

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:	For further information contact:
Committee Room 2 – Senedd	Gareth Williams
Meeting date: 5 October 2015	Committee Clerk
Meeting time: 15.00	0300 200 6565
	SeneddCLA@Assembly.Wales

1 Introduction, apologies, substitutions and declarations of interest

2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

(Pages 1 – 2)

CLA(4)–24–15 – Paper 1 – Statutory Instruments with Clear Reports

Negative Resolution Instruments

CLA585 – The Plant Health (Forestry) (Amendment) (Wales) Order 2015

Negative procedure; Date made: 24 September 2015; Date laid: 20 September 2015; Coming into force date: 20 October 2015

Affirmative Resolution Instruments

CLA583 –The Town and Country Planning (Power to Override Easements and Applications by Statutory Undertakers) (Wales) Order 2015

Affirmative procedure; Date made; Not stated; Date laid: 22 September 2015;
Coming into force date: Not stated



CLA584 – The Microchipping of Dogs (Wales) Regulations 2015

Affirmative procedure: Date made: Not stated; Date laid: 29 September 2015;
Coming into force in accordance with Regulation 1(2)

3 Papers to note

(Pages 3 – 16)

CLA(4)-24-15 – Paper 2 – Letter from the Chair to the Minister for Natural Resources in relation to Proposal for European Regulations on the GMOs

CLA(4)-24-15 – Paper 3 – Letter from the Deputy Minister for Health in relation to Proposal for European Regulations on the GMOs

CLA(4)-24-15 – Paper 4 – Letter from the Minister for Natural Resources to the Chair of the Environment and Sustainability Committee in relation to the Environment (Wales) Bill

CLA(4)-24-15 – Paper 4 Annex 1 – Responses to further questions from the Environment and Sustainability Committee

CLA(4)-24-15 – Paper 4 Annex 2 – Letter from the Secretary of State for Wales to the First Minister in relation to the Environment (Wales) Bill

CLA(4)-24-15 – Paper 5 – Written Statement by the Deputy Minister for Farming and Foods: Microchipping Dogs in Wales

4 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

(ix) any matter relating to the internal business of the committee, or of the Assembly, is to be discussed

Update: Draft Wales Bill

(Pages 17 – 23)

CLA(4)-24-15 – Paper 6 – Notes of pre-legislative workshop

CLA(4)-24-15 – Paper 7 – Notes of pre-legislative workshop

CLA(4)-24-15 – Paper 8 – Notes of pre-legislative workshop

Legacy

(Pages 24 – 175)

CLA(4)-24-15 – Paper 9 – Review of Committee Working, February 2014

CLA(4)-24-15 – Paper 10 – Mid-term Review

CLA(4)-24-15 – Paper 11 – Subordinate legislation made by Welsh Ministers under Assembly Acts

CLA583 - The Town and Country Planning (Powers to Override Easements and Applications by Statutory Undertaker) (Wales) Order 2015

Procedure: Affirmative

This Order confers powers on local authorities and other bodies to override easements and other rights which otherwise restrict their use of land that has been acquired or appropriated for planning purposes. This can only be done if the use is in accordance with planning permission.

This Order also disappplies the requirement for the Welsh Ministers and the appropriate Minister to decide jointly certain planning applications and appeals where the application has been made by the statutory undertaker.

CLA584 - The Microchipping of Dogs (Wales) Regulations 2015

Procedure: Affirmative

The draft Regulations provide for the compulsory microchipping of dogs and the recording of each dog's identity and its keeper's contact details on a database.

The Explanatory Memorandum states:-

"These draft Regulations address the comments made by the Constitutional and Legislative Affairs Committee in respect of the draft Regulations laid on 24 June and subsequently withdrawn in July 2014. The withdrawal allowed for officials to carry out further work to develop the current policy. This included the detailed consideration of the Committee's comments in relation to introducing standards for microchipping and database operators and the duties placed on owners and explore all options available to Welsh Government to best secure its policy aim.



CLA585 - The Plant Health (Forestry) (Amendment) (Wales) Order 2015

Procedure: Negative

The Plant Health (Forestry) Order 2005 contains measures to prevent the introduction and spread of harmful tree pests and diseases (implementing EU law).

