 12. The Minister should state what inter-governmental arrangements the Welsh Government intends to utilise in order to be engaged in the levelling-up agenda and the implementation of Part 1 of the Bill, and what arrangements she will put in place to ensure the Senedd and its Committees can hold the Welsh Government to account for the decisions it makes.**

**Recommendation 13. The Minister should state what mechanism she will use to seek a co-decision-making role for agreeing how funds supporting the levelling-up agenda (including the Shared Prosperity Fund) should be spent, and what arrangements she will put in place to ensure the Senedd and its Committees can hold the Welsh Government to account for the decisions it makes.**

**Recommendation 14. The Minister should report to the Senedd before 12 December 2023 on the outcome of her discussions with the UK Government in relation to recommendations 12 and 13**

**Recommendation 15. The Minister should make a statement to the Senedd setting out the outcome of the consultation now required by Part 1 of the Bill and make appropriate arrangements to ensure that the UK Government's first statement of levelling-up missions is brought to the attention of the Senedd within 7 days of it being laid in the UK Parliament.**

Response to recommendations 9, 11, 12, 13, 14 and 15

The UK Government's Levelling Up agenda and missions are broad, covering a wide range of areas, some of which are devolved to Wales. While the Welsh Government has had some meaningful engagement from the UK Government on policies impacting on our economy and labour market (for example Freeports), engagement on other areas, including on devolved matters, have been either non-existent or less than satisfactory (for example, in the design and delivery of the Shared Prosperity and Levelling Up funds as well as a series of smaller schemes including, most recently, the UK Government's announcement on Long term Plan for Towns on 1 October, with the UK Government denying the Welsh Government from having any decision-making role despite these being devolved matters).

It is unhelpful that the UK Government is persisting in using the financial assistance powers of the UK Internal Market Act to by-pass devolved governments and the scrutiny of their respective legislatures in order to spend directly in devolved areas of responsibility. This risks duplication, poor value for money and outcomes, and a confused funding landscape that is directly at odds with Welsh Government policies and does not meet the distinct needs of the Welsh economy and communities.

We will continue to use all channels of communication between the Welsh and UK Governments to represent our views and the interests of Wales, including through, for example the Inter-Ministerial Standing Committees and we will continue to press for decisions on devolved matters to be made by Welsh Ministers and scrutinised by the Senedd. A legislative framework already exists to hold the Welsh Government to account for the decisions it makes on policies and proposed legislation, of which the Senedd and its cross-party Committees are part.

In accordance with normal practice, the Minister will update the Senedd when there is anything substantial to report. Updates on discussions at Inter-Ministerial Standing Committees are also routinely provided to the relevant Senedd Committees as part of the Inter-Institutional Relations Agreement between Senedd Cymru and the Welsh Government agreement.

I will soon be writing to the new Minister for Levelling Up, Neil Young MP, to seek clarification and assurances on how the UK Government will comply with their new duties arising from the amendments and the approach to the reporting of this missions, and where data may be sought about these missions in Wales. This will include the process the UK Government intends to follow to ensure that it has regard to the role of the Senedd and the Welsh Ministers and carries out appropriate consultation with the Welsh Ministers.

In addition, Clause 2(2) specifically requires the UKG Minister to prepare a document that sets out how they have complied with the duty to 'have regard' to the role of the Senedd and the Welsh Ministers in connection with the levelling up missions. Clause 2(3) requires this to be placed before each House of Parliament, and publish it, at the same time as, or as soon as is reasonably practicable after, the statement of levelling-up missions is so laid and published. We will ensure that this report is brought to the attention of the Senedd.

## **Other parts of the Bill**

### **Recommendation 16. The Minister should explain:**

- **why she has agreed to the Secretary of State having powers to make regulations in relation to planning data and environmental outcomes reports, in areas of devolved competence;**

▪ **the circumstances under which she would consent to the Secretary of State making regulations in relation to planning data and environmental outcomes reports, thereby denying the Senedd the ability to fully scrutinise such regulations under its Standing Orders.**

This Bill started in a deeply unsatisfactory state containing placeholder provisions which gave the Secretary of State powers to legislate within devolved competence. The only acknowledgment of devolution was a requirement for the Secretary of State to consult the Welsh Ministers prior to making planning data and EOR regulations. As a result of Welsh Government engagement with UK Government the consultation requirements have been amended to become a consent requirement. The Welsh Ministers have regulatory making powers in devolved areas, either alone or concurrently with the Secretary of State. The Secretary of State would only be able to make regulations in devolved areas with the prior consent of the Welsh Ministers. Amendments also provide for a consultation requirement in situations where a Devolved Welsh Authority e.g., National Resource Wales is conferred a new function, or a function is modified or removed, under EOR regulations made by the Secretary of State for a reserved matter.

