

Agenda – Climate Change, Environment and Rural Affairs Committee

Meeting Venue:

Video Conference via Zoom

Meeting date: 8 October 2020

Meeting time: 13.30

For further information contact:

Marc Wyn Jones

Committee Clerk

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Private pre-meeting (13.30–13.45)

In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on www.senedd.tv.

Public meeting

1 Introductions, apologies, substitutions and declarations of interest

(13.45)

2 UK Emissions Trading Scheme: evidence session with the Welsh Government

(13.45–15.00)

(Pages 1 – 21)

Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs

Catriona Hawthorne, Lawyer, Environment and Energy Team

Rhiannon Phillips, Policy Officer, Carbon Markets

Christine Wheeler, Deputy Director, Decarbonisation & Energy



Senedd Cymru
Welsh Parliament

Attached Documents:
Research brief

Break (15.00–15.15)

3 Scrutiny session with the Minister for Environment, Energy and Rural Affairs on the Welsh Government's response to flooding

(15.15–16.15)

(Pages 22 – 51)

Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs

Gian Marco Currado, Director, Environment and Marine

Andy Fraser, Deputy Director, Water and Flood Division

James Morris, Head of Flood & Coastal Risk Management

Attached Documents:

Research brief

Paper – Welsh Local Government Association

Paper – Natural Resources Wales

Paper – Caerphilly County Borough Council

Paper – Rhondda Cynon Taf County Borough Council

Paper – Monmouthshire County Council

4 Paper(s) to note

4.1 Correspondence from the Minister for Environment, Energy and Rural Affairs – Update on the UK Fisheries Bill and response to the Committee's report on the Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the UK Fisheries Bill

(Pages 52 – 60)

Attached Documents:

Letter

**4.2 Correspondence from the Minister for Environment, Energy and Rural Affairs
– Supplementary Legislative Consent Memorandum (Memorandum No 4) on
the UK Agriculture Bill**

(Pages 61 – 63)

Attached Documents:

Letter

**5 Motion under Standing Order 17.42 (vi) and (ix) to resolve to
exclude the public from the remainder of the meeting and from
the first session of the meeting on 15 October 2020**

Private meeting

6 Consideration of evidence received under item 2

7 Consideration of evidence received under item 3

Document is Restricted

Agenda Item 3

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales. The three national park authorities and the three fire and rescue authorities are associate members.
 2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.
 3. WLGA welcomes the opportunity to provide evidence to the Climate Change, Environment and Rural Affairs Committee for the forthcoming scrutiny session on flooding. This report also includes feedback collated from councils in Wales.
 4. Flooding, coastal erosion and sea level rise are the greatest natural risks facing Wales and are likely to be further exacerbated by climate change. Last winter's floods were some of the most devastating floods to hit Wales in recent history with a succession of storms battering the UK and Wales with consistent rain.
 5. Unfortunately, this seems to highlight an increasing pattern of more frequent and intense storms. Whilst we have seen continued investment in flood assets from the Welsh Government and councils, this trend also highlights the huge challenge faced by Risk Management Authorities (RMAs) to plan and respond to these types of storms. It also questions the future resilience of services to manage flood risk and cope with the impacts from climate change, especially in light of public expectations that they will and should be protected from all flood events".
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6. We saw a fantastic response locally during and immediately after the events with council teams working around the clock to try and make badly impacted areas safe and to open-up access to affected areas. We also saw some very good solidarity amongst councils with the less impacted offering officers and equipment to support those in needs. There was also a huge response from communities and volunteers with a very high level of relief and help offered.

7. The Welsh Government response was also very positive offering a range of financial assistance to councils and homeowners¹. Councils also received further support from the WG's Flood & Coastal Erosion Risk Management (FCERM) branch through a high level of flexibility enabling RMAs to prioritise how to use the FCERM funding for emergency works.

Q1: Is the current level of funding provided by the Welsh Government for flood and coastal erosion risk management (FCERM), and for relevant authorities to provide emergency flood response sufficient?

8. Flood & Coastal Erosion Risk Management can be linked with day to day activities delivered by Risk Management Authorities (RMAs) to manage the risks from flooding. These include pre-planned capital works aimed at improving flood risk assets, inspection and maintenance of these assets, flood awareness as well as delivery of a range of statutory functions linked with flood risk management and sustainable drainage. These activities are usually funded through a mix of capital and revenue funding from the Welsh Government FCERM Branch as well as match funding from councils.
9. The current level of capital funding provided by the WG FCERM Branch for ongoing activities is adequate purely based on **the inability of RMAs to deliver more capital schemes due to a lack of capacity**. Furthermore, councils are also limited in the amount of capital schemes they can deliver due to the requirement to match fund 15% of construction works. To ease this issue the WG made some very positive changes to the programme this year by funding 100% for scheme development and reducing from 25% to 15% the intervention rates for coastal schemes. **Our members welcome these changes and are calling for these changes to remain in place for the foreseeable future and not seen as a 'one-off' measure. It is important to note that the COVID pandemic has also placed more financial hardship on councils and significantly increased the cost of capital schemes making the 15% match funding even harder to find.**
10. Whilst we acknowledge that the current level of capital funding from the Welsh Government for FCERM is adequate based on what we can physically deliver, it is important to note that this level of funding is insufficient to protect all communities in Wales. Considering climate change and projected increased risks, it would be unaffordable and highly unsustainable to consider capital investment to protect all communities in Wales. Resilience must therefore come

¹ Discretionary Assistance Fund (DAF)- **£1.3M**
Emergency Financial Assistance Scheme (EFAs)- **£1,989,338M**
FCERM Grant in Aid- **£2.89M**

from a range of other adaptative measures but support from a legislative and policy perspective is not in place to support these.

11. **The current WG criteria to access FCERM capital funding is also restrictive in solely focussing on protecting lives and properties** with a need for RMAs to demonstrate direct benefits through the number of properties being protected. Flood risk management however, especially surface water flooding, is intrinsically linked to highway and land management. The highway and topography are often the conduit for surface water flooding. However, because of the assessment criteria used, improvements to the highway infrastructure for a flood risk purpose are often not eligible under FCERM. **The current approach of focussing on specific assets/areas rather than a more holistic approach may reduce the level of protection.**
12. Furthermore, **there is an added requirement under the Well-Being of Future generations Act to deliver multiple benefits** and be more integrated in our delivery of capital schemes. However, current WG budgets do not offer the opportunity to maximise these opportunities as they tend to be managed in silos by different departments with different priorities. **Until WG budgets become integrated, we will not be able to fully deliver multiple benefits.**
13. **It is also important to highlight the resources needed to deliver effective and pro-active flood risk management.** All these resources have revenue funding implications and councils receive a ring-fenced grant from the WG FCERM branch (£50k annually increased to £105k this year) on top of the Revenue Support Grant (RSG) which councils allocate based on priorities.
14. **Whilst we welcome this year's increase in revenue funding, it is unfortunately insufficient to increase the resilience of councils' flood services and to adopt a pro-active approach to flood risk management.** The expectation of councils to subsidise using the RSG is also unrealistic in the face of ongoing cuts as highlighted in Figure 1.