This Order applies, in relation to Wales, certain provisions which have been made amending the 2005 Order in relation to England and Scotland. Therefore, this Order provides that certain provisions of the 2005 Order which currently apply only in relation to England and Scotland, also apply in relation to Wales.

This Order also makes consequential amendments to the 2005 Order.



Carl Sargeant AM
Minister for Natural Resources
Welsh Government
Tŷ Hywel
Cardiff

8 July 2015

Dear Carl

Proposal for European Regulation on GMOs

At our meeting on 22 June 2015, we considered the European Commission's proposals for a new Regulation on the use of genetically modified food and feed.

We noted that the UK Government's Explanatory Memorandum gives no indication that the devolved administrations will be able to take their own decisions in relation to this proposed Regulation. As matters relating to agriculture are devolved, can you confirm that this matter will be decided by the Welsh Government and National Assembly? It would also be helpful if you could provide us with details of any discussions you have had with the UK Government on this issue.

We are aware that a number of parliaments and regional assemblies have highlighted concerns about the proposals, including the Thüringen (German), Romanian and Irish parliaments. The Thüringen State Parliament has summarised its concerns as:

"Bearing in mind the very strict legal requirements set out by the Commission in its proposal, it is highly questionable whether it is actually possible for a Member State to adopt opt-out measures in compliance with EU-law, especially with regards to the international obligations of the Union. Questionable is also to what extent the involvement of all 28 EU states in the mandatory notification and control procedure contributes to fulfil the intended objectives."



We would be interested to know to what, if any, extent you share these concerns.

Yours sincerely

A handwritten signature in black ink that reads "David Melding". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.



Vaughan Gething AC / AM
Y Dirprwy Weinidog Iechyd
Deputy Minister for Health



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LF/VG/0807/15

David Melding AM
Chair of the Constitutional and Legislative Affairs Committee
The National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

23 September 2015

Dear David,

Thank you for your letter of 8th July to Carl Sargeant AM, Minister for Natural Resources, regarding the European Commission's proposals for genetically modified food and feed. I am responding as this matter falls within my portfolio.

The Food Standards Agency (FSA) is the competent authority for genetically modified (GM) food and feed, and as a non-Ministerial Government Department advises the National Assembly for Wales and the Welsh Ministers through me as Deputy Minister for Health. The Deputy Minister for Farming and Food also has an interest in this issue as the Welsh Ministers are the competent authority in Wales for the purposes of the deliberate release of genetically modified organisms into the environment.

You asked specifically about the ability of devolved administrations to take their own decisions in relation to this proposed legislation. The FSA advises that the European Commission's proposals to reform the authorisation process for GM food and feed by amending Regulation 1829/2003 is at an early stage and there is insufficient certainty at the present time as to how the proposals would work in practice.

The Welsh Ministers have existing powers in relation to food and animal feed in the context of the European Union. The European Communities (Designation) (No2) Order 2005 designates the Welsh Minister for the purposes of section 2 (2) of the European Communities Act 1972 in relation to food and feed. The Welsh Ministers also have powers in relation to "*measures relating to the control and regulation of the deliberate release, placing on the market and trans-boundary movements of genetically modified organisms*" under the European Communities (Designation) (No.4) Order 2003 No.2901.

Any assessment as to whether the power conferred by these designation orders would be sufficient to allow the Welsh Ministers to "take their own decisions" will involve a detailed consideration of the finalised EU regulation.

You also asked about the discussions the Welsh Government have had with the UK Government. The FSA as the competent authority is in regular dialogue with both UK Government and the European Commission regarding this proposal. The Right Honourable Elizabeth Truss, Secretary of State for Environment, Food and Rural Affairs, wrote to me recently seeking my views on the proposal prior to the EU Agriculture and Fisheries Council meeting in July.

The Welsh Government supports the UK Government's position which is not to support the proposal to amend Regulation 1829/2003 because the analysis has identified a number of significant concerns:

- it undermines the principle of the EU single market, which we support. It could impact on existing trade flows in GM products into and within the EU;
- national bans for non-safety reasons undermine the principles of science-based regulation, and of allowing fair market access for safe products;
- to date we have not been able to identify the non-safety grounds which might be WTO compliant or defensible under EU law;
- the UK livestock sector is heavily dependent on imported GM feed, using upwards of 3 million tonnes per year (70% of total UK animal protein feed). If a number of Member States banned the use of GM food and feed, the EU market could become far less attractive to the main exporting countries (Brazil, Argentina and the USA) and the effect on UK supplies and costs is unknown;
- the negative impact on wider international trade; and
- it has already had a detrimental impact on negotiations for the EU US Transatlantic Trade Investment Partnership.