Given the safeguard of the consent mechanism, I consider a pragmatic approach to is required in this case, as is consistent with our principles. This will enable the potential benefits of the Bill as set out in my Supplementary Legislative Consent memoranda and enable smooth consent routes for cross jurisdictional schemes that may be required.

The UK Government would apply the EOR approach to consent regimes that are reserved irrespective of whether it is applied to devolved regimes. Therefore it is vitally important that the Welsh Ministers have the regulation making powers to use should they need them to ensure cross jurisdictional projects are adequately accommodated, even if it means accepting a concurrent plus approach.

To give consent for the Secretary of State to make EOR or planning data regulations acting alone would likely be limited to small technical matters. I do not envisage this situation happening frequently.

Specific consideration to the exercise of the powers would also need to be given to take forward EOR in areas where cross jurisdiction projects regularly occur. Marine consenting is the most likely area where alignment of processes makes sense to avoid duplication and additional procedures. Any regulations made collaboratively would have to be developed with full engagement with Welsh stakeholders.

**Recommendation 17. The Minister should clarify exactly how her concerns about clause 155(2) (clause 128(2) of the Bill as introduced), regarding the omitting of section 71A of the Town and Country Planning Act 1990 have been resolved as a consequence of the amendments to the Bill.**

As I outlined in my letter of 27 June 2023, the loss of section 71A would impact the ability of the Welsh Ministers to make regulations for the i town and country planning parts of the EIA regime. However, the amendments to the Bill, which provide the Welsh Ministers with the power to make EOR regulations in devolved areas means there is a mechanism for the entire EIA regime to be replaced in due course, if desired. As I consider the powers to make EOR procedures to be acceptable to Welsh Ministers, I consider all issues with the repeal of 71A to be resolved.

**Recommendation 18. The Minister should provide a detailed analysis of the regulation-making powers provided to the Welsh Ministers by the Bill including:**

- **the scope of each power;**

- a statement of policy intent for each power;
- when she intends to exercise each power.

The LCMs that have been laid on the Bill set out the scope of the powers provided to the Welsh Ministers, but I provide further detail on this matter in response to Question 22 below. In terms of a statement of policy intent of how I intend to use these powers and my timetable for doing so I want to engage with stakeholders over an appropriate framework for Wales. This means I cannot set these out at this time.

**Recommendation 19. The Minister should explain how her agreement to include concurrent powers in the Bill is consistent with principles that Ministers have agreed in Cabinet in relation to such powers, as set out in her letter to us of 6 August 2021.**

The position is consistent with those principles, as set out in principle 8. I have sought further improvement to this provision as detailed in [SLCM \(No.5\)](#), where the commencement of the provisions for the carve out is undertaken automatically.

I consider the rationale set out in response to recommendation 16 provides justification for the creation for these concurrent plus powers.

**Recommendation 20. The Minister should state whether she intends to bring forward, before the end of the Sixth Senedd, a Welsh Government Bill that will include provisions replicating those in the Bill relating to planning data and environmental outcomes reports to allow full Senedd scrutiny and to enable the making of bilingual, accessible Welsh law.**

I do not intend to bring forward a Welsh Government Bill that would replicate these provisions in the near future.

**Recommendation 21. The Minister should state when she expects the first opportunity to arise such that all concurrent powers in the Bill will be removed in accordance with principles agreed in Cabinet by Ministers.**

As is set out in response to recommendation 16 certain environments have benefited from a joint working approach to legislation. Therefore, I cannot at this point set out when concurrent powers will be removed. The amendments set out in SLCM (No.5) ensure that should we want to remove concurrent powers in the Bill in the future we are able to do so.

**Recommendation 22. The Minister should lay before the Senedd a document explaining the effect in Wales, including on devolved matters, of every section of the Act that applies in Wales within 3 months of the Bill receiving Royal Assent (should it do so).**

I consider the LCMs laid throughout the passage of the Bill set out the effects in accordance with Standing Orders. Should the Bill receive Royal Assent the explanatory notes should provide further an explanation of the Act, including the effect it will have in Wales.

Yours sincerely



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