

Julie James MS
Minister for Climate Change

2 November 2022

Dear Julie

Legislative Consent Memorandum: Levelling Up and Regeneration Bill

I am writing regarding the above Memorandum, which we considered at our meeting on 24 October 2022.

We note the Memorandum refers at paragraph 3 to the letter you wrote to the Llywydd and explains that:

"...due to the very limited engagement by the UK Government prior to the Bills' introduction and the complexity of the Bill, it has taken time to fully consider the devolution consequences of what is being proposed and consequently it has not been possible to lay this LCM within the normal two-week SO29 deadline."

We are disappointed with the lack of engagement by the UK Government to explain its proposals and acknowledge the difficult position for the Welsh Government as a result.

Nevertheless, we are concerned that some four months after the Bill's introduction into the UK Parliament, the content of the Memorandum laid before the Senedd is severely lacking in necessary detail that we do not believe it would enable the Senedd to reach an informed view on the matter of whether or not to give consent.

We highlight 20 questions in the Annex to this letter which seek clarification on a range of matters. In our view, the responses to most of these questions need to be addressed in a revised Memorandum.

I would be grateful to receive a response to this letter as soon as possible, together with confirmation that a revised Memorandum has been laid or will be laid before the Senedd as a matter of urgency.

The current deadline for reporting is 8 December 2022 but our ability to meet that deadline is constrained by the situation we and other Committees are now facing. In laying a revised Memorandum we believe therefore that the deadline should be re-visited. .

I am therefore copying this letter to the Llywydd as Chair of the Business Committee, as well as the Chairs of the Climate Change, Environment and Infrastructure Committee, the Local Government and Housing Committee and the Economy, Trade and Rural Affairs Committee.

Yours sincerely,

A handwritten signature in black ink that reads "Huw Irranca-Davies". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Huw Irranca-Davies
Chair

Annex 1 – Questions to the Minister for Climate Change

1. Can the Minister explain fully the divergence of opinion between the Welsh Government and the UK Government as to whether Part 1 of the Bill requires the consent of the Senedd? What discussions has the Minister had with the UK Government in this regard?
2. Is the Minister able to provide more information regarding the Welsh Government's policy regarding the content of clauses 1-6 and the substantive reasons for its recommendation that the Senedd does not consent to these provisions?
3. Can the Minister confirm why the LCM makes reference to clause 96 (street votes) requiring consent in the view of the UK Government, when this view is not reflected in the Explanatory Notes to the Bill?
4. Is the Minister in a position to seek clarity as to why the UK Government included clause 78 as requiring consent in the Explanatory Notes, when clause 78 is entitled "Power to require use of approved planning data software in England". Is clause 78 intended to apply in Wales or has the UK Government erroneously noted that it applies in Wales?
5. Has the Minister raised the inconsistency between the Explanatory Notes, immediately before paragraph 470, and the Bill at clause 77 regarding the title of clause 77, where the Explanatory Notes refers to England but the clause itself does not? Is the Minister confident that this clause applies in Wales?
6. Can the Minister provide further detail as to the new powers that are provided to the Secretary of State by Chapter 1 of Part 3, clause 96 and clause 112 and confirm what effect these powers would have in Wales, including any effect on the legislative competence of the Senedd and the executive competence of the Welsh Ministers?
7. Can the Minister explain the reasoning behind her statement at paragraph 58 of the LCM that "Two areas, on planning data and environmental outcome reports, have potential benefits for Wales, but their current drafting means this benefit cannot be realised." What are the potential benefits that are referred to? Why does their current drafting mean that such benefits cannot be realised?
8. Can the Minister provide further information in relation to the statement at paragraph 59 of the LCM that "the current drafting of powers on digital data does not accord with our desire to legislate for Wales." In what way does the current drafting have this effect? Is the reference to "digital data" a reference to planning data?
9. The LCM does not clearly conclude whether it is appropriate for each of the clauses in Chapter 1 of Part 3, clause 96 or clause 112 to be included in the Bill, nor does it provide a clear recommendation

as to whether or not consent should be given to these provisions. Can the Minister confirm the position in this regard?

10. Can the Minister confirm the specific clauses that are referred to in paragraphs 58 and 59 of the LCM?

11. Can the Minister confirm which clauses are referred to as “the clauses in relation to planning” in paragraph 64 of the LCM? Does this include clause 112?

12. Can the Minister seek confirmation from the UK Government as to how the planning provisions will work in practice, to include providing an analysis of the clauses in relation to planning and explaining how Welsh authorities will be impacted by the provisions of the Bill in real terms? Can the Minister confirm who, in Wales, is considered a ‘relevant planning authority’ for the purposes of this Chapter?

13. Can the Minister confirm which provisions in Part 5 of the Bill relate to reserved matters and which relate to devolved matters, as referred to in paragraph 49 of the LCM?

14. With reference to paragraph 58 of the Bill, can the Minister confirm the detail of the potential benefits that she envisages to an improved system of environmental planning reports and whether discussions have taken place with the UK Government with a view to realising these benefits in the Bill? Can the Minister also confirm what is meant by “planning outcome reports” in paragraph 58?

15. Can the Minister explain how the current provisions mean that the Welsh Ministers have lost their ability to make Welsh regulations in relation to environmental outcome reports?

16. Can the Minister state whether or not support is given to the provisions in Part 5 being included in the Bill, as is required by Standing Order 29.3(iii), and whether or not consent should be given?

17. Can the Minister provide an update as to any discussions that have taken place with the UK Government regarding clauses 96 and 187?

18. Has the Minister discussed clauses 80 and 121 of the Bill with the UK Government and sought to amend the provisions to require that, at the very least, the UK Government has to obtain the consent of the Welsh Ministers before making planning data regulations or environmental outcome report regulations containing provision which is within Welsh devolved competence? What has been the outcome of these discussions?

19. Does the Minister have any views on the inclusion of the Henry VIII powers at clauses 129 and 191 of the Bill? Has the Minister discussed clause 129 and/or clause 191 with the UK Government to seek their amendment or removal? What has been the outcome to date of such discussions?

20. Can the Minister provide any view on the financial implications of this Bill for Wales?