I note the concerns of the other Assemblies outlined in your letter. Our concerns regarding the proposal, set out above, suggest a degree of similarity, particularly regarding the proposal's compliance with EU-law and the principle of the single market.

I am copying this letter to the Chair of the Environment and Sustainability Committee.

Yours sincerely



Vaughan Gething AC / AM
Y Dirprwy Weinidog Iechyd
Deputy Minister for Health

Carl Sargeant AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref LF CS 0887 15

Alun Ffred Jones AM
Chair of the Environment and Sustainability Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

29 September 2015

Dear Alun

ENVIRONMENT (WALES) BILL

I am writing following my appearance before the Environment and Sustainability Committee on 16 September. During this session, I committed to provide further information in response to some of the queries raised by the Committee to inform your consideration of the Bill.

Annex 1 to this letter contains the additional information requested during the Committee session.

One of the topics discussed related to the three 'area trials' that have been led by Natural Resources Wales (NRW). The area trials were designed to help to take forward NRW's approach to integrated natural resource management in line with the Welsh Government's commitments to achieve the sustainable management of natural resources, in addition to helping to inform the associated practical processes looking ahead to implementation of the Environment (Wales) Bill – particularly in relation to area statements – as well as the Well-being of Future Generations (Wales) Act requirements.

I have asked NRW to provide further information on the results of these trials to date, and more specifically, detail on what can be learned and developed in relation to the implementation of the area statements.

Annex 2 contains the letter issued by the Secretary of State to the First Minister on 11 September setting out his position in relation to the relevant consents for the Bill.

I hope that the attached information helps to inform further your forthcoming Committee report.

I would like to take this opportunity to thank you for your detailed consideration of the Bill during Stage 1.

Yours sincerely

A handwritten signature in cursive script that reads "Carl Sargeant". The signature is written in a dark ink and is positioned above the printed name.

Carl Sargeant AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources

Annex 1: Responses to further questions from Committee

This Annex sets out responses to the questions and clarifications raised in the Environment and Sustainability Committee session held on 16 September.

Part 1: Section 6 – Biodiversity and Ecosystems Resilience Duty

- 1) Provide information on how much of the land in Wales would be affected if Minister of the Crown consents is not provided in relation to section 6 of the Bill.**

On the basis of our initial assessment, the estimated total coverage of Crown land in Wales is 151,605 ha (or 374,624 acres). This equates to around 5% of the land mass of Wales.

If the Secretary of State for Wales does not give consent then any land in Wales which is Crown land may be exempt from the requirement to comply with the duty in section 6.

In Wales, Crown land includes a diverse property portfolio, including substantial areas of common land, agricultural holdings and a range of mineral interests. It also includes 65 per cent of the foreshore and the seabed out to 12 nautical-miles.

Land that is managed by the MoD is a substantial part of the Crown land, with an estate equal to over 1% of the UK land mass. The MoD holds 228,000 hectares of land and foreshore (either freehold or leasehold), with access to a further 204,900 hectares from various rights and grants, much of this forms the training estate. In total this is about 1.8% of the UK land mass.

There are also other UK Government departments and agencies holding land in Wales to which section 6 of the Bill would apply, if consent was given. This includes property managed by Her Majesty's Prisons Service, police forces, courts, Home Office, Driver and Vehicle Licensing Authority, Department for Work and Pensions. This would be additional to the estimate above. However, our initial assessment indicates that this is unlikely to add more than 1% to this figure.

2) Provide information on the current law in relation to existing controls to prohibit and rectify serious pollution on Crown land.

The current legislative framework for pollution control that governs how pollution is regulated and monitored in Wales will continue to apply and will not be affected by the new biodiversity duty under section 6 of the Bill. Such legislation covers air, land and water pollution and includes the Environmental Permitting (England and Wales) Regulations 2010, the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009, the Water Resources Act 1991 and the Pollution Prevention and Control Act 1999, to name but a few. Government departments managing Crown land in Wales will continue to be under a duty to comply with this legislation which, if consent is given, will apply alongside the biodiversity duty.

