

Environment and Sustainability Committee

Report to the National Assembly for Wales on the
Infrastructure Bill Legislative Consent Memorandum
relating to the control of Invasive Non-Native Species

September 2014

- 1.1 We considered the Infrastructure Bill LCM at our meeting on 17 July 2014 and agreed to report to the Assembly with a view to assisting Assembly Members with their consideration of the legislative consent motion on 23 September 2014.
- 1.2 Whilst the evidence available to us appears to be supportive of the approach being taken through the Infrastructure Bill, and consequently would appear to suggest support for the LCM in turn, we have not undertaken sufficient work to draw our own conclusions as we have not had sufficient time to gather a full range of evidence.
- 1.3 In reporting, we have sought to add some value to the Assembly's consideration of the legislative consent motion by providing background information to Assembly Members.
- 1.4 Additionally, we sought clarification on some points raised by NFU Cymru in correspondence with the Minister for Natural Resources, Culture and Sport. Our letter to the Minister and the Minister's response are also provided as annexes to this report.
- 1.5 Attached to this covering report are five annexes that provide further information. They are:
 - **Annex A** – A paper from the Clerk to the Environment and Sustainability Committee;
 - **Annex B** – Comments on the Legislative Consent Memorandum from Natural Resources Wales;
 - **Annex C** – Comments on the Legislative Consent Memorandum from NFU Cymru;
 - **Annex D** – A letter dated 21 July 2014 from the Chair of the Environment and Sustainability Committee to the Minister for Natural Resources, Culture and Sport requesting a response to points raised by NFU Cymru; and
 - **Annex E** – A letter dated 12 August 2014 from the Minister for Natural Resources, Culture and Sport to the Chair of the Environment and Sustainability Committee responding to the points raised by NFU Cymru
- 1.6 We trust that this additional information is of assistance to Assembly Members in arriving at a decision on the legislative consent motion.

Annex A – Paper by the Clerk to the Environment and Sustainability Committee

Environment and Sustainability Committee

Legislative Consent Memorandum – Infrastructure Bill

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



Date: 17 July 2014
Author: Alun Davidson – Clerk
Contact: alun.davidson@wales.gov.uk
029 2089 8639

1. Purpose

- 1.1 To assist the Environment and Sustainability Committee in its consideration of a legislative consent memorandum that relates to provisions in the [UK Infrastructure Bill](#) that seek to amend the [Wildlife and Countryside Act 1981](#).
- 1.2 Links to all of the documents referred to in this paper are provided in the final section: ‘Sources and additional information’.

2. Background

- 2.1 The UK Government’s Infrastructure Bill (‘the Bill’) is currently being considered by the UK Parliament.
- 2.2 Sections of this Bill seek to legislate in areas of competence devolved to the National Assembly for Wales. Convention requires that the National Assembly for Wales (‘the Assembly’) considers consenting to this. The Assembly does this through considering a legislative consent motion tabled by the Welsh Government.
- 2.3 Further information on legislative consent motions is provided in the Research Service’s quick guide *The Constitution Series: 6 Legislative Consent Motions*.
- 2.4 The Welsh Government published a legislative consent memorandum (‘the memorandum’) on 18 June 2014 that explains this in more detail.

- 2.5 Principally, the memorandum sets out that the provisions in the Bill for which consent is sought are contained within [Part 2, Clause 16](#).
- 2.6 Part 2, Clause 16 inserts a new subsection 14(4A) in the Wildlife and Countryside Act 1981 (“the 1981 Act”) providing for measures relating to species control agreements and species control orders to be contained in a new Schedule 9A to the 1981 Act.
- 2.7 This new Schedule 9A is in five parts and runs to 26 sections.

3. Policy intent

- 3.1 The memorandum sets out the policy intent in more detail. A concise summary is provided in the box below.

Summary of policy intent

Clause 16 will, if made law, allow certain environmental authorities to take action to eradicate or control invasive non-native species (“INNS”) that pose serious threats to biodiversity, other environmental interests or social or economic interests.

This includes powers of entry in defined circumstances.

4. Stakeholder views

The Law Commission’s report

- 4.1 The provisions in the Infrastructure Bill are based on a Law Commission report [Wildlife Law: Control of Invasive Species](#), printed on 10 February 2014.
- 4.2 The Law Commission recommended that legislation of the type set out in the Infrastructure Bill be introduced in England and Wales. Scotland already has similar legislation in place (the [Wildlife and Natural Environment \(Scotland\) Act 2011](#)) and this legislation recommended broadly follows the Scottish model.
- 4.3 The recommendations made by the Law Commission were based on consultation. The report does not list all respondents to the consultation, but it does mention two Welsh organisations in summarising the consultation responses. NFU Cymru and the Countryside Council for Wales (now Natural Resource Wales) responded to the Law Commission’s consultation and raised

similar points to those expressed to the Committee (see *Views on the LCM* below).