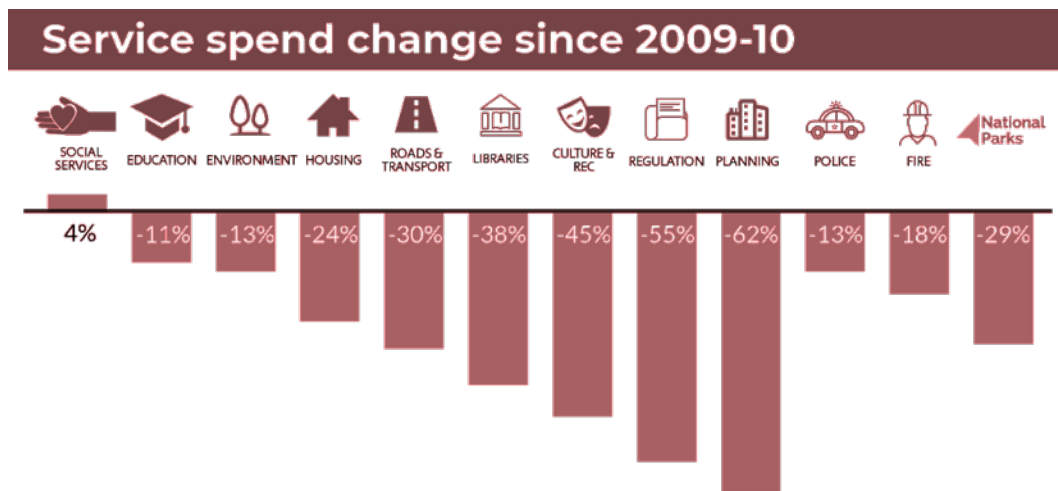


Figure 1- Local Government budget cuts

15. The resilience of FCERM services is further hindered by additional non-funded duties placed on FCERM services (Sustainable Drainage legislation). **In practice, this translates into an inability to employ more staff, a hindered ability to inspect, investigate and manage existing assets as well as deliver more capital schemes.** Furthermore, having to wait each year to find out what its grant will be undermines councils' confidence and willingness to allocate additional, upfront revenue themselves. **The WLGA has long called for increased revenue funding to support councils' FCERM work and services and for longer term settlements.**
16. Emergency flood response is delivered by a range of stakeholders and triggered during and after flood events. The Council's emergency response to flooding is provided by a number of different teams and varies according to the nature of the flood event. Typically, Street scene (Highways), Social Services, Housing and Facilities and Emergency Planning would be involved, with support from the flood risk management team and the senior leadership team. The work will include preparing for an event, supporting, and protecting communities during an event as well as undertaking huge operational activities afterwards from cleaning-up to emergency works on failed assets. This work also includes support in response to requests for assistance from businesses and residents affected
17. The funding required for such events (emergency funding) is usually based on the scale of impacts and ability of councils to estimate accurately the costs of impacts. It consists of a mix of revenue and capital funding to cover a range of activities. The WG made several funding pots available to councils last year (refer to para7) including 100% capital funding from the FCERM Branch which supported emergency works on flood assets. Although the capital funding from the FCERM Branch was only possible due to an underspend to last year's

budget, historically the WG has responded positively in providing emergency funding to councils. **However, with major storms happening in winter and the time needed to safely start work, councils are under huge pressure by the constraints of the financial year and their own capacity to make full use of this emergency funding. This ultimately leads to councils being unable to deliver other FCERM statutory functions to ensure funding deadlines are met. The WLGA would encourage the WG to remove those 'end of year' constraints for emergency funding.**

18. To our knowledge Emergency Planning and other blue light services represented through the Local Resilience Forums (LRFs) do not receive additional funding from the WG to support emergency flood response. Furthermore, Emergency Planning teams within councils have been decimated and real term reductions in local authority budgets will inevitably have had an impact on the Council's response to flooding, to a greater or lesser extent, depending on the scale of the event.

Q2: Will more emergency funding be necessary to assist local authorities to deal with flooding this winter.

20. It is impossible to predict whether the winter of 2020/21 will be as storm dominated as 2019/20. However, statistical records highlight that flooding seems to be more likely than, say, 10 years ago. Whatever the statistical likelihood of flooding this winter, it makes sense to prepare for the worst. That includes setting funding aside to be able to respond rapidly, according to need. However, the intermittent and unpredictable nature of flood events as well as the current financial hardship exacerbated by the COVID pandemic means that identifying dedicated Council contingency funding and resources to respond to these events isn't realistic. Equally, the WG cannot set aside contingency funding 'in case of flooding' and has historically been able to find emergency funding when required.
21. One of the most important aspects of flood response is the activities that are carried out in advance of a flood event. For example, inspecting and clearing screens, culverts, highway drains and other critical flood assets as well as undertaking regular cctv inspections and investigations throughout the year. There are occasions when this can be a severe challenge to councils and resources can become stretched and possibly overwhelmed as result of dealing with several weather extremes at once like storm Ciara and Dennis. **However, the critical issue hindering this pro-active approach to preparedness is the ongoing lack of revenue funding which currently results in councils being reactive. With climate change in mind and the current**

level of revenue funding allocated to councils, we feel that councils are a long way away from being fully prepared and resilient.

Q3: Are local authorities sufficiently supported to recover from a major flooding event, undertake any necessary investigations and make changes needed to manage the risk of a recurring event

22. The support required to recover from a flooding event is 2-fold: financial and other resources. As highlighted above, it is impossible to financially plan and have contingency funding in place. Historically, the emergency funding provided by WG has been acceptable in supporting councils with the recovery costs associated with floods, albeit with delays in it being issued and time constraints associated with the financial year.
23. Following last winter's floods, the WG triggered the Emergency Financial Assistance Scheme (EFAS) for revenue costs and 'other than flood assets' capital costs. The EFAS for revenue costs was deemed inadequate due to the current grant rates and threshold² which left councils out of pocket. The WG is still in discussion with central government for the capital funding and we understand that a settlement of £100M over 4 years has been requested. 8 months down the line and councils have not been informed of this funding being secured.
24. Compiling EFAS claims was a significant piece of work for councils who were also being asked to identify the recovery costs of the floods (split over 3 financial years). The February floods triggered an unprecedented amount of information requests from the WG and other organisations. The requested information has often been a duplication, with queries being sent to different points of contact within the Council. There was also a further expectation from the WG for councils to manage the Discretionary Assistance Fund applications and undertake households visit to reduce the risk of false claims. This added further stress on already overwhelmed services, again impacting on their ability to focus on emergency and recovery.
25. On the other hand, the lack of resources makes responding to major flood events very difficult. Such events generate huge volumes of workload through the initial response phase to investigations, reporting, public engagement, and scheme development. Furthermore, there is a public expectation that a flooding problem should be resolved immediately after the event, whereas in reality it can take years. As an example, RMAs are still in recovery mode from

² Rates are calculated at 0.2% of an authority's annual budget requirement. (These apply to the whole financial year, not to each incident within the financial year so the more incidents in a year the more likely the threshold will be crossed). For qualifying expenditure above the threshold, grant is normally paid at 85%. For significant incidents where eligible expenditure exceeds ten times the threshold, 100% will be reimbursed.

last winter's floods, section 19 reports are still ongoing and numerous capital schemes are yet to be identified, developed, funded, and constructed.