3) Provide information on the impact of the biodiversity duty on public authorities.

What would be different under the Bill is the strengthening of the existing biodiversity duty under section 40 of the Natural Environment and Rural Communities Act 2006. The current duty requires public authorities to 'have regard' to the purpose of conserving biodiversity and therefore it merely requires a public authority to consider biodiversity rather than require action to be taken. The new duty under section 6 of the Bill will require public authorities to be more proactive in relation to biodiversity, by obliging them to 'seek to maintain and enhance' biodiversity.

It is intended that the new duty will also illustrate to public authorities the vital role of biodiversity in ecosystem resilience and enable them to apply a more holistic approach to maintaining and improving biodiversity.

Not extending the duty would increase the risk of Wales not meeting its commitment to halt the loss of biodiversity. Declining biodiversity in turn increases the risk of declining ecosystems and consequently declining quality of ecosystem services and therefore a loss of economic, social and environmental benefits.

Examples of what public authorities could do to seek to maintain and enhance biodiversity are below.

- Letting grass grow longer at certain times of year and in certain places, before cutting it, to provide a more varied structure, encourage wild flowers, and enhance wildlife habitats (something we believe that certain UK Government Departments are doing);

- Consideration of biodiversity as part of a site's Environmental Management System (something we believe that certain UK Government Departments are doing).
- Allowing some weedy areas to provide food for birds and animals;
- Use of native tree and plant species.

Many of these examples can already fall under how a public authority at present may contribute to the section 40 duty so I do not believe that the enhanced duty will present a significant increase to their current responsibilities.

Specifically, while the new duty will include a reporting requirement, this is not expected to be a detailed or lengthy report. Public authorities could, for example, comply with it by including a couple of pages about biodiversity within any of their existing reports. The aim of this reporting duty is that public authorities should report every three years in a specific document or another suitable report on what steps they have taken to comply with their statutory obligations. There is a similar reporting requirement in Scotland.

4) Provide information on how the Bill will demonstrate how it measures progress made to halt the decline in biodiversity.

An integral component of the new duty on public authorities is to report on how they are delivering on the biodiversity duty in section 6(5) of the Bill. They will therefore be under a requirement to report on what actions they have taken. Public authorities should report every three years and can elect to report in either a specific document or another suitable report on what steps they have taken to comply with their statutory obligations - the first report would need to be published by the end of the 2019.

By linking biodiversity to the resilience of ecosystems, it will assist public authorities to have an increased understanding of the multiple benefits that biodiversity and ecosystems provide, for example, tackling climate change, improving health and well-being and providing opportunities for green growth.

Measuring progress is a key component of the Bill and is integral to the delivery framework for the sustainable management of natural resources. The State of Natural Resources Report, the National Natural Resources Policy and area statements, each contribute to measuring of such progress.

The State of Natural Resources Report will include an assessment of the state of natural resources (including the biological) in Wales and how their sustainable management is being achieved; this will include an assessment of the resilience of ecosystems and therefore the biological diversity.

The National Natural Resources Policy and area statements will consider all of the natural resources as defined in the Bill and will provide the overall natural resource management context both nationally and for specific areas, within which biodiversity action can be delivered.

In meeting the “resilience goal” in the Well-being of Future Generations Act (Wales) 2015 public authorities will also be required to consider biodiversity. Public bodies will have to demonstrate how they are working towards all of the goals. The new duty under section 6 of the Bill will need to be considered within this framework, in particular the well-being goals and the indicators and milestones introduced by that Act.

Part 4 – Collection and Disposal of Waste

5) Provide an explanation on the decision to exclude enzyme bio-digesters from the assessment undertaken to inform the Regulatory Impact Assessment (RIA).

We did not consider food waste bio-digester systems within the IRIA. The two following scenarios were modelled:

- Firstly, a baseline reflecting the existing situation, whereby 21,000 tonnes of food waste is disposed of to sewer via macerator by businesses and the public sector. Bio-digesters, which are a method of treating food waste prior to disposal to sewer, have little market penetration within Wales, and were therefore not included within the baseline modelling.
- Secondly, a situation whereby food waste disposal to sewer was banned, in support of our policy of maximising the amount of food waste available for energy production and high quality fertiliser. As enzymic bio-digesters result in the disposal of food waste to sewer, they were not relevant to the option and therefore were not included within the modelling.