4.4 Paragraph 2.55 on page 23 of the Law Commission's report states:

In general, the introduction of the Scottish system for species control orders in England and Wales was strongly supported in consultation. However, there was a worry that species control orders could be used too widely or impose unnecessary burdens on those subject to them. On the basis of consultation, we consider that the creation of a species control regime for invasive non-native species would provide a highly desirable addition to the law of England and Wales. Such a process would facilitate the effective control of invasive non-native species, and thereby accord with domestic preferences and international obligations.

The Committee's inquiry

4.5 During the course of the Committee's inquiry into Invasive Non-Native Species, the Committee heard arguments for and against powers of entry for the purpose of eradicating or controlling invasive non-native species. The majority of stakeholders were in favour of powers being made available to enforcement authorities.

Views on the LCM

4.6 To assist the Committee with its consideration of the memorandum, the Committee's Clerk has sought views from all stakeholders that contributed to the Committee's 2013 inquiry into Invasive Non-Native Species.

4.7 NFU Cymru and Natural Resources Wales responded. These were brief responses given the short time available for consideration. These responses are annexed to this paper.

4.8 **Natural Resources Wales are broadly supportive** of the proposals, but question the feasibility of applying these powers in Wales due to funding constraints.

4.9 Members will wish to note that **concerns were raised by the NFU Cymru** in relation a need for better safeguarding 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.

4.10 Both organisations believe this issue should be addressed on an England and Wales basis.

5. Process for consideration

5.1 The Business Committee remitted this memorandum to the Environment and Sustainability Committee for consideration. In doing so, the Business Committee is obliged to set a timetable for the consideration of the memorandum.

5.2 The Business Committee agreed that the Environment and Sustainability Committee should report on the memorandum by the **18 September 2014**.

5.3 The legislative consent motion will be considered by the Assembly in Plenary on **23 September 2014**.

6. Conclusions

6.1 This issue has been subject to significant consultation by the Law Commission, and stakeholders have had the opportunity to contribute.

6.2 The Committee has undertaken its own inquiry. On the issue of powers of entry, most stakeholders expressed support for such powers, though some raised concerns about the level of safeguarding in certain circumstances.

6.3 There is a consensus that this issue should be dealt with on an England and Wales basis.

6.4 Whilst the evidence appears to be supportive of the approach being taken through the Infrastructure Bill, and consequently would appear to suggest support for the LCM in turn, the Committee has not undertaken sufficient work to draw its own conclusions and it does not have sufficient time to do so.

6.5 The Committee may wish to consider adding some value to the Assembly's consideration of the LCM in Plenary by reporting with the contents of this paper, and to seek clarification from the Welsh Government on the points raised by NFU Cymru (and on any other points it might wish to raise).

Sources and additional information

- A copy of the **legislative consent memorandum** is available at: <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=256767&ds=7/2014>
- The **Infrastructure Bill** is available on the UK Parliament's website at: <http://services.parliament.uk/bills/2014-15/infrastructure.html>
- The **Wildlife and Countryside Act 1981** is available on the legislation.gov.uk website: <http://www.legislation.gov.uk/ukpga/1981/69>
- The Law Commission's *Wildlife Law: Control of Invasive Non-native Species* report and impact assessment are available at <http://lawcommission.justice.gov.uk/publications/2612.htm>
- The **Wildlife and Natural Environment (Scotland) Act 2011** is available on the legislation.gov.uk website: <http://www.legislation.gov.uk/asp/2011/6/contents/enacted>
- The Environment and Sustainability Committee's **inquiry into alien invasive species** is available at <http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=6591>
- The **Research Service's Quick Guide** *The Constitution Series: 6 Legislative Consent Motions* is available at: <http://www.assemblywales.org/qg07-0006.pdf>
- **Standing Orders** can be viewed at <http://www.assemblywales.org/bus-home/bus-assembly-guidance.htm> (Standing Order 29 sets out the process for considering a legislative consent memorandum).
- A record of the **legislative consent memorandum's consideration** by the Assembly can be viewed at <http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=10297&Opt=0&AlID=17700>

Annex B – View from Natural Resources Wales



Natural Resources Wales' Views on: Infrastructure Bill - Part 2: Provisions for the Control of Invasive Non-Native Species

Natural Resources Wales welcomes the opportunity to comment on the above Provisions as set out in the Legislative Consent Memorandum provided by Alun Davies AM.