26. Councils and other Risk Management Authorities are not resourced enough and the issue is further exacerbated by a current deficit in skilled workforce which *a)* makes it difficult to identify suitable candidates, *b)* increases reliance on external contractors who are also reaching capacity limits, especially when commissioned on the back of flood events. It is clear that additional long-term financial support is required to reverse the current trend and capital funding alone cannot solve this.
27. Councils are clearly at the forefront of recovery and are heavily involved throughout a flooding incident and post incident as well as supporting communities impacted. However, the level of support that flooded communities require (sometimes for years after) is beyond councils' capability as it often requires dedicated resources with specific skills to provide the necessary support and increase communities' health & well-being.

Q4: how effective the Wales Flood and Coastal Erosion Committee is in providing an advisory and coordinating role to Welsh Government.

28. The Flood & Coastal Erosion Committee is still in its infancy being in place for just over 12 months. As such, it is too early to assess its efficacy in its advisory and coordinating role. The committee has so far been very pro-active in responding to various WG consultations including the Updated National Strategy for Flood & Coastal Erosion as well as the National Development Framework.
29. The Committee has also developed a robust work programme informed by the needs of RMAs and national priorities and is looking to target some key issues inherent to FCERM including the lack of resources, the need to identify alternative funding mechanism for capital works and reviewing current FCERM policies and legislation. These specific areas of work have already started with sub-committee groups set-up.

END

**CCERA scrutiny session with the Minister for Environment, Energy and Rural Affairs
on the Welsh Government's response to flooding.**

**Comments from Natural Resources Wales in response to request from the
Committee's secretariat**

30 September 2020

1. Flooding is one of the top civil contingency risks in Wales, and the impacts of climate change are likely to produce more extreme weather and more flooding in the future (see for example, the UK Climate Change Risk Assessment 2017¹, Welsh Government Climate Change Adaptation Plan², UK Climate Projections 2018³, Intergovernmental Panel on Climate Change Special Report⁴). The impacts of flooding can be devastating, not just to human life and properties, businesses, infrastructure and the economy, but also in terms of human well-being and damage to the environment and to nature.
2. The rainfall and river levels that led to the floods of winter 2019-20, and February in particular, were exceptional. It was the wettest February since records began in 1862, the fifth wettest month of all months, and the fifth wettest winter on record. Record river levels were recorded in many locations and these events produced significant impacts across Wales, with over 3,100 properties flooded during February.
3. Managing such severe weather events, at a greater frequency, means there are huge challenges ahead. There is a need for adaptation to climate change to respond to the impacts that are locked in, as well as continuance of measures for mitigation and decarbonisation.
4. Welsh Government recognise these issues, in the declaration of the Climate Emergency, and the ground-breaking Well-being of Future Generations legislation. The WG Climate Change Adaptation Plan sets out the responses needed, with flood risk featuring prominently in the risks. The upcoming revised National Flood and Coastal Erosion Risk Management Strategy from Welsh Government also sets out the challenges, and the nature of the response.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/584281/uk-climate-change-risk-assess-2017.pdf

² https://gov.wales/sites/default/files/publications/2019-11/prosperity-for-all-a-climate-conscious-wales_0.pdf

³ <https://www.metoffice.gov.uk/research/approach/collaboration/ukcp/index>

⁴ <https://www.ipcc.ch/sr15/>

5. Natural Resources Wales (NRW) also recognises these risks, of climate change and increased flooding, and has a key role to play, alongside all flood Risk Management Authorities (RMAs). We need to invest in our people, processes and systems to keep pace with the challenges, to manage the risks from flooding to the people of Wales.
6. We comment on the four specific questions posed by the Committee below.

Question 1: whether the current level of funding provided by the Welsh Government for flood and coastal erosion risk management (FCERM), and for relevant authorities to provide emergency flood response, is sufficient;

7. Many elements are required for an effective emergency flood response. It is clearly not just about providing emergency funds for repairs and support after the floods – though Welsh Government acted swiftly to put such support in place after the floods in February. There needs to be the **capital investment** in flood defences, to reduce the likelihood of flooding to homes and businesses. This is not just hard flood defences, but also elements like holding back water in uplands and making space for water. There also needs to be the **revenue investment** in maintenance work, to ensure the defences are kept in good condition so they do their job when required.
8. Defences can reduce the risk of flooding, but cannot eliminate it. There is also a need for investment in a suite of other measures to manage the risks of flooding. This includes investment in mapping and modelling to understand what is at risk and where, and in development planning, to control the number of properties and infrastructure built in flood plains and put at risk in the first place. Investment in hydrometry and telemetry services is crucial to obtaining accurate information on rainfall and river levels, to feed into the forecasting models to enable effective warnings of flooding to take place. This flood warning service requires deep skills and expertise of staff to interpret data and make decisions about when and where to issue warnings, as well as investment in technology and processes. We also need to work with communities to help them understand what the warnings mean, and what action they need to take if they receive one. We also need to help communities focus in on what they can do themselves, including making their own community flood plans or their own properties more resilient to flooding. In a flooding event itself, we also need staff to go out for the operational response (e.g. clearing trash screens and closing flood gates), and have staff in incident duty roles including forecasting and warning. Although there are capital elements to the infrastructure needed, all of these activities require **revenue investment** for the staff and recurrent costs. We make decisions about the levels of effort we put into these different activities, dictated by the budget and resource available.
9. NRW invests its budgets to manage flooding on a risk basis, and this is a product of both frequency of flooding, and the impacts when it does flood. The impacts are greater when there is more at risk – people, properties, businesses. This means that our budgets are prioritised to locations with greater numbers of people at flood risk, and less on more isolated locations with fewer properties at risk. This again is another facet of the prioritisation choices we need to make.
10. Often there is a call for increased capital spend to build more defences, or emergency funds for the short term immediate recovery work. Both of these are important, but the long term revenue needs are just as, if not more, important, as this underpins the skilled and specialist staff who run the suite of flood risk management services and build our resilience to future events. Clearly, more work to manage flood risk can be done if there is more resource. The level of investment is a choice, alongside all the competing

societal demands on the public purse. The flooding of February 2020 stretched all organisations involved, and they were exceptional events – but the climate scientists tell us that we can expect that such events will be more frequent in the future. If we are to respond well to more frequent and more extreme events in the future, then the levels of resource need to keep pace. Managing such huge quantities of water will be challenging, and there is no single solution. We will need the range of measures at our disposal, and it is not just capital investment in defences.

Question 2: whether more emergency funding will be necessary to assist local authorities to deal with flooding this winter;

11. See response to Q1. Although emergency funds may be needed if there are significant floods this winter, the bigger picture is long-term investment in the services that underpin flood risk management – particularly the revenue funded services. This is both in preventative maintenance work, which should reduce the likelihood of any defence suffering damage or failure, and in the revenue funded services such as flood mapping, forecasting and warning, and work to prepare for flooding incidents (e.g. planning and exercising).