We are aware that the Mechline Waste₂O bio-digester has received certification from WRc regarding the safety of its discharge of effluent to sewer. However, the purpose of the proposed ban to sewer is to maximise the amount of food waste available for energy production and high quality fertiliser. The safety of disposal of treated waste to sewer, though an important consideration to the water authorities, is not an issue.

Part 6 – Marine Licensing

6) **Confirm that NRW will be able to retain the fees raised from marine licensing charges for reinvestment in that service?**

As I outlined in the Committee session on 16 September, marine licensing fees are currently retained for the benefit of the marine licensing authority. It is intended that this arrangement will continue for both existing fees and the extended charging powers set out in Part 6 of the Bill. However, any proposal to retain marine licensing fees, rather than paying these fees to the consolidated fund, will continue to be subject to approval pursuant to the financial provisions of Part 5, Finance - of the Government of Wales Act 2006.

Alongside the introduction of the Bill, and working in partnership with Natural Resources Wales, officials are undertaking a review of applicable fees. The review will consult on the level of fees and the use and level of the new charging powers. The overall aim of the fees review is to provide a fit for purpose, robust, proportionate, fair and transparent regime for charging for costs associated with marine licensing.

With adequate cost recovery, it is anticipated that the marine licensing authority will be able to respond to requests from applicants more readily, giving applicants more certainty that timescales will be met and that the service provides value for money.



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Rt Hon Stephen Crabb MP
Secretary of State for Wales

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Rt Hon Carwyn Jones AM
First Minister
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Ref: 397SUB 15

11th September 2015


Environment (Wales) Bill

You wrote to me on 7 August 2015 seeking formal Secretary of State consent for the functions of Ministers of the Crown to be modified by sections 6, 11(3)(b), 21 and 22(2) of the Bill as introduced. I am content to provide consent for sections 11(3)(b), 21 and 22(2). I am, however, withholding consent for section 6 at this time.

As well as a duty to seek to maintain and enhance biodiversity in the exercise of their functions, section 6 includes a new duty on those public bodies (including Ministers of the Crown) to report every three years on what has been done to comply with the biodiversity duty.

Since the Bill's introduction, my officials have discussed these provisions with a number of departments. Concerns have been raised about the duties imposed by section 6 and the additional burdens this may place, not just on Ministers of the Crown, but also on bodies carrying out wholly or mainly non-devolved functions in Wales.

We have sought to gain further clarity on these duties from your officials and suggested minor amendments to address shared concerns. However, it remains our view that the duties imposed in this section will be more onerous than the duty on which they are based, in section 40 of the Natural Environment and Rural Communities Act 2006.

I know our respective officials, and those across Whitehall, have worked hard to resolve issues with the Bill and I am encouraged by the joint working that has taken place. Through further negotiation I am confident that our officials can reach a resolution to the remaining issues in the Bill which will allow you to meet your policy objectives.

Rt Hon Stephen Crabb MP
Secretary of State for Wales


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Llywodraeth Cymru
Welsh Government

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **Microchipping of Dogs in Wales**

DATE **29 September 2015**

BY **Rebecca Evans AM, Deputy Minister for Farming and Food**

I am pleased to announce that draft Regulations which will require the compulsory microchipping of dogs in Wales have today been laid before the National Assembly for Wales for consideration. They are to be debated in Plenary on the 20th October.

In taking these draft Regulations forward, we submitted our draft Regulations along with the accompanying Regulatory Impact Assessment to Member States via the European Commission. A standstill period of three months was observed and no objections were raised by Member States or the European Commission.

We are now working to bring in the compulsory microchipping for all dogs in Wales in April 2016 (this is in line with the date announced for compulsory microchipping in England and Scotland).

My officials have worked closely with counterparts in England on cross-border issues because dogs are moved routinely between England and Wales. Also, given that providers of microchipping services work across Wales and England, there is a need to harmonise standards and to synchronise our work.

Animal welfare is a priority for the Welsh Government in line with the Wales Animal Health and Welfare Framework. It is firmly believed that compulsory microchipping will have a positive impact because the traceability of all dogs back to their owners - and ultimately back to the breeders - will help to encourage more responsible ownership.

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

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Agenda Item 4.2

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