We make our comments on these Provisions within the context of the Invasive Non-Native Species (INNS) work we conduct in partnership with Welsh Government, local authorities, businesses, Third Sector groups and the many others who all have roles in helping to manage and reduce the risks posed by INNS.

We agree these Provisions will help address one of the 'gaps' for more effectively managing INNS risks and their impacts on people, the economy and the environment.

While we are broadly supportive of the Provisions, it is important to note these will need to be adequately funded and viewed as part of a suite of measures and mechanisms that need further development to support more effective INNS management in Wales.

To establish INNS control agreements or orders, sufficient funds will be needed from Welsh Government for the associated work – either as a payment to the owner of premises containing the INNS in question or for Natural Resources Wales to conduct any such work including staff resources.

We therefore agree with the view in the Memorandum that these powers would be for exceptional circumstances on a case-by-case basis and primarily used to support national eradication programmes such as the DEFRA funded programme for eradicating Top Mouth Gudgeon in England.

Section 18 in the Legislative Consent Memorandum acknowledges the lack of dedicated [or readily available] funding for INNS within the Welsh Government. Access to readily available funding will be essential to enable either the Welsh Government or Natural Resources Wales to implement these Provisions.

We also note that Section 8 in the Memorandum emphasises the need to "...consider the proportionality of a proposed agreement." We support this in terms of assessing the potential costs, benefits and risks that will be involved in tackling particular INNS. These aspects will need to be a key component of the Welsh Code of Practice guidance that will be developed under the Provisions.

It will also be important for the Welsh Code of Practice to be developed in close liaison with those developing the equivalent Code of Practice for England to ensure that as far as is possible the Provisions can be delivered consistently across England and Wales.

We also agree that these Provisions will put Wales in a better position in relation to meeting key obligations that are expected to stem from the proposed European Union Regulation on Invasive Alien Species (ie INNS).

Nick Bialynicki-Birula
Natural Resources Wales
30th June 14

Annex C – View from NFU Cymru

Initial comments on the Infrastructure Bill LCM

1. Need clarification on exceptional circumstances definition in the powers section.
2. Needs better safeguarding 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.
3. Cannot really understand in Wales why the environmental authority needs to be both Welsh ministers and NRW. Surely it should be the Welsh ministers who are in a position in theory at least to make a more balanced judgement on economic grounds in particular.
4. Agree that it should be an UK approach.
5. First Tier Tribunal is not operational in Wales. WG insist (unfortunately) on using the Planning Inspectorate for appeals!
6. Interesting that Highway Agency will be replaced by strategic highway companies in England but not it seems in Wales?
7. Not clear from this if the Bill will actually list the species covered.



Y Pwyllgor Amgylchedd a Chynaliadwyedd

Environment and Sustainability Committee

John Griffiths AM
Minister for Natural Resources,
Culture and Sport
Welsh Government

21 July 2014

Dear John

Response to NFU Cymru's Initial Comments on the Infrastructure Bill LCM

The Committee considered an LCM in relation to the Infrastructure Bill at its meeting on 17 July 2014. It has received the following comments from NFU Cymru regarding the Infrastructure Bill LCM:

1. Clarification is needed on exceptional circumstances definition in the powers section.
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.
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?
4. First Tier Tribunal is not operational in Wales. It is unfortunate that the Welsh Government insist on using the Planning Inspectorate 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.
6. Clarity is needed on whether the species covered will be listed in legislation.

Bae Caerdydd | Cardiff Bay
Caerdydd | Cardiff
CF99 1NA

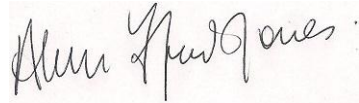
Ffôn | Tel: 029 2089 8639

E-bost | Email: alun.davidson@wales.gov.uk

We'd be grateful if you could consider these points raised by NFU Cymru and provide a response to these comments by Friday 29 August in order for the Committee to lay its report by the 18 September.

I thank you for your consideration of this matter and look forward to receiving your response.

Yours sincerely

A handwritten signature in black ink on a light-colored rectangular background. The signature is written in a cursive style and reads "Alun Ffred Jones".

Alun Ffred Jones AM
Chair of the Environment and Sustainability Committee

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence: John.Griffiths@wales.gsi.gov.uk
Printed on 100% recycled paper

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,



John Griffiths AC / AM

Y Gweinidog Cyfoeth Naturiol, Diwylliant a Chwaraeon
Minister for Natural Resources, Culture and Sport