Q3. Whether local authorities are sufficiently supported to recover from a major flooding event, undertake any necessary investigations and make changes needed to manage the risk of a recurring event

12. Although this question is geared to local authorities, it is relevant to NRW as well. Recovery work after a flood takes many forms. Much of the immediate recovery is about assessing damage and undertaking repairs. Then there is making immediate improvements to our services and responding to the huge volume of public questions and concerns. Elements of this are still ongoing, and all of this unscheduled work has an impact on planned work programmes.
13. The LAs rightly lead on recovery for their communities, as it is the LAs that oversee the main health, social, transport and environmental services that are needed. However, other organisations clearly also need to be involved. For example, the flooding can be from a variety of sources – watercourses or drains – that may be the responsibility of the LA, NRW, the water company, or private owners. It is important that all parties work together to understand the causes of flooding and what can be done about it, and also work together in the recovery efforts. NRW is assisting LAs in their investigative work into why flooding occurred, where appropriate.
14. After any significant flooding or environmental incident, NRW undertakes a review to understand what went well, and what can be improved. We are undertaking a comprehensive review of our performance in the February floods and will be sharing our findings in October, including areas for improvement. The results of our recovery and review work can complement any other reviews done by other organisations.

Q4. How effective the Wales Flood and Coastal Erosion Committee is in providing an advisory and coordinating role to Welsh Government.

15. The Flood and Coastal Erosion Committee is a relatively new statutory committee with a role to advise Ministers. The members are drawn from a range of organisations with a role in Flood Risk Management (FRM) in Wales, and each member has good experience of FRM issues. The FCEC has a work programme, with themes that are

highly relevant to the furtherance of FRM in Wales. The FCEC has already been active in these themes; for example, it has provided responses to several Welsh Government consultations. The work of the FCEC on these work themes should be helpful in providing advice to Ministers. A challenge is that this is an advisory committee and its members are giving their time in an unpaid capacity, therefore consideration needs to be given to the capacity for delivery - it cannot take on too many activities.

END

Senedd Cymru
Y Pwyllgor Newid Hinsawdd, Amgylchedd a
Materion Gwledig
Ymateb Llywodraeth Cymru i lifogydd
CCERA(5) FL 01
Ymateb gan Cyngor Bwrdeistref Sirol Caerffili

Welsh Parliament
Climate Change, Environment and Rural Affairs
Committee
Welsh Government's response to flooding
CCERA(5) FL 01
Evidence from Caerphilly County Borough
Council

Background

The Climate Change, Environment and Rural Affairs Committee will be running a scrutiny session with Lesley Griffiths focussing on last year's floods and preparedness as we head into the winter.

LA's have been asked to submit evidence to the Committee around the following areas:

Whether the current level of funding provided by the Welsh Government for flood and coastal erosion risk management (FCERM), and for relevant authorities to provide emergency flood response, is sufficient;

The current capital funding is insufficient. The funding is organised very well by the current WG team to support the delivery of schemes, however, LA's struggle with staff resources to project manage feasibility studies/design and construction schemes due to other flood risk management functions and work commitments. Additionally, the requirement to match fund 15% towards the schemes is a problem for LA's, further reductions or zero contribution are needed for the next 5-10 years. Further, LA's have a backlog of projects that need funding but due to unavailability LA's have to prioritise those schemes most likely to cause the most damage to properties as a result of flooding.

The restriction of the current FCERM funding criteria can sometimes hamper the ability of LA's to deliver schemes to protect them from surface water flooding. FCERM funding to make improvement to highways to reduce flood risk as the highway is not deemed as 'protecting homes and businesses. However, highways is often the biggest channel for the surface water flows.

LA's have serious concerns due to the lack of revenue funding allocation. NRW get £21M year and LA's only get £1.1M (£2.5M this year).

The lack of revenue funding restricts the ability of for LA's to be resilient, plan, inspect, investigate and maintain assets to a good quality standard. We also need longer settlements as the yearly allocation restrict employment opportunities and the long-term planning necessary in FCERM.

Whether more emergency funding will be necessary to assist local authorities to deal with flooding this winter;

A bit of an unknown until we see what this winter will bring.

We need more revenue funding at this time of the year to help prepare, investigate and maintain assets regularly ahead of the winter.

Whether local authorities are sufficiently supported to recover from a major flooding event, undertake any necessary investigations and make changes needed to manage the risk of a recurring event

LA's are still recovering from 15th & 16th February 2020 floods. There is still huge workload outstanding. We are still collating information, still doing analysis and developing s19 reports. Lack of staff is one issue and sufficient revenue funding to develop appropriate other urgent scheme works.

How effective the Wales Flood and Coastal Erosion Committee is in providing an advisory and coordinating role to Welsh Government.

It is still too early to give an accurate assessment due to it only been in place 12 months.

Senedd Cymru
Y Pwyllgor Newid Hinsawdd, Amgylchedd a
Materion Gwledig
Ymateb Llywodraeth Cymru i lifogydd
CCERA(5) FL 02
Ymateb gan Cyngor Bwrdeistref Sirol Rhondda
Cynon Taf

Welsh Parliament
Climate Change, Environment and Rural Affairs
Committee
Welsh Government's response to flooding
CCERA(5) FL 02
Evidence from Rhondda Cynon Taf County
Borough Council

Rhondda Cynon Taff's CBC Response to the Invitation to submit views on the Welsh Government's response to flooding by the Senedd's [Climate Change, Environment and Rural Affairs Committee](#)

Question	RCTCBC Response
<ul style="list-style-type: none"> – whether the current level of funding provided by the Welsh Government for flood and coastal erosion risk management (FCERM), and for relevant authorities to provide emergency flood response, is sufficient; 	<p>The level of funding for capital investment is considered reasonable for what we currently know.</p> <p>However, the National Strategy being published soon, and this will trigger a review of RCT's Local Flood Risk Management Strategy which in turn will feed into a review of Flood Risk Management Plans for completion by Dec 2021. Therefore, there could be further demand on the funding as programs and pipelines are developed over the next 12 months.</p> <p>In terms of revenue support to deliver the preparation of the Strategies, plans, regulation of the legislation and planning for emergency flood response, it is likely that further support is required. The Welsh Government funds each LA with revenue support annually. This was £70k in 2019/20 and increased to £105k for 2020/21 after the February Storms. This supports regulatory functions, asset investigation and assessment and maintenance. However, the funding is not allocated on a risk basis, that is all LAs get the same amount regardless of flood risk within their borough. For example, RCT receives 4.54% (1/22) of the national revenue funding. An estimate based on the Communities at Risk Register (CaRR) would suggest that RCT has 21% of the national surface water flood risk to manage. This would suggest that from a proportional risk position RCT is underfunded to support its flood risk</p>

	management functions.
<ul style="list-style-type: none"> – whether more emergency funding will be necessary to assist local authorities to deal with flooding this winter; 	<p>RCTCBC is very grateful to the Welsh Government for the Emergency Funding received from FCERM. There is a strong likelihood that further funding may be necessary should the borough experience storm events. This is primarily to do with the fact that surveys and repairs to the damage infrastructure is ongoing which may increase the risk of flooding and further damage during the winter.</p>
<ul style="list-style-type: none"> – whether local authorities are sufficiently supported to recover from a major flooding event, undertake any necessary investigations and make changes needed to manage the risk of a recurring event 	<p>RCTCBC response from all departments has been enormous and challenging with over 1,400 properties internally flooded during Storm Dennis..</p> <p>The flooding within the borough has generated 28 unique flood investigation areas and likely 19 s19 regulatory reports under the flood and Water Management Act 2010. This invaluable information will feed into the Strategy, plans and projects to manage the risk from recurring events. This strategic work is generally supported by the revenue funding indicated in Question 1.</p> <p>There is no indication currently of additional revenue funding being made available by the Welsh Government to support the borough, and as further indicated in Q1, managing the risk is further hindered by linear and not proportional funding based on the flood risk.</p>
<ul style="list-style-type: none"> – how effective the Wales Flood and Coastal Erosion Committee is in providing an advisory and coordinating role to Welsh Government. 	<p>The FCEC committees annual report demonstrates how active the committee has been within their first year especially responding to national consultations. It highlights the use of the committee for independent review of documents/reports which is useful based on the different areas of expertise from its members. From a LA perspective, it is good to see good representation from local Authorities and WLGA.</p>

