



Ein cyf/Our ref: JJ/PO/341/2023

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

16 October 2023

Dear Llŷr,

I write in response to the Climate Change, Environment and Infrastructure Committee report on the Supplementary Legislative Consent Memorandum (SLCM) (Memorandum No. 4) relating to the Levelling-up and Regeneration Bill laid on 29 September 2023.

Recommendation 1 - The Minister should explain whether, and if so why, she considers the requirement in clause 157(5)(a) (in the Bill as amended in House of Lords Report Stage) to be appropriate, given that the UK Government's current environmental improvement plan (under Part 1 of the Environment Act 2021) relates only to England.

Clause 157(5)(a) as amended at House of Lords Report Stage was unacceptable. The UK Government was informed of what the Welsh Government considered the appropriate equivalent provision in Wales for the 'environmental improvement plan' but this was not included in earlier amendments. The UK Government have sought to correct their oversight by tabling an amendment in lieu of Lords Amendment 90. This amendment is contained in [SLCM NO.5](#). The effect of this amendment would mean the Welsh Ministers, when acting alone and setting the specified environmental outcomes, must have regard to the current national natural resources policy within the meaning of section 9 of the Environment (Wales) Act 2016.

Recommendation 2 - The Minister should explain why she considers it appropriate for the Secretary of State to have powers to make planning data and EOR regulations containing provision within devolved competence.

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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.

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. This means 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 applying the Welsh Government's Principles for UK Bills is required in this case. This will enable the potential benefits of the Bill as set out in my Supplementary Legislative Consent memoranda, to avoid contradictions and uncertainty in the law and enable smooth consent routes for cross jurisdictional schemes that would otherwise result.

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.

Recommendation 3 - The Minister should explain the circumstances under which the Welsh Minister would consent to the Secretary of State making planning data and EOR regulations containing provision within devolved competence.

To give consent for the Secretary of State to make EOR or planning data regulations acting alone would require the purpose of the legislation to be a very small technical matter where the benefit does not outweigh the cost for the Welsh Ministers to draft it themselves. I do not envisage this situation happening.

The joint use of the powers is a more likely scenario 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.

Yours sincerely,



Julie James AS/MS

Y Gweinidog Newid Hinsawdd
Minister for Climate Change