

John Griffiths AC /AM
Y Gweinidog Cyfoeth Naturiol, Diwylliant a Chwaraeon
Minister for Natural Resources, Culture and Sport



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref
Alun Ffred Jones AM
Chair of the Environment and Sustainability Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

19 August 2014

Dear Alun Ffred

Response to NFU Cymru's Initial Comments on the Infrastructure Bill Legislative Consent Motion and Memorandum (LCM)

I am extremely grateful that the Committee considered this important issue at your meeting on 17 July. I thank you for your letter of 21 July 2014 which contained comments from the NFU Cymru regarding the Infrastructure Bill ("the Bill") LCM. I will respond to each of their points in turn.

1. Clarification is needed on exceptional circumstances definition in the powers section.

There is no reference to "exceptional circumstances" in the Bill. That phrase was used at paragraph 9 of the LCM to describe that species control agreement/order powers will be used where a voluntary approach is not possible. The Bill does state that before entering into a species control agreement with an owner, an environmental authority must be satisfied that the provisions of the agreement are proportionate to the objective to be achieved.

The Welsh Ministers will issue a Code of Practice in relation to species control agreements/orders. The Code of Practice will provide advice and guidance on how a species control agreement/order will operate and will give details of what is considered proportionate. There is a requirement for the Welsh Ministers to lay this Code of Practice before the National Assembly for Wales.

It is intended that these powers will be used primarily to support national eradication programmes for invasive non-native species. It is not intended that the routine use of these

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powers would be for widespread species, such as Japanese knotweed as this would generally not be viewed as appropriate and proportionate. The intention is that the order approach should be used where a voluntary approach cannot be agreed and there is a clear and significant threat from inaction.

- 2. Better safeguarding is necessary for owners and occupiers who may have invasive species on their land through no fault of their own against costs of control falling on them.*

The Code of Practice will also cover advice and guidance about payment of costs for control action and in particular what it should contain by way of provision about payment and recovery of costs. It is intended that in situations where a landowner is responsible for the release of an invasive species it is expected that the landowner would be accountable for costs, in accordance with the polluter pays principle.

- 3. Clarity is needed over why the environmental authority in Wales needs to be both Welsh Ministers and NRW. Should it not be Welsh Ministers who are in a position, in theory at least, to make a more balanced judgement on economic grounds in particular?*

Invasive non-native species can have a considerable impact on biodiversity and ecosystem services. Natural Resources Wales (NRW) is the primary operational body delivering wildlife and environment policy in Wales. The provisions are based on a Law Commission report "Wildlife Law, Control of Invasive Species", published on 10 February 2014: <http://lawcommission.justice.gov.uk/publications/2612.htm>. The Law Commission explored whether the powers should be reserved by Welsh Ministers and they concluded that such an approach would be out of step with the rest of wildlife law. They recommend that NRW should be given the powers to enter into species control agreements and make species control orders. Equivalent environment bodies have been given similar powers in Scotland and it is in the proposed arrangement for England.

- 4. First Tier Tribunal is not operational in Wales. It is unfortunate that the Welsh Government insist on using the Planning Inspectorate for appeals.*

An owner of premises in relation to which a species control order is made can appeal against the making of and/or the provision with a species control through First Tier Tribunal, which is operational in Wales. It is not proposed that the Planning Inspectorate will be used for appeals.

- 5. Clarity is needed on why the Highway Agency will be replaced by strategic highway companies in England but not, as it seems, in Wales.*

The LCM does not include the highways provisions. The provision in the Infrastructure Bill in relation to highways relate to changing the status of the Highways Agency. The Highways Agency is an England-only body and so the provisions relate to England only.

6. *Clarity is needed on whether the species covered will be listed in legislation.*

The Bill defines “invasive” and “non-native”. Although there is no list of “invasive non-native species”, non-native species include (but in the case of animals are not limited to) those specified in Schedule 9 of the Wildlife and Countryside Act 1981. The proposed Code of Practice will provide advice and guidance on when it may be appropriate to make an agreement or order. We anticipate their primary use will be primarily in the control of recently arrived species that are not widely established in Wales.

Y ou,



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