Senedd Cymru
Y Pwyllgor Newid Hinsawdd, Amgylchedd a
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Ymateb Llywodraeth Cymru i lifogydd
CCERA(5) FL 03
Ymateb gan Cyngor Sir Fynwy

Welsh Parliament
Climate Change, Environment and Rural Affairs
Committee
Welsh Government's response to flooding
CCERA(5) FL 03
Evidence from Monmouthshire County Council

The comments below are in a response for detail concerning Welsh Government's response to flooding events. The detail is for consideration and where necessary for inclusion in a WLGA report to include responses from other Welsh Local Authorities. The response focus on the 4 key areas as numbered below and as set out in the request for information.

1. Whether the current level of funding provided by the Welsh Government for flood and coastal erosion risk management (FCERM), and for relevant authorities to provide emergency flood response, is sufficient;

Revenue Funding

- 2019/20 £105,000
- This grant covers statutory activities under the Flood And Water Management Act 2010 as Lead Local Flood Authority, which include:
 - o SuDS Approving Body (SAB)
 - o FRMP & LFRMS activities
 - o Asset maintenance, inspection, recording and mapping
 - o Flood investigations
 - o Training
 - o Software etc.

Current levels of funding do not allow Monmouthshire CC as the LLFA to deliver the current demand on the in-house Flood Team. Additional revenue funding is required to support the following activities:

- Staff costs for investigation, studies and scheme development works associated with the response to the devastating flooding experienced during winter 2019/20. These flood events have resulted in a significant increase in workload which requires additional funding to undertake the necessary investigations, reporting and scheme appraisals. Without further funding, delays in completing Section 19 reports and promoting flood schemes are inevitable unless additional resource can be employed.
- Asset inspections and recording – Current levels of funding hamper the quantity of drainage investigations which we are able to undertake. Additional funding would secure resource to undertake additional activities such as CCTV surveys, culvert capacity checks etc., asset recording etc.. Following the winter flood events of 2019/20 we have seen a significant increase in demand within this area.
- Staff costs associated with the role of SUDS Approving Body - workload has doubled during 2020 compared to 2019 when Schedule 3 was enacted. No additional financial support has been received which has significantly drained staff resources and reduced capacity to manage and respond to flood events.

Annual allocations of Revenue funding make it very difficult to forward plan workload. If certainty of funding for staff resource could be provided, appointments over 2-3 years could be made to cover elements of work that span financial years i.e. scheme assessment & development, activities associated with Flood Risk Management Plans and Local Flood Risk Management Strategies etc.. Longer term settlements will also support programmes of works associated with asset maintenance and inspection.

The majority of communities affected by flooding in Monmouthshire during winter 2019/20 were flooded from main rivers. MCC as Lead Local Flood Authority are limited as to what we can do to resolve these issues from main river flooding and are largely reliant on Natural Resources Wales (NRW) to react and assess potential mitigation options. As well as our own resource limitations we are aware of the limited resources available to NRW to respond to such large events which spanned much of Wales last winter. Additional funding is therefore required across all RMA's to work collaboratively to protect our communities. With more frequent flood events, workloads of LLFA's and RMAs will only increase, the costs of which need to be met by sufficient levels of funding.

Capital

- Current levels of funding are generally sufficient. MCC have generally been successful in receiving the required grant funding through scheme applications. Recent flood events have identified the need for more flood schemes which will require greater future capital investment.
- The Small Scheme Grant has been beneficial for the typical smaller schemes in Monmouthshire.
- Grant Received:
 - o Last 3 years £159,879
 - o 2019/20 - £127,500
 - o Total - £287,379

Recent changes to the Small Scheme threshold to allow allocations to LLFA's of >£100k was welcomed and much needed. As with larger capital schemes, a significant increase in the number of small schemes required annually is anticipated. We are currently developing a 5 year forward programme of small schemes which will require additional grant support to deliver along with experienced staff resource and expertise to manage these projects. The ability of this grant to span financial years would be beneficial.

As outlined above, the current level of investment limits what can be achieved by LLFA's and RMA's. When we experience significant flood events there is very little to no staff resource readily available to adequately respond without diverting resource from other areas. This has a knock on effect and threatens the ability of LLFA's to deliver their statutory duties under the Flood and Water Management Act 2010. Work associated with the response and recovery to a major flood event takes months even years to deliver. The effects of the Winter 2019/20 events will be felt for years to come in Monmouthshire and require a continued increased level of investment to adequately respond. This work has to take place alongside "the day job" and whilst delivering other key statutory functions related to FCERM.

DAF Grant

Financial assistance provided directly to residents through the DAF scheme was welcomed by

residents. Approximately 150 properties benefitted from this scheme in Monmouthshire. Monmouthshire CC were required to administer this financial aid scheme, process applications and check properties were flooded, which required significant input from staff across the Authority. The substantial costs associated with this work have not been recovered and are not eligible under the EFAS grant. Future schemes should take account of this and allow Authorities to employ additional resource and re-cover all such costs.

2. Whether more emergency funding will be necessary to assist local authorities to deal with flooding this winter;

If another wet winter is experienced with regular or significant flooding, yes, additional funding to undertake emergency repairs, clearance and inspections will be required. Such flood events also require a significant volume of post event input through Section 19 reports, residents meetings, scheme assessments and development etc. which current levels of revenue funding do not cover.

LLFA staff are already fully utilised with statutory duties with next to no capacity to drop workloads and respond to major flood events without causing delays in other areas. Any further notable flooding this winter which requires a response from staff during and post event(s) through inspections, reports, scheme promotion etc. would require additional financial support.

Monmouthshire CC were successful in applying for £101,525 through the Emergency Flood Response Grant in February 2020. This grant covered essential work undertaken during the initial response to the flood events and was very welcomed. The grant however required all costs to have been incurred and claimed by the end of March 2020. At this time we were still experiencing flooding and the aftermath of Storms Ciarra, Dennis & Jorge. Whilst this grant covered a lot of the culvert and watercourse works, much of this work was still ongoing and could not be recouped through the grant. We subsequently tried to re-coup the costs through the EFAS grant which was unsuccessful due to the threshold limits as outlined above. Such grants need to be more flexible in terms of end of financial year's restrictions to accommodate ongoing events.

3. Whether local authorities are sufficiently supported to recover from a major flooding event, undertake any necessary investigations and make changes needed to manage the risk of a recurring event

As outlined in 1. above, current levels of funding and resource make responding to major flood events very difficult. Such events generate huge volumes of workload through the initial response phase to investigations, reporting, public engagement, scheme development etc.. Public perception is often that a flooding problem should be resolved immediately after the event, where in reality it can be years later. Further investment can allow LLFA's & RMA's to manage the expectations of individuals more effectively and to assess and deliver flood alleviation options in a more timely and cost effective way.

In terms of funding to recover costs associated with major flood events, Monmouthshire CC

have sought funding through the EFAS scheme which has identified a number of issues. A general observation of the EFAS scheme is that it has to be activated by Welsh Government for a particular event. Therefore Council's currently do not have any certainty that they will be supported financially when faced with a serious event.

Specifics in respect to the February floods:

- When the scheme was activated we were led to believe that Ministers had indicated that there was some flexibility in the scheme. Councils were encouraged and advised to register even if costs were not expected to exceed their threshold.
- Councils were also encouraged to award additional reliefs for Council Tax and Business Rates to homes and businesses affected by the floods and to include these in the EFAS return (the expectation was that these would be fully funded)
- From the contact we had with Welsh Government colleagues, there was an expectation that the usual thresholds would not apply. However this turned out not to be the case. When the EFAS terms and conditions were released towards the end of March 2020 the standard thresholds were applied along with the 85% rule on eligible expenditure. (This also applied to the Council Tax and Business Rate element of the claim).
- Compiling the claim was a significant piece of work and involved Officers from across the Council, with Welsh Government requiring a detailed list of the work undertaken. The result of this exercise was a payment of just £6,857. It really was not worth all the effort for such a small sum of money.

At the same time as compiling the EFAS claim, Councils were also being asked to identify the recovery costs of the floods (split over 3 financial years). This information was submitted to Welsh Government in May 2020. We have only recently been given the go ahead (mid September) to start this work and for 2020/21 only. Again, as with EFAS, the guidance is patchy and incomplete making it very difficult for Councils to plan both the work and their finances.

The main sticking point appears to be that Welsh Government are looking to the UK Government to provide funding for these emergency schemes. Delays in agreeing this funding has a direct impact on councils, who are dealing with the effect of these events in real time. This all makes it very difficult for Councils to plan and manage their resources.

With regard to managing risk of recurring events, Welsh Government are aware of the issues with private un-adopted flood bunds which breached in Monmouthshire during Storm Dennis & Jorge. These events, most notably in Llanbadoc, Llanwenarth and Prioress Mill Lane Usk, resulted in significant and life threatening flooding to many properties. With the exception of Llanbadoc, which has now been recognised and formally adopted by NRW as their asset, the remaining locations remain in a state of uncertainty.

Despite some repairs being undertaken, residents remain in a state of extreme anxiety and

consciousness that repeat flood events could result in a catastrophic failure of these defences again, and that a repeat of the devastation caused during winter 2019/20 could re-occur.

All parties recognise the need for such defences to be assessed, monitored and inspected as they are key assets in protecting property and life. As these structures form a defence from main river flooding, Monmouthshire CC are not in a position to formally undertake the above. Funding, which can only be released from Welsh Government, is required to allow Natural Resources Wales as Risk Management Authority, to undertake the appropriate assessments of these structures, with a view to undertaking the necessary improvements to allow them to be formally adopted and placed on a cyclic inspection and maintenance regime.

As the first point of contact for our residents affected by flooding, Monmouthshire CC has continued to raise concerns over this with NRW and Welsh Government. Unfortunately the issues and concerns held by residents remain, with no resolution in sight. Greater support from Welsh Government in recognising the need for swift action and financial assistance to deal with such issues should be realised following last winter's flooding and during similar future flood events.

4. How effective the Wales Flood and Coastal Erosion Committee is in providing an advisory and coordinating role to Welsh Government.

We as LLFA have not had any direct dealings with the FCERM Committee nor are aware of the how effective they have been with advising Welsh Government. More details of the Committee's meetings including Agendas and minutes would be welcomed.

In addition to the main funding streams for FCERM, additional funding is required for Local Authority Highway teams to manage surface water drainage systems effectively. We are already experiencing more frequent year round heavy rainfall events in Wales with the situation only going to get worse. Rural highway drainage systems in particular are more frequently being called upon to cope with overland runoff, for which they are not designed to cater for. With cuts to highway budgets over many years, little or no proactive inspection or maintenance is not uncommon on these drainage systems. Effectively they are falling into a state of disrepair and require significant investment to restore and upgrade to cater for larger rainfall events brought about by climate change. These highway drainage systems often form a crucial role in flood prevention and should be treated as flood defence assets where they provide such a function. Additional funding specific to these assets is required to ensure communities are protected from effective surface water drainage systems that are fit for purpose.

As part of this review elected Members have been consulted and have raised the following additional points for inclusion in this submission:

- Improved funding for highway drainage systems and watercourses required
- Funding to repair damaged road surfacing is required post flood events
- On the preventative side maintaining clear planning policies on not having future residential developments in flood zones and not to pursue the technical risk based

approach being proposed for TAN15 and to have a zero tolerance approach to building in areas which are at risk of flooding.

- The Welsh Government should always provide the full resources on a claim basis to cover the impact and costs of flooding for local authorities. There may also be hidden later costs of flooding events. For example the drainage replacement and resurfacing. So the deadline for claims needs to be left open for some time after the flooding event so its true cost implications can be properly assessed.
- A fund to cover emergency accommodation for residents who have had to evacuate their homes is required. This can be for periods of over 12 months in some cases.

Agenda Item 4.1

Lesley Griffiths AS/MS
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Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LG/3222/20

Mike Hedges MS
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1 October 2020

Dear Mike

I wish to provide an update on the UK Fisheries Bill, ahead of the scheduled Legislative Consent Motion (LCM) debate which has been rescheduled for 6 October. Thank you for your letter dated 22 September and your report on the Supplementary Legislative Consent Memorandum (Memorandum No. 2). I have responded to your recommendations in this letter.

House of Commons Committee stage

A Supplementary Legislative Consent Memorandum (Memorandum No. 3) was laid on 16 September in respect of amendments tabled at Commons Committee stage. I have today laid a final Supplementary Legislative Consent Memorandum (Memorandum No. 4) (SLCM (No.4)), in advance of the LCM debate, which captures those amendments agreed at Commons Committee stage which had not been covered in the Memorandum laid on 16 September and clarifies some amendments made previously (Your **recommendations 1 and 2** are responded to via SLCM (No.4)). A new version of the Bill has been published and I have provided the link here:

<https://publications.parliament.uk/pa/bills/cbill/58-01/0181/200181.pdf>

References to clause/schedule numbers in this letter relate to the new version of the Bill.

House of Commons Report stage

My officials provided input during the early Bill stages to ensure all amendments which related to the legislative competence of the Senedd could be included at Commons Committee stage. However, as a result of delays by UK Government, some further amendments will be sought at Commons Report stage.

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To support the Senedd consideration of the LCM, I have set out details here of further amendments being pursued:

Legislation (Wales) Act 2019 – amendments are being sought to apply the Legislation (Wales) Act 2019 to subordinate legislation made under the Bill and which will apply in relation to the Welsh zone. These amendments are consequential upon clause 43 of the Fisheries Bill which is extending the Senedd's competence to the Welsh zone in relation to fishing, fisheries and fish health.

Agency Arrangements power – amendments are being sought to provide powers for the four fisheries administrations to enter into agency type arrangements. We currently have a power under section 83 of the Government of Wales Act 2006, which enables the Welsh Ministers to make this type of arrangement with Welsh and English public bodies. We have sought the same type of power in relation to fishing, fisheries and fish health functions only to enable the four UK administrations to establish helpful joint working arrangements which would enable collaboration and the efficient exercise of functions to achieve robust and effective fisheries management outcomes.

Schedule 3 - Sea Fishing Licences: Further provision, and Schedule 8 – Powers to make further provision: devolved authorities – we continue to seek improvement of some aspects of the scope and operation of the Welsh Ministers powers and their relationship with the corresponding Secretary of State Bill powers.

Schedule 10 – Amendments of the Marine and Coastal Access Act 2009

- a small amendment is needed to make it an offence to contravene an order under 134B of the Marine and Coastal Access Act 2009 (MCAA) (as amended by the Fisheries Bill), which was unintentionally omitted.
- an amendment is sought to remove subsection (2) of section 189 of the MCAA. Under section 189 the Welsh Ministers may by order make provision in relation to Wales, to manage exploitation of sea fisheries. Subsection (2) currently limits the availability of that power, such that it may only be used by the Welsh Ministers if no other alternative legal power can be identified. This restriction is unnecessary and I am seeking its removal.
- an amendment is sought to the consultation requirements that apply to the Welsh Ministers order making power under section 134A and 134B.

I will inform the Committee and Members of the Senedd of any changes made at Commons Report stage, which impact on the legislative competence of the Senedd, following the LCM debate.

Clause 23 (formally 24) – determination of fishing opportunities

In relation to clause 23 of the Bill, and **recommendation 4** in your report, I wrote to the Climate Change, Environment and Rural Affairs and Legislation, Justice and Constitution Committees on 3 September and advised I had written to the UK Government to seek agreement on the key issues on which I need assurance in order to recommend the Senedd gives consent to the Bill. I have received a response from DEFRA and have attached the exchange of letters at Annex 1 and 2.

I acknowledge the concerns raised by Committees in their scrutiny and we continue to press for swift progress on the Fisheries Framework Memorandum of Understanding (MoU). It was my intention for the Committee to have the opportunity to review the MoU prior to seeking the Senedd's consent, however, given the wide ranging nature of the MoU, its dependency on the Joint Fisheries Statement and the timings of the Bill progressing through UK Parliament, this is now not possible.

I can assure the Committee and Members of the Senedd I am confident the commitments made by UK Government, including in the exchange of letters attached, provides the ongoing assurance needed to fully resolve these concerns and I am seeking Senedd consent on this basis. We will continue to work with UK Government to finalise the MoU, within the parameters set out in the letters.

Sunset provisions

I also wish to address a point raised by Committee in its scrutiny regarding sunset provisions and **recommendation 3** of your report. My position remains we do not support the inclusion of sunset provisions in this Bill, for reasons I have already set out in my responses to Committee. However, given the strength of feeling here and recognising the concerns raised, I will commit to making a biennial report to the Senedd on the implementation of the provisions in the Bill which relate only to Wales, until such time as a Welsh Fisheries Bill is introduced.

Consent

I am grateful to Members of the Climate Change, Environment and Rural Affairs Committee for its scrutiny of the Bill and for indicating it would recommend consent, subject to clarity and reassurances, which I hope I have now provided. I can confirm I have tabled a consent motion recommending the Senedd consent to the UK Fisheries Bill.

I have written in similar terms to Mick Antoniw MS, Chair of Legislation, Constitution and Justice Committee and have copied this letter to all Members of the Senedd.

Regards

A handwritten signature in cursive script, reading 'Lesley Griffiths'.

Lesley Griffiths AS/MS

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Annex 1

Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LG/2656/20

Victoria Prentis MP
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1 September 2020

Dear Victoria,

Determination of fishing opportunities

Further to your letter of 8 April 2020 I am seeking an agreement between our Governments on the use of the power to determine fishing opportunities within clause 24 and consultation requirements within clause 25 of the UK Fisheries Bill. I will need to provide the Senedd with assurance we have reached agreement on the detail of how our Governments will work together in relation to the use of this power before the Senedd debate on legislative consent (29 September). This agreement will be in lieu of the Senedd having the opportunity to consider the detail of the Fisheries Framework Memorandum of Understanding (MoU) which I note, due to other pressures, is still in development.

I am conscious we are building on many years of close collaboration in fisheries management. We do not want to curtail any of the good practice already in place and

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see this as an opportunity to enhance and clarify the existing arrangements and responsibilities. I am seeking your agreement on the following matters:

Exercise of clause 24 power

Clause 24 primarily provides a legal mechanism to give effect to agreements reached at any future coastal states negotiations, setting the top level UK catch limit for the calendar year or relevant period. It is our expectation the power will not normally be used for any other purpose, in recognition of the fact setting catch limits for species not covered by coastal states agreements, is a matter for the four administrations of the UK to act in relation to their separate jurisdictions.

As you know our concern is the power may be exercised in a way which impacts solely on a Welsh stock, which would otherwise be entirely managed by the Welsh Ministers, without meaningful input from Welsh Ministers, and this is why we have agreed to set out the assurances around the use of the power in an MoU.

Retain existing engagement arrangements

Fisheries management historically, and necessarily, has always required fisheries administrations to work collaboratively as equal partners across the UK. I would like to see in the MoU a statement confirming a continuing commitment to these existing best-practice arrangements and governance principles, locking them in place as a collective UK position. I would like to see the MoU confirm these arrangements which follow the principles of: mutual respect, shared responsibility, open and transparent information sharing, and clear dispute resolution procedures.

I expect the detail to include a no surprises approach, being enabled by the ongoing governance arrangements via the SSG and working groups, as well as Welsh representation in all matters of interest to Wales.

Meaningful consultation

Clause 25, requires the Secretary of State to consult the Welsh Ministers before making or withdrawing a determination of fishing opportunities. This will provide the opportunity for the Welsh Ministers to set out its position, and for the Secretary of State to explain the reasons for the final form of the determination and how UK Government has sought to reach agreement.

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I am mindful of the close link to the coastal state negotiations and the desire to issue the determination as early as possible. I propose the following, which reflects a reasonable consultation approach but am open to suitable alternatives we can discuss and agree as the MoU wording is developed:

- the Welsh Ministers are given sight of the draft determination in writing in advance;
- there is a period of 21 days to respond to the consultation;
- the Welsh Ministers can make written representations within this period;
- the Secretary of State provides a written response to any representations made.

It may be possible to reduce these steps where the determination reflects a decision at Coastal States where Welsh Government formed part of the delegation.

Dispute avoidance and resolution

I recognise dispute avoidance processes linked to portfolio level structures are already in place and well established, via the Senior Officials Programme Board and where Ministerial escalation is required, via the Inter-Ministerial Group – Environment, Fisheries and Rural Affairs (IMG-EFRA).

The fisheries administrations and their officials have a strong track record of working closely together to develop fisheries management policy and resolve disputes before using DRM processes. Although, I note the existing DRM is a default position, it would be helpful, to provide the necessary reassurances and certainty, to have acknowledgement the DRM would be available for a clause 24 determination.

Progress on the Memorandum

I would be grateful if you could confirm your officials will work with mine to finalise the wording for the MoU by the end of the year, reflecting what we have agreed by this exchange of letters. I would also be grateful if you could make the above commitments on the floor of the House of Commons during the remaining stages.

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Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru
Welsh Government

I would be grateful for a response to this letter as soon as possible so we can move ahead with the legislative consent process.

Regards

Lesley Griffiths AS/MS
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Minister for Environment, Energy and Rural Affairs

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18 September 2020

Dear Lesley,

Thank you for your letter of 1 September about the determination of fishing opportunities under clause 23 of the Fisheries Bill.

As I hope Defra Ministers have made clear throughout the passage to the Fisheries Bill, we have very much appreciated the collaborative approach taken both at official and Ministerial level. We have also been careful to explain how the Bill seeks to respect the devolution settlements. This is an approach built on many years of close working, and is one we intend to follow.

As you note, clause 24 provides the Secretary of State with a statutory duty to consult the Devolved Administrations before making or withdrawing a determination. While the precise details will need to be worked out, we intend for these to be meaningful consultations.

Whilst we are committed to providing adequate time for formal consultation (I am sure there will be plenty of engagement at official level prior), it might not always be possible to allow a 21 day consultation period or to commit to a Ministerial exchange of letters as you suggest. However, to provide some further reassurance, we think that the memorandum of understanding (MoU) could usefully set out principles for consultation. In addition, the MoU will set out a fisheries dispute resolution process between the Fisheries Administrations, incorporating and building on existing processes where appropriate. I understand that discussions on the process for determinations are well underway between officials within the Fisheries Management Working Group.

I am grateful for your comments on the need to make rapid progress to draft and finalise the MoU. Defra has a team of officials ready to contribute to that process.

Given the rapid progress of the Bill, and parliamentary procedure in Westminster, there may not now be an opportunity to make the reassurances you suggest on the floor of the House. However, I trust that this letter will be sufficient and that swift progress to deliver legislative consent can be made.

Yours sincerely,

Victoria Prentis

VICTORIA PRENTIS MP

Agenda Item 4.2

Lesley Griffiths AS/MS
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Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru
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Ein cyf/Our ref: MA/LG/3171/20

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28 September 2020

Welsh Government's Supplementary LCM (Memorandum No 4) on the Agriculture Bill

Thank you and members of the Climate Change, Environment and Rural Affairs Committee for your scrutiny of the amendments made to provisions relating to Wales in the Agriculture Bill during the House of Lords' amending stages. I committed to write to the Committees and Members of the Senedd should there be any further amendments requiring the legislative consent of the Senedd prior to the plenary debate.

Introduced in the House of Commons, the Agriculture Bill completed Report Stage in the House of Lords on 22 September. We expect the Bill to receive Royal Assent by the end of October.

I can inform the Committee three further government amendments were made to the Bill. Under Standing Order 29.1(i) and 29.2(iii), the Welsh Government is required to lay a LCM in the Senedd normally no later than 2 weeks after those amendments are tabled or agreed, but due to the advanced stage of the Bill and therefore the lack of time available for normal Senedd scrutiny, I am writing to outline the amendments made. Full details can be found in Supplementary Legislative Consent Memorandum no.4.

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Amendment to Schedule 5 (and related provision) with regard to references to retained direct EU legislation

After the amendment was made to paragraph 5, Welsh Government Legal Services identified another potential issue with the provision, arising from the different possible interpretations of Article 138 of the Withdrawal Agreement and its implications on EU legislation relating to rural development, and the Common Agricultural Policy more generally.

Amendments have been tabled in relation to RDP, Common Market Organisation and Apiculture which confirm the specified legislation does become retained EU law on IP completion day, and ensure the powers given to the Welsh Ministers in Schedule 5 are operable;

A narrow financial assistance power has been included which allows the Welsh Ministers to pay those people who have ongoing agreements under the current RDP scheme after the EU funding has been exhausted. This power is designed to allow the Welsh Ministers to continue to fulfil their contractual obligations if Technical Measures cannot be agreed with the EU pursuant to Article 138(5) of the Withdrawal Agreement to bring the programme to an end. It is limited in scope, and can only be used to give financial assistance to those who have ongoing, existing agreements/contracts;

A regulation-making power to amend retained EU legislation in relation to Apiculture has been included. This ensures in the future, the retained EU apiculture framework could be amended to implement a new scheme. A technical amendment will be tabled at Third Reading on October 1 to confirm this regulation-making power is subject to the negative procedure;

These are now Clauses 17 (continuing EU programmes: power to provide financial assistance), Clause 18 (retained direct EU legislation), Clause 55 (interpretation), Clause 59 (financial provision), Clause 60 (extent) and Schedule 5 – Paragraph 4.

Food Security

Clause 19 (Duty to report to Parliament on UK food security) places a duty on the Secretary of State to report to Parliament on data relevant to UK food security. During scrutiny, Committees raised concern around the reporting frequency on food security, I accepted more frequent reporting may be necessary given the potential pace of development in this area. This clause was also subject to much debate during the House of Lords passage.

A UK Government amendment has been made to increase the reporting frequency of the Secretary of State from every 5 years to every 3 years with a requirement to lay the first report under clause 19 on or before the “relevant day” as defined in the Bill.

Power to make consequential and transitional provision

Clause 50 (power to make consequential etc. provision) provided for a general and broad power by regulations to make supplementary, incidental or consequential provision in connection with any provision of the Bill (including powers to modify primary legislation, retained direct EU legislation or subordinate legislation).

The clause is amended to create two new provisions. One (Clause 57) deals with supplementary, incidental or consequential provision (and comprises what was section 50(1) to (4), as amended at House of Lords Report stage), the other (Clause 58) deals with transitional etc., provision (and comprises what was section 50(5) and (6), as amended at House of Lords Report stage).

In summary, officials requested these amendments be made at Report stage so the Welsh Ministers, and not the Secretary of State, may exercise the powers to make consequential and transitional provision under what was clause 50(1) and 50(5) in relation to certain additional provisions, as requested (as well as the provisions previously covered).

The Secretary of State may not make consequential or transitional provision which could be made by the Welsh Ministers in respect of those provisions, with one exception. The Secretary of State may make consequential provision in respect to sections 36 and 37 (organic products), if the Secretary of State has first consulted the Welsh Ministers. This means the Welsh Ministers and the Secretary of State have concurrent powers to make consequential provision so far as relating to Wales in respect of sections 36 and 37. Further detailed briefing on these amendments will follow.

Non-Government Amendments made at House of Lords Report Stage

There have been further amendments I have noted for the Committee below which we are currently analysing. I am recommending consent on the basis if these new amendments remain in the Bill, and if they affect my consent recommendation, I will table a further debate.

These non-government amendments were included in the Bill during House of Lords Report Stage and include the following:

- Clause 20 – National Food Strategy;
- Clause 38 – Application of pesticides: limitations on use to protect human health;
- Clause 47 – Requirement for agricultural and food imports to meet domestic standards;
- Clause 48 – Contribution of agriculture and associated land use to climate change targets;
- Clause 49 – Trade and Agriculture Commission.

I would like to reiterate the importance of this Bill as a vehicle to deliver stability and continuity to Welsh agriculture while we continue to develop the groundwork for our own Agriculture (Wales) Bill, to be introduced in the next Senedd term as I set out in my oral statement on 8 July.

Regards

A handwritten signature in black ink, reading 'Lesley Griffiths'. The signature is written in a cursive, flowing style with a large 'L' and 'G'.

Lesley Griffiths AS/MS

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs