

## Agenda – Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig

---

Lleoliad:	I gael rhagor o wybodaeth cysylltwch a:
Ystafell Bwyllgora 3 – Y Senedd	Marc Wyn Jones
Dyddiad: Dydd Iau, 19 Mawrth 2020	Clerc y Pwyllgor
Amser: 08.50	0300 200 6565
	<a href="mailto:SeneddNHAMG@cynulliad.cymru">SeneddNHAMG@cynulliad.cymru</a>

---

**Rhag-gyfarfod (08.50 – 09.00) – Brîff gan y Gwasanaeth Cyfreithiol ar y Memorandwm Cydsyniad Deddfwriaethol mewn perthynas â Bil Amgylchedd y DU – PREIFAT**

- 1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau (09.00)**
- 2 Memorandwm Cydsyniad Deddfwriaethol mewn perthynas â Bil Amgylchedd y DU – trosolwg a llywodraethu amgylcheddol (09.00–10.00) (Tudalennau 1 – 52)**

Ruth Chambers, Uwch Gysylltydd Materion Seneddol – Greener UK (drwy gyswllt fideo)

Annie Smith, Pennaeth Polisi Natur a Gwaith Achos – Y Gymdeithas Frenhinol er Gwarchod Adar (RSPB) Cymru, yn cynrychioli Cyswllt Amgylchedd Cymru

William Wilson, Fargyfreithiwr – Cyfarwyddwr – Wyeside Consulting Ltd

Dogfennau atodol:

Briff Ymchwil

Nodyn cyfreithiol (Saesneg yn unig)

Papur – Cyswllt Amgylchedd Cymru (Saesneg yn unig)



**3 Memorandwm Cydsyniad Deddfwriaethol mewn perthynas â Bil Amgylchedd y DU – gwastraff ac effeithiolrwydd adnoddau: amgylchedd**

(10.00–11.00)

(Tudalennau 53 – 64)

Gill Bell, Pennaeth Cadwraeth Cymru – Y Gymdeithas Cadwraeth Forol

Libby Peake, Pennaeth Polisi Adnoddau – Green Alliance (drwy gyswllt fideo)

Chris Sherrington, Pennaeth Polisi Amgylcheddol ac Economeg – Eunomia

Dogfennau atodol:

Papur – Cyswllt Amgylchedd Cymru (Saesneg yn unig)

**EGWYL (11.00 – 11.15)**

**4 Memorandwm Cydsyniad Deddfwriaethol mewn perthynas â Bil Amgylchedd y DU– gwastraff ac effeithiolrwydd adnoddau: busnes a llywodraeth leol**

(11.15–12.15)

Richard Brown, Pennaeth yr Amgylchedd a Gwarchod y Cyhoedd – Cyngor Sir Benfro, yn cynrychioli Cymdeithas Llywodraeth Leol Cymru (CLILC)

Brian Mayne, Dirprwy Gadeirydd Sefydliad Siartredig Rheoli Gwastraff (CIWM)

Cymru a Chyfarwyddwr HJL Environment Ltd – yn cynrychioli Sefydliad

Siartredig Rheoli Gwastraff (CIWM) Cymru

## **5 Memorandwm Cydsyniad Deddfwriaethol mewn perthynas â Bil Amgylchedd y DU – Ansawdd Aer**

(12.15–12.45)

Richard Brown, Pennaeth yr Amgylchedd a Gwarchod y Cyhoedd Cyngor Sir Benfro, yn cynrychioli Cymdeithas Llywodraeth Leol (CLILC) Cymru

Joseph Carter, Pennaeth Cenhedloedd Datganoledig Asthma UK a Phartneriaeth Sefydliad Ysgyfaint Prydain, Awyr Iach Cymru

Tom Price Arweinydd Tîm Rheoli Llygredd a Thai Sector Preifat – Cyngor Abertawe, yn cynrychioli Fforwm Ansawdd Aer Cymru

### **EGWYL (12.45–13.15)**

## **6 Memorandwm Cydsyniad Deddfwriaethol mewn perthynas â Bil Amgylchedd y DU – Dŵr**

(13.15–14.00)

Yr Athro Tony Harrington, Cyfarwyddwr yr Amgylchedd – Dŵr Cymru

Carl Pheasey, Cyfarwyddwr, Strategaeth a Pholisi – Ofwat

Mark Squire, Rheolwr Dŵr – Cyfoeth Naturiol Cymru

## **7 Papurau i'w nodi**

### **7.1 Gohebiaeth gan y Pwyllgor Amgylchedd, Newid Hinsawdd a Diwygio Tir, Senedd yr Alban – Ymgysylltu â Chynhadledd y Partïon 26**

(Tudalennau 65 – 66)

Dogfennau atodol:

Llythyr (Saesneg yn unig)

**7.2 Tystiolaeth ysgrifenedig gan Gyngor Defnyddwyr Dŵr ar y Memorandwm Cydsyniad Deddfwriaethol mewn perthynas â Bil Amgylchedd y DU**

(Tudalennau 67 – 70)

Dogfennau atodol:

Papur – Y Cyngor Defnyddwyr Dŵr (Saesneg yn unig)

**7.3 Tystiolaeth ysgrifenedig gan Yr Ymddiriedolaeth Genedlaethol ar y Memorandwm Cydsyniad Deddfwriaethol mewn perthynas â Bil Amgylchedd y DU**

(Tudalennau 71 – 76)

Dogfennau atodol:

Papur – Yr Ymddiriedolaeth Genedlaethol (Saesneg yn unig)

**7.4 Tystiolaeth ysgrifenedig gan Gymdeithas Gwasanaethau Amgylcheddol Cymru ar y Memorandwm Cydsyniad Deddfwriaethol mewn perthynas â Bil Amgylchedd y DU**

(Tudalennau 77 – 79)

Dogfennau atodol:

Papur – Gymdeithas Gwasanaethau Amgylcheddol Cymru (Saesneg yn unig)

**8 Cynnig o dan Reol Sefydlog 17.42(vi) i benderfynu gwahardd y cyhoedd o weddill y cyfarfod heddiw**

**PREIFAT 14.00–14.30**

**9 Trafod y dystiolaeth a gafwyd o dan eitemau 2,3,4,5 a 6**

Mae cyfyngiadau ar y ddogfen hon

Mae cyfyngiadau ar y ddogfen hon

Cynulliad Cenedlaethol Cymru Y  
Pwyllgor Newid Hinsawdd,  
Amgylchedd a Materion Gwledig  
Memorandwm Cydsyniad  
Deddfwriaethol (MCD) mewn  
perthynas â Bil Amgylchedd y DU  
NHAMG (5) EB01  
Ymateb gan Cyswllt Amgylchedd  
Cymru

National Assembly for Wales Climate  
Change, Environment and Rural Affairs  
Committee  
Legislative Consent Memorandum  
(LCM) in relation to the UK Environment  
Bill  
CCERA(5) EB01  
Evidence from Wales Environment Link



# LCM in relation to the UK Environment Bill

## Part 1 on Environmental Governance

March 2020

### Summary

Wales Environment Link is pleased to provide a short paper on the LCM for the UK Environment Bill. Our response focuses on Part 1 of the Bill on environmental governance and how it relates to Wales. A separate paper provided to the Committee focuses on Part 3 on Waste & Resource Efficiency, as well as the issue of marine matters in Part 1.

This is a significant piece of legislation which brings forward new environmental governance arrangements largely for England, as well as bringing environmental principles into domestic law (again, pertaining to UK Ministers and focused on England) and is stated to bring environmental principles into domestic law (again, pertaining to UK Ministers and focused on England) as well as the welcome addition of a target setting framework. It is critical to delivering the UK Government's commitments to "*place environmental ambition and accountability at the heart of government*", "*create a pioneering new system of green governance*" and "*delivering a Green Brexit*"<sup>1</sup>. Whilst the Bill does contain important and welcome provisions, it will require amendment if it is to achieve its stated aims.

The Welsh Government must urgently bring forward legislation to address the governance gap and capture the environmental principles which have guided our environmental law as part of the EU Treaties. From 1 January 2021 (under current UK Government timetable), Welsh citizens will not have a route to hold government to account on infringements to environmental law, including nature conservation, water quality, air quality or levels of pollution. The LCM (point 79) highlights concerns from the Welsh Government about pressures on the Assembly's timetable to progress its own legislation, but due to the gap that will arise when the UK leaves the EU transition period, there will be a gap in protections and provisions if the Assembly does not introduce legislation by the end of 2020.

The Westminster Environment Bill also contains provisions establishing a framework for setting statutory targets for nature's recovery. We need an equivalent framework in Wales, to ensure the Environment (Wales) Act framework for the sustainable management of natural resources drives change at a scale and pace commensurate with the emergency response our environment needs.

The [Legislative Consent Memorandum](#) concludes that this Bill is an appropriate vehicle to "*progress the circular economy strategy*" but does list some outstanding areas of concern around the devolved competence and the duty on the Office for Environmental Protection (OEP) (Point 82). Specifically:

- The impact of clause 19 (statements about bills containing new environmental law) on devolved competence and the duty on the OEP to consult devolved environmental governance bodies.
- The impact of clause 24(4), requiring the OEP to consult a devolved environmental governance body if it considers a particular exercise of its functions of relevance. Given the possibility of the OEP

---

<sup>1</sup> <https://www.gov.uk/government/news/stronger-protections-for-the-environment-move-closer-as-landmark-bill-takes-shape>

investigating a complaint which could be concerned with reserved and devolved matters, it would require a degree of partnership working.

- The impact of clause 19 (statements on whether bills containing new environmental law include regression from current environmental protection standards) on devolved competence.
- The impact of clause 24(4)<sup>2</sup>, requiring the OEP to consult a devolved environmental governance body if it considers a particular exercise of its functions of relevance. Given the possibility of the OEP investigating a complaint which could be concerned with reserved and devolved matters, it would require a degree of partnership working.

## Environmental Governance – Part 1 of the Bill

There are several issues of concern and lack of clarity in regard to the UK Environment Bill and its impacts on Wales, which we think the Committee should consider.

### Issues regarding the Office for Environmental Protection (OEP)

Regarding the remit of OEP in terms of reserved bodies and clarity on which body will be competent for citizen complaints:

- It would be useful if the Committee could gain clarification on the relative roles of the OEP and any new Welsh environmental governance body regarding operations of reserved bodies in Wales. A lack of clarity may cause jurisdictional confusion regarding any citizen complaints.
- Clarification is required, with examples, of the reserved functions of UK ministers that would be subject to oversight by the OEP.

We are also concerned that the OEP is not sufficiently independent from Government and that this will compromise its ability to hold that government to account. It may be a concern to the Committee of the impact of this on good governance in Wales, both regarding the issues above, and the lessons which could be learnt for the development of the Welsh body.

### Environmental Principles

Clarity is needed around the following issues:

- To indicate whether UK and Welsh Ministers have agreed whether UK ministers, when undertaking reserved functions within Wales, will be subject to any Environmental Principles passed by the Senedd, or by the Palace of Westminster. Currently this is not the case regarding the reserved functions of UK Ministers in Scotland and Wales (as drafted in clauses 130(1) and 18(3)(c), taken together).
- Clarity on which Environmental Principles will apply to reserved bodies operating in Wales (should Welsh law diverge from the Environment Bill) is also sought.
- The Welsh Government has advocated that there should be a core set of principles applied in relation to areas of joint decision making and legislation between the administrations<sup>3</sup> and has indicated that the four administrations have discussed agreeing a consistent set of principles rather than a common

---

<sup>2</sup> Requiring the OEP to consult a devolved environmental governance body if it considers a particular exercise of its functions may be relevant to the exercise of a devolved environmental governance function.

<sup>3</sup> Paragraph 3.62, Environmental Principles and Governance in Wales Post European Union Exit

Welsh Government consultation, Number: WG35189 March 2019:

[https://gov.wales/sites/default/files/consultations/2019-03/eu-exit-consultation-document\\_0.pdf](https://gov.wales/sites/default/files/consultations/2019-03/eu-exit-consultation-document_0.pdf)

set applying to the UK<sup>4</sup>. In relation to the application of these principles, across the UK, Ministers need to outline their plans to ensure a coherent approach between countries should a divergence in the application of otherwise consistent Environmental Principles occur, and when stakeholders will be able to comment on those proposals

- To indicate why the reserved functions of UK ministers in Northern Ireland are rightly subject to the environmental principles (Schedule 2, Paragraph 8(2)), but that this is not the case in regard to the reserved functions of UK ministers in Scotland and Wales (clauses 130(1) and 18(3)(c), taken together). It is unclear if Ministers have agreed that such functions would be addressed by any similar legislation passed by the Scottish Parliament or the Senedd.

## Non regression

The Welsh Government's Brexit policy 'Securing Wales' Future' identifies non regression of environmental rights and to provide continued citizens' rights to hold Government to account as priorities. The Welsh Government's consultation<sup>5</sup> on environmental principles and governance also stated that there is an opportunity to develop a structure which supports a commitment to non-regression from environmental protections, and more fundamentally a commitment to enhancing the environment to meet challenges faced (paragraphs 1.3 and 1.5).

### Clause 19-20: Non regression and dispute on interpretation of environmental law and devolved matters

The LCM outlines concerns regarding the impact of Clause 19 (Statements on whether bills containing new environmental law include regression from current environmental protection standards) on devolved competence and the duty on the OEP to consult devolved environmental governance bodies (clause 24(4)). Clause 19 of the Bill requires that Ministers of the Crown publish a statement before the second reading of any bill which contains environmental law provisions, to the effect that in the Minister's view the bill will not have the effect of reducing the level of environmental protection provided by existing environmental law.

In relation to Clause 19 of the UK Environment Bill, the LCM refers to "*non-regression of environmental standards*" (point 82) and "*non-regression statements*" (Point 7), although this terminology is not included in the Bill itself. **We are concerned that this provision could be interpreted as a legal commitment to non-regression, which it is not.** Whilst we recognize the intent of this provision, it does not represent a legal and binding commitment to non-regression on environmental standards. WEL and Greener UK recommend the inclusion of an unambiguous commitment to non-regression or a principle of non-regression in the UK legislation. The principle of non-regression is already a principle of international law as acknowledged by the International Union for Conservation of Nature (IUCN).

The restriction on Clause 19 to bills containing environmental law provisions potentially excludes other law and policy that impact on the environment. The scope of the provision should also be extended to include international treaties and agreements, secondary legislation, policy and guidance.

The LCM identifies this provision as requiring legislative consent because, unlike the rest of the Bill, "*environmental law*" for the purposes of this clause (19) includes devolved legislative provision. It states that "*the effect of this is that the requirements in clause 19 apply equally to UK bills involving environmental law applying in Wales*". The LCM notes that there is a difference of interpretation between the UK Government and Welsh Government in relation to this, with the UK Government of the view that the provision relates to

---

<sup>4</sup> Correspondence from the Minister for Environment Energy and Rural Affairs Lesley Griffiths to the CCERA Committee, 20<sup>th</sup> January 2020: <http://senedd.assembly.wales/documents/s97913/Letter.pdf>

<sup>5</sup> Environmental Principles and Governance in Wales Post European Union Exit Number: WG35189 (March 2019) <https://gov.wales/sites/default/files/consultations/2019-03/eu-exit-consultation-document.pdf>

parliamentary process, with 'Parliament' a broadly a reserved subject, and the Welsh Government's view is that whilst the process is one delivered through an accountability procedure in Parliament, that its purpose is truly an environmental one – a devolved subject matter. (Point 10 in LCM).

#### **Clause 24 (4): Co-operation duties of public authorities and the OEP**

WEL agrees with the Welsh Government's assessment that the consultation clause needs to be strengthened to ensure the OEP co-operates with a future Welsh governance body. This will be critically important for issues which might involve reserved functions, or cross border impacts. Given the possibility of the OEP investigating a complaint which could be concerned with reserved and devolved matters, it would require a degree of partnership working.

#### **Clause 43: Meaning of environmental law**

The LCM states that Clause 43 requires consent in as far as it relates to clause 19 on non-regression.

Clause 43 defines environmental law as *"any legislative provision which is mainly concerned with environmental protection"*. The term 'mainly concerned' is vague and lacks clear legal meaning. 'Related to' would be a better alternative. Dr David Wolfe QC, drew attention to this issue in his written evidence<sup>6</sup> to the pre-legislative scrutiny of the draft Bill: *"And, even then, there is no basis for a 'mainly concerned with' test. If any provision of any Act or regulation is concerned with an environmental matter, then it is 'environmental law'."*

#### **Environmental Review (clause 35) and the Upper Tribunal**

Any governance body created in Wales will have to have its ultimate legal sanctions provided by a Court or Tribunal in the common jurisdiction of England and Wales. Obviously, this is not an area over which the Senedd has any jurisdiction, therefore ensuring proposals made in Parliament suit Wales's situation is important.

The current proposal from UK Government is that this be the Upper Tribunal. WEL is supportive of this approach in principle. However, the proposed environmental review process, from an English perspective, is unsatisfactory. This is because:

- There is a need to move away from traditional Judicial Review, which have proved unsatisfactory in dealing with environmental complaints. While the Environmental Review model appears to be an attempt to do just that, the way it is currently curtailed by reference to Judicial Review principles means the substance of the review is, in essence, Judicial Review in disguise. We do not believe that this approach should be supported for Wales as it weakens existing approaches; something Welsh Government have committed to avoid.
- There is also a problematic difference between the approach and powers of the OEP and (as currently drafted in the Bill) those of the Upper Tribunal. The OEP will be able to reach different findings of fact to those of the public authority in question, and make recommendations on that basis, but it is unclear whether (and if so how) the Tribunal will be able to back up those findings. In addition, the OEP may be limited in the recommendations it can make since, unlike the Tribunal, it may not be able to require a public body to reverse a decision. This creates a fundamental mismatch between the work of the two bodies. We are concerned a similar problem awaits the Welsh body.
- The remedies and sanctions available through the Environmental Review process are too weak. The Upper Tribunal must be empowered to grant meaningful, dissuasive and effective remedies including, where

---

<sup>6</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environment-food-and-rural-affairs-committee/prelegislative-scrutiny-of-the-draft-environment-principles-and-governance-bill/written/97141.pdf>

appropriate, financial penalties – just as the Court of Justice of the European Union (CJEU) is currently able to do, if we aren't to weaken any current protections. The constraints imposed on the Upper Tribunal in clause 35(8) severely limit the ability of the Tribunal to gain meaningful remedies, undermining the entire enforcement process.

Wales Environment Link (WEL) is a network of environmental, countryside and heritage Non-Governmental Organisations in Wales, most of whom have an all-Wales remit. WEL is a respected intermediary body connecting the government and the environmental NGO sector in Wales. Our vision is a healthy, sustainably managed environment and countryside with safeguarded heritage in which the people of Wales and future generations can prosper.

This paper represents the consensus view of a group of WEL members working in this specialist area. Members may also produce information individually in order to raise more detailed issues that are important to their particular organisation.



Baltic House, Mount Stuart Square, Cardiff, CF10 5FH  
 Tŷ Baltic, Sgwâr Mount Stuart, Caerdydd, CF10 5FH

Tel: 02920 497 509 www.waleslink.org

Registered Charity Number / Rhif Elusen Gofrestredig: 1022675  
 Chair / Cadeirydd: Roger Thomas  
 Joint Directors / Cyf-Gyfarwyddwyr: Susan Evans & Karen Whitfield  
 Tudalen y pecyn 70

Cynulliad Cenedlaethol Cymru  
Y Pwyllgor Newid Hinsawdd,  
Amgylchedd a Materion Gwledig  
Memorandwm Cydsyniad  
Deddfwriaethol (MCD) mewn  
perthynas â Bil Amgylchedd y DU  
NHAMG (5) EB02  
Ymateb gan Cyswllt Amgylchedd  
Cymru

National Assembly for Wales  
Climate Change, Environment and  
Rural Affairs Committee  
Legislative Consent Memorandum  
(LCM) in relation to the UK  
Environment Bill  
CCERA(5) EB02  
Evidence from Wales Environment  
Link

---

## Summary

Wales Environment Link is pleased to provide a paper on the LCM for the UK Environment Bill. There are two main parts of the legislation we have focused on: environmental governance and waste. A separate paper focuses on Part 1 of the Bill on Environmental Governance. This paper looks at marine matters in Part 1 and Part 3 on Waste & Resource Efficiency.

The [Legislative Consent Memorandum](#) concludes that this Bill is an appropriate vehicle to “*progress the circular economy strategy*” but does list some outstanding areas of concern around the devolved competence and duty on the Office for Environmental Protection (OEP).

There are also some flaws relating to how the Bill refers to the marine environment. At a minimum, the Bill should explicitly state that it relates to the marine environment for key provisions of Part 1, covering the Office for Environmental Protection and targets.

## Environmental Governance as it relates to marine - Part 1 of the Bill **Clarity of scope of the Environment Bill regarding marine matters**

There is a lack of clarity as to how the Bill would work in the marine areas, both offshore and cross-border.

## LCM in relation to the UK Environment Bill

Part 1 on its scope regarding the marine environment  
Part 3 on Waste & Resource Efficiency  
Part 5 on Water Quality

March 2020

WWF sought legal advice in regard to the clarity of the powers of the Secretary of State (SoS) in regard to Wales. As the Environment Bill is currently drafted, in preparing an Environmental Improvement Plan (EIP), the SoS must not seek to make provision for water “*in Wales*”, which falls within the definition of “*the natural environment in Wales*” as per s7(6).

However, what is meant by water ‘in Wales’ for this purpose is not defined by the Bill, e.g. the extent to which sea waters are included. The term is used only in the Explanatory Notes, which do not have legal effect. Due to this:

- There is a lack of clarity on the extent to which the SoS’s EIP may deal with Welsh sea area.
- Certain functions in the Welsh sea area have been transferred to Welsh Ministers e.g. some marine licensing functions in the Welsh inshore and offshore regions in s113(4) Marine and Coastal Access Act 2009 and, via the Wales Act 2017, the designation of Marine Conservation Zones in the offshore, as well as inshore, area. However, the broad language of the qualification sits uneasily with the breadth of the apparent prohibition in the Bill on preparing a plan for water “*in Wales*”.

To deal with this issue, we want to ensure that EIPs for the sea adjacent to Wales don’t ‘fall between two stools’ and we have to avoid ending up in a position where the SoS cannot prepare an EIP because it ‘relates to the natural environment in Wales’ but the Welsh Ministers are unable take equivalent action either, because it is a part of the Welsh natural environment that isn’t entirely devolved, nor is covered by the provisions of the Environment (Wales) Act 2016.

For instance, the Environment Bill as drafted may mean that the SoS cannot exercise EIP functions in relation to, say, pollution which is more than 12nm offshore from Wales (because it may fall within the broad definition of ‘in relation to the natural environment in Wales’) but it falls within Part VI of the Merchant

Shipping Act 1995 and therefore the appropriate licensing authority is the SoS rather than Welsh Ministers under s113(5) MACAA 2009 (i.e. it is not devolved).

In addition, there is a need to consider how the Severn and Dee Estuaries can be managed according to the ecosystem approach as required by the UK Marine Policy Statement (MPS). National boundaries run through these estuaries, yet they clearly function and need to be managed as single ecosystems. We have been disappointed in the way in which the Marine Planning process has failed to effectively deal with this. Despite the MPS indicating the need for estuary-scale marine planning, the Wales National Marine Plan and the emerging NW and SW England Marine Plans give insufficient regard to how this will be achieved. There is a need to develop thinking and mechanisms to enable Welsh Government and UK Government to work together to effectively manage these ecosystems that span the Wales-England borders – wildlife does not recognise these boundaries.

### **Definition of 'natural environment'**

As written, it is currently unclear whether or how the UK Environment Bill relates to the marine environment. Greener UK has recommended that Clause 41 – the definition of 'natural environment' – is amended to make it explicitly clear that it includes the marine environment. Paragraph 61 of the Explanatory Notes indicates that the definition does extend to the marine environment, as well as the terrestrial and water environments, but for legal clarity this should be stated on the face of the Bill. MPs have put forward amendments clarifying that 'natural environment' includes referencing to the marine environment and is not just confined to inland waters.

The definition of 'natural environment' is relevant to the whole of Part 1 of the Bill, so covers targets, environmental improvement plans, environmental principles and the Office for Environmental Protection.

### **Targets for the marine environment**

The Environment Bill requires the setting of long-term targets for air, land, water and biodiversity. There should be at least one target on each, but as marine is not explicitly included as a matter for target setting on the face of the Bill, the UK Government would not be required to set targets recovery of marine areas.

Tabled amendments 1 and 85 below seek to address this problem. A further proposed amendment on Clause 6 seeks to require that the 'significant

improvement' test applies to the natural environment as a holistic system. Hence, where there is connectivity between land and sea, both should show improvement. Where the Bill refers to improvement "*on land*", we believe it should be amended to include "*and at sea*".

## Waste and Resource Efficiency – Part 3 of the Bill

The Environment Bill devolves a raft of powers to the Welsh Government over waste and resource efficiency. It has been unclear whether plastic pollution measures would be tackled at a UK-wide, England & Wales, or Wales-only level, up until this point. If the Bill passes, this will be a significant change to how Welsh Ministers will be able to tackle plastic pollution.

The direction of this Bill suggests Welsh Ministers will be able to:

- Apply levies to single-use plastic items (such as coffee cups, polystyrene takeaway containers or plastic cutlery).
- Reform extended producer responsibility through enabling powers to Welsh Ministers to "*set minimum requirements for manufacturers and producers to provide information about the resource efficiency of their products.*"
- Set up our own Deposit Return Scheme (via Clause 51, which grants regulation-making powers to establish a scheme). However, the intent as to whether this will be taken forward is unclear.

## Ensuring the Bill supports sustainable development goals

Greener UK – a coalition of environment organisations working on ensuring that leaving the EU doesn't damage environmental protections – has suggested amending Clause 50 on Resource Efficiency Requirements. This Clause grants general powers to national authorities (i.e. Welsh Ministers) on products' impact on the environment throughout their lifecycle.

Welsh Ministers will need to ensure this adheres to the Wellbeing of Future Generations Act and the seven wellbeing goals. The principle of Sustainable Development has been embedded through legislation in Wales but not in UK legislation, so Greener UK has suggested amendments to ensure the transition to a zero-waste economy is done so sustainably.

For example, it would fulfil a 'Globally Responsible Wales' to phase out single-use materials. However, a 'Prosperous Wales' would not be seen as fulfilled if a business dependent on recycling is put out of business, or if jobs are lost are a

result of the transition. But the goal of a circular economy is the only way to have a truly 'Resilient Wales'. As plastic products are phased out, we need to ensure re transition to refillable, reusable society. This means ensuring:

- That we do not incentive the replacement of single use plastic items with other single use products.
- That there be mandatory, full-material disclosure to ensure clarity on product composition.
- Clear, standardised, consistent labelling on all packaging and waste recycling so ensure ease of use and high level of compliance.
- That - in abiding by the waste hierarchy - the focus is on reducing production of materials and unnecessary consumption and instead provides incentive for reusable products.
- That products are not replaced with similarly damaging products. For example, a single-use product badged as 'biodegradable', without any clarity as to how or under what conditions it would degrade (thus leading to consumer confusion, and still filling landfill instead of focusing on the reduction and re-use of plastic).
- The impact on ways of working on business and public sector is not detrimental.
- That ecologically sustainable materials are not financially dis-incentivised due to cost.

### **Charges for single use plastic**

Clause 52 allows Welsh Ministers to create regulations which set charges on single-use plastic items. It does not set a level for charges and says that regulations may only be set for items which are single-use; made "*wholly or partly of plastic*"; and are "*supplied in connection with goods or services*".

Greener UK has recommended that "*made wholly or partly of plastic*" is amended to "*made of plastic or any other material*" (note: Schedule 9, page 174, line 31).

This would ensure that items made of several materials can be tackled and provides further flexibility for how Wales would set charges. It would also ensure unintended consequences whereby manufacturers create products out of new materials - which are not plastic - but still cannot be recycled. The Bill needs to be 'future proof' and anticipate that new single-use products can be created, still out of materials that are very difficult to recycle, degrade or re-purpose.

### **Exporting waste**

Clause 59 amends previous legislation to allow for regulation-making powers on imports and exports of waste.

There is a need to ensure that Wales does not export its waste problems elsewhere and recognises the limits of the global environment. Whilst we welcome Clause 59 shows the UK Government's recognition that a wealthy country like the UK should 'stop the exports of polluting plastic waste to developing countries', this require clarity on how Welsh Government will implement further bans or restrictions that will stop the export of materials that damage environments and people abroad.

International commitments mean it is already illegal for the UK to send 'polluting' waste to non-OECD countries. The international [Basel Convention](#), to which the UK is an independent signatory, obliges the UK to prohibit export of waste to developing countries *"if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner"*.

This Basel Convention will be strengthened in 2021, when most plastic will become subject to even stricter hazardous waste controls. Unfortunately, the UK has failed to live up to its international obligations, with a poorly resourced Environment Agency in England unable to stop illegal practices.

Greener UK has been calling for an urgent review of the regulatory process and proper resourcing of regulatory bodies to ensure illegal and contaminated containers do not leave our shores.

### **Producer responsibility**

The sections around Extended Producer Responsibility (EPR) should enable Wales to create a circular economy. However, with a shared legal jurisdiction and Trade & Industry being a - mostly - reserved matter, the most helpful approach would be for the whole of the UK to work together on similar, high standards. There may be knock-on effects from trade agreements that have been reached after leaving the European Union as well.

The [waste hierarchy](#) promotes the reduction of waste foremost and WEL would advocate that Producer Responsibility schemes should be designed in a way that goes beyond simply 'covering the costs' of disposal and end-of-life solutions, but seeks to reduce consumption of materials in the first place, therefore reducing the

full lifecycle impacts arising from sector and product groups. WEL would also advocate that, as a Globally Responsible Wales, we should be encouraging re-use and repair, as well as tackling consumption and production.

Overall, the measures in the Bill itself are too focused on 'end of life' solutions to waste and recycling. Much more emphasis is needed on reduction and design for resource efficiency, including through reuse, at the design stage.

Producers and manufacturers need to incorporate: waste minimization, reduction of use, promoting reusability, redistribution, recovery / recycling of products and materials. Ultimately, the **use of virgin materials needs to be reduced**. For example, using recycled plastic or recycled paper, rather than extracting oil or cutting down trees, when that material wasn't necessary or could have been made out of an already-existing and recycled resource. As cited above in 'Ensuring the Bill supports Sustainable Development', this will ensure Wales can achieve the 'Globally Responsible Wales' wellbeing goal.

Clause 47 introduces schedule 4 on producer responsibility obligations and enables Welsh Ministers (as the "relevant national authority") to impose regulations under two purposes:

- (a) preventing a product or material becoming waste, or reducing the amount of a product or material that becomes waste;
- (b) sustaining a minimum level of, or promoting or securing an increase in, the re-use, redistribution, recovery or recycling of products or materials.

Greener UK has recommended an amendment to insert "*or reducing the consumption of virgin materials*" into point (a) which WEL would wholeheartedly agree with.

In addition, further into Schedule 4 it's stated: "*The regulations may make provision about targets to be achieved in relation to the proportion of products or materials (by weight, volume or otherwise) to be re-used, redistributed, recovered or recycled (either generally or in a specified way).*" WEL and Greener UK would welcome inserting 'prevented' and 'reduced' into the list, so that reduction of material and encouragement / incentivizing of re-usable products is prioritized. Wales has led the way with this on carrier bags and the behavioural nudge to ensure re-usable, sturdier bags with a longer life are encouraged both as a producer **and** consumer responsibility. This priority on reduction and prevention has drastically reduced the production of unnecessary plastic.

## **Energy from waste**

In Schedule 5, the definitions around the 'disposal costs of products or materials' is important to note. In this Schedule, the 'disposal' of products or materials "*includes their re-use, redistribution, recovery or recycling*". In the Bill, the interpretation of 'recovery' can mean 'composting', but also "*obtaining energy from them by any means*".

Whilst Wales does have high recycling targets, we do also incinerate a lot of waste. This can be classed as 'recycling' as the bottom ash waste is then 'recycled' into concrete. To avoid unintended consequences - i.e. an increase in incinerating waste - Greener UK and WEL would recommend amending the Bill and removing the line "*obtaining energy from them by any means*" (note: Schedule 4, page 154, line 38).

Energy from incineration should be the last resort as it undermines the principles of circular economy and merely creates another form of pollution; carbon and air pollution.

WEL & Greener UK are opposed to Producer Responsibility fees being used to support new waste incineration capacity, particularly for domestic waste which could be recycled, or could have been removed through design for prevention or reuse. We would also support a moratorium on new incineration capacity. The current market for compostable alternatives to plastic has highlighted the gap in the waste stream, in terms of the lack of commercial composting and in-vessel composting facilities. We would like to see the Bill better reflect the need to consider future potential materials and the infrastructure required for their recycling and disposal.

Ideally, Producer Responsibility schemes should be designed in a way that goes beyond simply 'covering the costs' of disposal and end-of-life solutions, but seeks to reduce consumption of materials in the first instance, therefore reducing the full lifecycle impacts arising from sectors and product groups.

These fees should not be used to fund new incineration capacity and the system needs to be designed to ensure incineration is minimised in line with the legally enshrined waste hierarchy.

## **Producer responsibility fees**

Given the way this Bill has been drafted, and Welsh Government's own work on extended producer responsibility, we'd expect this to be considered on a Wales-only basis in future. However, there is currently a lack of clarity on how and when the Welsh Government would legislate on this. Furthermore, there are concerns in how producer responsibility is defined in the Bill.

The Bill appears to limit producers' responsibilities to disposal costs only which, as cited above, can have a restricted definition. Along with taking greater account of the environmental considerations when designing materials, producers should be responsible for the full costs to the end-of-life. Schedule 5 only provides the general power to introduce charges for producers to cover waste disposal costs.

However, the environmental footprint of products is not limited to disposal costs, as there are environmental and social risks at each stage of the life cycle for all materials – including the extraction of fossil feedstocks for plastic, forest management concerns associated with pulp and paper, and pollution and health risks of mining for metal production. Consumers should not continue to bear the financial costs and producers' charges should incentivize responsible and sustainable product design. We'd urge the Welsh Government to seek to reduce consumption and incorporate full lifecycle costing into products to producers.

As such, Greener UK has proposed a change to the circumstances in which the regulations can be made in terms of producer responsibility. The Bill, as introduced, states regulations may only be made in relation to "*the disposal costs of the products or materials*". Greener UK and WEL would endorse changing this to "*the environmental and social costs incurred throughout the lifecycle of the products or materials.*" Disposal is an environmental issue, so this should be covered by this amendment. (Note, this is in Schedule 5, page 157, line 11).

### **Deposit Return Schemes**

WEL would seek urgent clarity on discussions between Welsh Ministers and DEFRA as to whether there would be an England, Wales, and NI Deposit Return Scheme or a Wales-only Deposit Return Scheme (DRS).

The Bill, as introduced, allows the Secretary of State to make regulations on behalf of Wales and Northern Ireland, subject to their consent. A recommendation from the [CCERA Committee report on plastic pollution and packaging waste](#) is particularly relevant to this: "*The Welsh Government should introduce a DRS that applies to the broadest variety of containers, so that no restrictions are placed on the size of containers eligible*

*for the scheme. If the UK Government decides to introduce a scheme with a narrower scope, the Welsh Government should consult on a specific scheme for Wales, with a DRS with the broadest scope as its preferred and recommended option.”* Hence, DRS should include all materials and all sizes.

Scotland is the first part of the UK to introduce a DRS for drinks containers with a deposit amount of 20p. WEL is of the view that, in order to make the scheme as easy to understand as possible, a standardised deposit across the UK should be in place. It would therefore be beneficial to adopt Scotland’s deposit of 20p per container. We would advocate that Welsh Government has the ability to go further than other UK schemes to enable incorporating HDPE within a Welsh DRS. In order, to ensure high compliance and ease of use, there should be standardised labelling and mandatory full material disclosure on all products.

This level was decided upon as the 20p deposit will provide a strong incentive for shoppers to return singleuse drinks containers for recycling, thereby increasing the number of these containers which are recycled (and reducing the number which could potentially end up as litter).

The deposit level is vital as a behavioural nudge device. As we have seen with the carrier bag charge, the initial 10p cost was a barrier to purchasing a single use carrier bag but over time this appeared to be a less of an incentive. A study by the Environmental Investigation Agency and Greenpeace has found that supermarkets sold 1.5 billion ‘bags for life’ last year (2019), which is an estimated 54 bags per household. Not only does this suggest that ‘bags for life’ need to be incorporated into the carrier bag charge, but that costs need to promote behaviour change without being a financial hardship. We are concerned that there has been a replacement of one single use disposable item (10p carrier bag) with another (bag for life). We would hope that a 20p DRS fee would be enough of an incentive in the long run to return the bottles. Ultimately we are aiming at driving behaviour change to adopt more sustainable practices, introducing a DRS has led to reduced littering within all environments and improved recycling rates, where it has been introduced elsewhere.

## Water Quality - Part 5 of the Bill

There is concern that clause 81 of the Environment Bill is a wide ranging power to amend the regulations that implement the EU Water Framework Directive. These include vital rules about how water quality is measured and the different chemicals and pollutants that must be considered. There is a similar power to amend for Welsh Ministers in clause 82.

There may be some justification for a power to make technical updates to regulations, but this should not be a licence to weaken important targets via secondary legislation. Clause 81/82 should be deleted or amended to ensure that targets and standards cannot be weakened without thorough public consultation and scientific advice.

England is already far behind its target of achieving Good Ecological Status in all waters by 2027. The 2015 Welsh assessment shows that only 37% of water bodies met the standard. We are concerned that the Environment Bill could be used to amend difficult targets or the way they are measured.

It will be important to consider this from a Welsh perspective too particularly given the number of river basins that cross the Wales-England border.

Wales Environment Link (WEL) is a network of environmental, countryside and heritage Non-Governmental Organisations in Wales, most of whom have an all-Wales remit. WEL is a respected intermediary body connecting the government and the environmental NGO sector in Wales. Our vision is a healthy, sustainably managed environment and countryside with safeguarded heritage in which the people of Wales and future generations can prosper.

This paper represents the consensus view of a group of WEL members working in this specialist area. Members may also produce information individually in order to raise more detailed issues that are important to their particular organisation.



Baltic House, Mount Stuart Square, Cardiff, CF10 5FH  
 Tŷ Baltic, Sgwâr Mount Stuart, Caerdydd, CF10 5FH

Tel: 02920 497 509

[www.waleslink.org](http://www.waleslink.org)

Registered Charity Number / Rhif Elusen Gofrestredig: 1022675  
 Chair / Cadeirydd: Roger Thomas  
 Joint Directors / Cyf-Gyfarwyddwyr: Susan Evans & Karen Whitfield



The Scottish Parliament  
Pàrlamaid na h-Alba

Mike Hedges AM  
Chair  
Climate Change, Environment, and  
Rural Affairs Committee  
[SeneddCCERA@assembly.wales](mailto:SeneddCCERA@assembly.wales)

c/o Clerk to the Committee  
Room T3.40  
The Scottish Parliament  
Edinburgh  
EH99 1SP

(RNID Typetalk calls welcome)

Tel: 0131 348 5249

[ecclr.committee@parliament.scot](mailto:ecclr.committee@parliament.scot)

6 March 2020

Dear Mr Hedges

## Engagement with COP26

As we approach COP26, the UN global climate change conference taking place in Glasgow from 9-19 November 2020, our Committee is keen to explore your interest in engaging with sister committees across the UK to consider effective collaborative working and scrutiny. This supports the advice of the UK Committee on Climate Change (CCC) which recently highlighted the importance of better collaboration across parliaments in addressing the challenge of climate change.

The Committees' principal focus for COP26 is examining how parliaments can contribute to solutions to the climate crisis and effectively hold governments to account. The Committee also agreed a series of key objectives for engagement with COP26, to:

- improve our scrutiny on climate change by learning from international best practice,
- develop lasting partnerships with national and international organisations and legislatures to support climate change work over the coming decade,
- support our operational work to scrutinise climate change work, and
- co-ordinate, plan and deliver further opportunities offered through COP26 engagement as the UK retains COP26 presidency into 2021.

The Committee would welcome an opportunity to explore your interest in engaging with this, alongside parliamentary committees across the UK. This could culminate in a joint meeting at COP26. The focus of this meeting would be agreed collaboratively, but could include:

- cross UK challenges by issue or theme, such as transport, agriculture and land use or energy; and/or

- examining how parliaments can contribute to solutions to the climate crisis and effectively hold governments to account; and/or
- exploring biodiversity and climate change in the UK – the forthcoming IPBES and IPCC co-sponsored [workshop](#) report findings and interaction with the UN Biodiversity [COP15](#) or,
- a coordinated UK-wide CCC Meeting: The CCC will release its [Sixth Carbon Budget](#) report in September 2020, and this meeting could discuss high-level policy and ambition goals.

I hope you find this proposal of interest and I look forward to hearing from you.  
Yours sincerely,



Gillian Martin MSP  
Convener

**Environment, Climate Change and Land Reform Committee**



## Ymateb CCW i Femorandwm Cydsyniad Deddfwriaethol Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig Cynulliad Cenedlaethol Cymru

Diolch am roi'r cyfle i CCW gyfrannu at waith y Cynulliad ar Femorandwm Cydsyniad Deddfwriaethol Bil yr Amgylchedd (DU). Ni yw'r [cynrychiolwyr defnyddwyr dŵr statudol yng Nghymru](#) a Lloegr.

Deallwn fod Llywodraeth Cymru yn meddwl y gallai Bil yr Amgylchedd ddarparu'r fframwaith angenrheidiol ar gyfer llywodraethu amgylcheddol yng Nghymru ar ôl i'r DU ymadael â'r Undeb Ewropeaidd.

Mae CCW yn deall pa mor bwysig yw hi fod darpariaethau Bil yr Amgylchedd yn rhoi ystyriaeth lawn i faterion datganoledig a threfniadau yng Nghymru. Mae hwn yn fater ar gyfer Gweinidogion a'r Cynulliad. Ar sail cynnwys y Memorandwm Cydsyniad Deddfwriaethol a ddsbarthwyd i ni rydym yn ystyried bod hyn yn cael sylw drwy'r sylwadau a gyflwynwyd.

Mae CCW yn cefnogi'r newidiadau deddfwriaethol a gynigir gan Fil yr Amgylchedd (DU).

Yn gryno, y cynigion pwysicaf sy'n berthnasol i ddŵr a charthffosiaeth rydym ni'n eu cefnogi yw:

- **Caniatáu i Weinidogion Cymru gyfarwyddo cwmnïau dŵr i lunio Cynlluniau Rheoli Adnoddau Dŵr, cynlluniau sychder, a chydweithio ar gynigion ar y cyd ar gyfer cynlluniau a threfniadau o'r fath.** Rydym o'r farn bod hyn yn bwysig o ystyried y trafodaethau sydd ar y gweill ar drosglwyddo dŵr yn y dyfodol, a nodwyd fel pwnc i'w drafod ymhellach yn [Adroddiad Blynyddol Comisiwn Seilwaith Cenedlaethol Cymru](#).
- **Datblygu cynlluniau rheoli draenio a dŵr gwastraff statudol,** y credwn a fydd yn hwyluso'r gwaith o gynllunio'n strategol ac yn hirdymor gwasanaethau dŵr gwastraff a draenio yng Nghymru. Mae hyn yn bwysig iawn oherwydd yr heriau sy'n ein hwynebu yn sgil seilwaith sy'n heneiddio a mwy a mwy o law a risg llifogydd yng Nghymru.
- **Cyflwyniad posibl labelu effeithlonrwydd dŵr.** Rydym yn cytuno'n llwyr y dylid arddangos gwybodaeth am effeithlonrwydd dŵr ar gynhyrchion defnyddio dŵr. Gall hyn alluogi defnyddwyr i wneud penderfyniadau a all helpu i leihau eu defnydd dŵr personol. Gallai labeli effeithlonrwydd dŵr hwyluso'r cyfathrebu a'r gwaith newid mewn ymddygiad y mae rhanddeiliaid yng Nghymru yn ei wneud gyda'i gilydd drwy Grŵp Effeithlonrwydd Dŵr Cymru a sefydlwyd yn ddiweddar.
- Ofwat yn gallu **gofyn am wybodaeth (yn electronig) gan gwmnïau at ddibenion monitro.**



The voice for water consumers  
Y corff sy'n rhoi llais i ddefnyddwyr dŵr

- **Yr Ysgrifennydd Gwladol yn pennu'r sylweddau i'w hystyried wrth asesu statws cemegol dŵr wyneb neu ddŵr daear, ac yn nodi safonau ar gyfer y sylweddau hynny mewn perthynas â statws cemegol dŵr wyneb neu ddŵr daear.** Bydd rheoliadau yn cael eu hymestyn i Gymru os yw'r Cynulliad yn cydsynio â'r Rheoliadau hyn neu os nad oes ganddi'r cymhwysedd gweithredol yn y materion hyn. Byddem yn cefnogi cydweithio ar draws yr adrannau perthnasol yn Llywodraeth Cymru a'r DU.

## **CCW response to Climate Change, Environment and Rural Affairs Committee, National Assembly for Wales Legislative Consent Memorandum**

Thank you for giving CCW the opportunity to feed into the Assembly's work on the Environment Bill (UK) Legislative Consent Memorandum. We are [the statutory water consumer representative in Wales](#) and England.

We understand that the Welsh Government thinks the Environment Bill could provide the necessary framework for environmental governance in Wales after the UK leaves the European Union.

CCW understands how important it is that the Environment Bill provisions take devolved matters and arrangements in Wales fully into account. This is a matter for Ministers and the Assembly. Based on the content of the Legislative Consent Memorandum circulated to us we think this is being addressed through the representations made.

CCW is supportive of the legislative changes proposed by the Environment Bill (UK). In summary the most important proposals relevant to water and sewerage we are supportive of are:

- **Allowing Welsh Ministers to direct water companies to produce Water Resource Management Plans (WRMPs), drought plans, and working together on joint proposals for such plans and schemes.** We consider this important considering the emerging discussions on future water transfer, identified as a topic for further discussion in the [National Infrastructure Commission's for Wales Annual report](#).
- **The development of statutory drainage and wastewater management plans**, which we think will facilitate the strategic and long-term planning of wastewater and drainage services in Wales. This is very important because of the challenges faced by aging infrastructure and increased rainfall and flood risk in Wales.
- **The potential introduction of water efficiency labelling.** We strongly agree that information on water efficiency should be displayed on water using products. This can empower consumers to make decisions that can help reduce their personal water use. Water efficiency labelling could help facilitate the communication and behavioural change work stakeholders in Wales are collectively undertaking through the recently established Water Efficiency Group Wales.
- Ofwat being able to **request information (electronically) from companies for monitoring purposes.**



The voice for water consumers  
Y corff sy'n rhoi llais i ddefnyddwyr dŵr

- **The Secretary of State determining the substances to be taken into account in assessing the chemical status of surface water or groundwater, and to specify standards for those substances in relation to the chemical status of surface water or groundwater.**

Regulations will be extended to Wales if the Assembly consents to these Regulations or if it does not have the executive competence in these matters. We would support collaborative working across the relevant Welsh and UK Government departments.

Cynulliad Cenedlaethol Cymru Y  
Pwyllgor Newid Hinsawdd,  
Amgylchedd a Materion Gwledig  
Memorandwm Cydsyniad  
Deddfwriaethol (MCD) mewn  
perthynas â Bil Amgylchedd y DU  
NHAMG (5) EB04  
Ymateb gan Yr Ymddiriedolaeth  
Genedlaethol

National Assembly for Wales Climate  
Change, Environment and Rural Affairs  
Committee  
Legislative Consent Memorandum  
(LCM) in relation to the UK Environment  
Bill  
CCERA(5) EB04  
Evidence from National Trust



Ymddiriedolaeth  
Genedlaethol  
National Trust

## Written evidence: LCM on UK Environment Bill

---

# **Submission from the National Trust in Wales to the Climate Change, Environment and Rural Affairs Committee, Welsh Assembly**

**March 2020**

## **Introduction**

The National Trust (NT) exists to care for the special places of Wales so that they can be enjoyed by everyone, forever. We place great importance on the conservation, management and enjoyment of the natural and historic environment both within and beyond our boundaries. We care for 157 miles of beautiful Welsh coast, 46,000 hectares of land, 97% of which is registered as agricultural, and ten of the fourteen peaks over 3000 feet. We are the guardian of 18 of Wales's finest castles, houses, gardens and industrial sites. We care for archaeological sites, designed and cultural landscapes, buildings, architecture and parks and gardens, 175 Scheduled Ancient Monuments and 381 listed buildings. We currently have approximately 240 agricultural tenancies, 6000 volunteers and welcomed 1.8 million visitors to our properties in the last year. Two-hundred thousand National Trust members live in Wales.

We believe that the UK's withdrawal from the European Union presents opportunities to establish an ambitious and environmentally responsible land management policy and to strengthen environmental protections. The Well-being of Future Generations Act (Wales) 2015 and the Sustainable Management of Natural Resources (SMNR) principles already embedded in the Environment (Wales) Act 2016 uniquely position Wales in filling gaps in environmental governance post-EU exit. However, Wales' legislative framework was created in the context of EU law already in place. Given the twin threats posed by the climate emergency and biodiversity crisis there is an urgent need to not only maintain a framework of protection and restoration of all aspects of our precious natural and historic environment, but to further strengthen it.

Thus, the Environment (Wales) Act 2016 urgently needs updating to account for the loss of EU legislative frameworks and judiciary and to strengthen protections to reverse current trends. Given legislative timetables, it seems unlikely that this will be in place, nor the office for environmental protection (OEP) in Wales, by the time the transition period ends in January 2021. Conversely, the UK Environment Bill is progressing through parliament and includes provision for an OEP, principles and standards, all of which need to be reflected in a common set of principles and regulatory framework for environmental protection across UK nations.

It is vital that the common principles and framework should not be set at Westminster and 'imposed' on devolved nations and instead should be agreed jointly by all four countries. Thus, we urge Welsh Government to expedite the process of amendment to the Environment (Wales) Act in order that Wales is not left behind and forced to adopt decisions made in parliament, particularly as

the Bill in its current form is not sufficient to ensure non-regression. Furthermore, the powers held by the four OEPs should be a) symmetrical (i.e. one OEP should be able to overrule a decision by another on cross-border issues) and b) at least equivalent to those currently held by the EU and EU judiciary. Lastly, the rights of citizens to report breaches and hold governments to account must be protected across the UK and the efficacy of both pre-enforcement measures and enforcement action must be strengthened. It is so far unclear how this would operate, particularly in Wales which comes under the England and Wales Judiciary.

### **Devolution, environmental protection and UK frameworks**

We believe that powers which are currently devolved, including most environmental matters, should be passed on to the devolved administrations following departure from the EU. We believe that Westminster should not seek to re-reserve (ie. take back any powers which are currently devolved), that the subsidiarity principle should apply and that the distribution of funding for agriculture and land use should be on the basis of need, not population as with the Barnett formula.

There is thus a need to move to a shared UK framework, based on the following:

1. Maintaining a set of common principles and shared framework across all four nations
2. Allow for UK to show commitment to international commitments that it has signed up to individually or as part of the EU.
3. Ensure UK acts as a single market for the purposes of signing new trade agreements

Point 1. is highly desirable, to avoid a race to the bottom and to address cross-border issues (landscapes, rivers and ecosystems do not recognise political borders). Common principles should include a commitment to strong and independent environmental governance, polluter pays principle, precautionary principle, subsidiarity. The common principles should not be set at Westminster and 'imposed' on devolved nations so should be agreed jointly by all four countries – ie. all four nations should opt into 'pooling' their sovereignty. The framework should set minimum standards but should be sufficiently flexible to allow for implementation at the devolved level, in ways which reflect national differences. The details needed in the framework may depend on the nature of future trade agreements (eg whether UK strikes out on its own or just mirrors EU regulations).

As noted above, distribution of funding for agriculture and land use should be on the basis of need, not population as with the Barnett formula. To reflect this, the framework should set out that funding for environment and agriculture should be allocated on the basis of need, drawing on research carried out with RSPB and Wildlife Trusts<sup>1,2</sup>.

### **Non-regression**

A further key 'principle' that should be enshrined by this Bill is that of non-regression in environmental standards. The UK Government has made clear statements about wishing to

---

<sup>1</sup> Rayment, M. (2017). Assessing the costs of Environmental Land Management in the UK. Commissioned by the RSPB, National Trust and Wildlife Trusts. Accessed from: <https://www.nationaltrust.org.uk/documents/assessing-the-costs-of-environmental-land-management-in-the-uk-final-report-dec-2017.pdf>

<sup>2</sup> Rayment, Matt. (2019). Paying for public goods from land management: How much will it cost and how might we pay? Final Report A report for the RSPB, the National Trust and The Wildlife Trusts. 10.13140/RG.2.2.11704.49929

achieve world-leading environmental standards and to be the first generation to leave the environment in a better state. However, the non-regression commitments that were in the first Withdrawal Agreement have now been lost. To uphold its commitments a non-regression commitment should be included in this Bill.

National Trust welcomes Welsh Government's commitment to non-regression and to enhancing the environment as reflected in the objective of sustainable management of natural resources (Environment (Wales) Act 2016).

- National Trust supports creation of an independent oversight body (OEP) with the resources to monitor, advise and enforce
- The OEP should be all-encompassing of environmental factors and should include agriculture directly
- Senior appointments to the OEP should be made through an independent appointment process, potentially through the Commissioner for Public Appointments
- The OEP should be independent of Welsh Government and instead be accountable to the Welsh Assembly

We believe that a strong regulatory baseline is required to ensure that there is no degradation in environmental standards. This underpins all actions to secure sustainable land management and address both the climate emergency and biodiversity crisis.

### **UK Government's Environment Bill**

The UK Government's Environment Bill creates new environmental governance arrangements and duties to apply environmental principles in respect of England and a few reserved matters in the other UK countries. The UK Government's Environment Bill sets out some of the key elements we need but doesn't go far enough which could have implications for Wales, as outlined below:

#### **1. The proposed Office for Environmental Protection would have the power to sue Government but not to impose fines.**

This is weaker than existing arrangements under EU law. Its senior staff and budget would also be controlled by Government, not Parliament. This proposed model has implications for good governance in Wales, for the development of a Wales body and for public opinion. We know that 73% of the UK public want a body that will hold government to account on environmental laws (National Trust/Ipsos Mori poll, July 2018).

The Welsh Government has promised to bring forward legislation on environmental governance and principles. Given the Brexit transition deadline at the end of this year we are concerned that an environmental 'governance gap' is imminent. The UK Government intention is for the Office for Environmental Protection to be up and running by 2021. We need legislation in Wales within the same timeframe – during the current Assembly. Otherwise, the people of Wales will face a lengthy delay, with only interim measures in place to uphold their rights around access to environmental justice, and a void in leadership around the delivery of environmental law.

Furthermore, we support Wales Environment Link's call (excerpt below) for clarity regarding the remit of the OEP, in terms of reserved bodies, and regarding the body that will be competent for citizen complaints:

“It would be useful if the Committee could gain clarification on the relative roles of the OEP and any new Welsh environmental governance body regarding operations of reserved bodies in Wales. A lack of clarity may cause jurisdictional confusion regarding any citizen complaints.

The Greener UK coalition is seeking clarity on the UK Government’s view and it would therefore be useful to seek clarification in the Senedd also. In particular clarification is being sought to:

- To provide clarification, with examples, of the reserved functions of UK ministers that would be subject to oversight by the OEP.
- To indicate whether UK and Welsh Ministers have agreed whether UK ministers, when undertaking reserved functions within Wales, will be subject to any Environmental Principles passed by the Senedd, or by the Palace of Westminster? Currently this is not the case regarding the reserved functions of UK ministers in Scotland and Wales (as drafted in clauses 130(1) and 18(3)(c), taken together).
- Clarity on which Environmental Principles will apply to reserved bodies operating in Wales (should Welsh law diverge from the Environment Bill) is also sought.
- In relation to the application of these principles, across the UK, can ministers outline their plans to ensure a coherent approach between countries should a divergence in the the application of otherwise consistent Environmental Principles occur, and when stakeholders will be able to comment on those proposals?”

## **2. Legally binding, time-bound targets are currently missing from the draft legislation.**

The UK Government’s Environment Bill places duties on the Secretary of State to set targets, including biodiversity targets, for England; we see an opportunity to establish an equivalent framework for Wales through Welsh Government’s forthcoming legislation on environmental governance and principles, alongside enhancement of the Environment (Wales) Act to include legally binding nature recovery targets.

Clause 9 of the UK Government’s Environment Bill acknowledges devolution:

*(9) The Secretary of State may not by regulations under this section make any provision which, if contained in an Act of the National Assembly for Wales, would be within the legislative competence of the Assembly.*

It follows therefore that in the absence of a ‘made-in-Wales’ framework for environmental governance and principles and the incorporation of targets into the Environment (Wales) Act this clause technically allows UK Government to make provisions for Wales. This is unlikely to be acceptable to any National Assembly for Wales.

New legislation should place a duty on the Minister to set targets via secondary legislation, by a certain date. As well as long term targets the Minister should be required to set milestones every five years, so that progress can be reviewed via the SoNaRR report and responded to accordingly in the Natural Resources Policy.

The targets framework should include a requirement for the Minister to obtain independent expert advice on target setting, and wider consultation. This should be linked to Wales' new governance arrangements (which should be brought forward via the same piece of legislation).

### **3. Exclusion of historic and cultural features**

Lastly, we are deeply concerned that the UK Government's Environment Bill excludes historic and cultural features from the definition of the environment. It is critical that these are not left out of future plans for restoring the environment. We have the same concerns for the Environment (Wales) Act and call on the Welsh Government to ensure that historic and cultural features are included in forthcoming amendments.

### Written evidence from the Welsh Environmental Services Association (WESA)

1. The Welsh Environmental Services Association (WESA) is the trade association which represents the UK's waste management and secondary resources industry.
2. Our member companies are helping the UK move towards a more circular economy by collecting, sorting, and treating waste to recover materials and energy, while protecting the environment and human health. An industry with an annual turnover of £11 billion, our Members have helped England's recycling rate quintuple in the last decade and provide 12% of the UK's renewable electricity.
3. WESA welcomes the opportunity to respond to the Climate Change, Environment and Rural Affairs Committee's inquiry on the UK Environment Bill.

### Environmental governance (Part 1)

4. The Environment Bill should further guarantee that the Office for Environmental Protection (OEP) has the powers, resources and independence from Government to effectively fulfil its role.
5. The Bill does not guarantee that the OEP will be properly funded and have the staff resources to carry out its tasks.
6. Chapter 2 of the Bill gives the OEP quite wide-ranging powers. It is also positive that the OEP has the ability to make review applications if public authorities are considered to have failed to comply with environmental law. However, will that allow the OEP to, for example, suggest fines for the Government if it breaches its air pollution limits or fails to meet its recycling targets? If not, then the powers are not similar to that of the EU Commission, which would go against the Government's aim of ensuring that environmental protection is not undermined following the UK's EU exit.
7. Moreover, the Bill puts the OEP's independence at risk by enabling significant Government's influence over the OEP's budget and appointment of staff. Nonexecutive members of the new OEP are appointed and remunerated by the Secretary of State, and the OEP will be funded according to what the Secretary of State deems reasonably sufficient to carry out its tasks. These measures undermine the OEP's independence and would risk hindering its ability to scrutinize the Government. For increased independence, it should be funded and appointed by the Parliament.
8. The OEP also needs to ensure it can keep separate its functions to advise and scrutinize the Government to avoid any conflict of interest (i.e. scrutinizing its own proposals). This is particularly important for the waste sector as there is a strong need for an independent

body to hold Government to account for meeting waste-related targets.

## **Waste and Resource Efficiency (Part 3)**

### **Producer responsibility obligations (Schedule 4)**

9. We believe that EPR should form part of a coherent system, alongside other measures, to improve recycling. Any system that is not coherent will likely result in unforeseen consequences and fall short of the desired outcome.
10. We agree that businesses should bear the full net cost of managing the packaging they place on the market at end of life, in line with the polluter pays principle. Producers have the greatest influence over the design of packaging and this will incentivise the use of more recyclable packaging.
11. Clear labelling (marking whether a material is recyclable or not or collected via alternative routes) will be essential if we want the consumer to be able to do the right thing.
12. The PRN system was successful in its narrowly defined objective of meeting higher packaging recycling targets at least cost to producers. To meet the Government's future objectives will require a more holistic approach involving more actors along the value chain.
13. One of the downsides of the PRN system was the volatility of the revenue streams. A more stabilised and certain stream of revenues would be key to unlocking future investment in domestic sorting and reprocessing infrastructure.
14. The proposals for EPR reform - combined with the parallel changes proposed for kerbside collections, the introduction of a deposit scheme, and the plastics packaging tax - increase the risk of system failure. WESA is concerned that the multiple concurrent radical changes have the potential to distort the market and lead to unintended negative consequences. Under these circumstances it makes sense to retain the parts of the current system which work well and to minimise disruptions wherever possible.
15. Additionally, there is a real risk that the UK fails to meet future municipal recycling targets which are extremely ambitious (particularly when combined with the new calculation point). An important consideration in the achievability of the targets is the recyclability of the current municipal waste stream composition. To make the targets achievable will require an increase in the recyclability of packaging. This needs to be incentivised through modulated fees under a new EPR system. As much packaging material as possible needs to be captured through modulated EPR fees (rather than other policy mechanisms, such as a DRS).
16. The future EPR system is structured/whichever combination of the consultation models is adopted, it must meet the following principles:
  - Cost control: A competitive element should be retained to restrain cost inflation over time. EPR payments need to be determined by practitioners, either benchmarked to

the market or through competition.

- Quality control: The scheme should adopt payments by result. EPR payments should be adjusted to reflect actual recycling collected, i.e. payments should be discounted to reflect actual contamination levels. This can be achieved by having an evidence point at the sorting stage.
- Non-discrimination between household and household-like material: The new system must treat household and household-like material identically to prevent market distortions and to remove the risk of fraud.
- Single point of compliance with the retailer: Making the retailer the point of compliance would ensure that online commerce is also captured by the scheme.
- 'Investment grade': There needs to be stable and certain revenue streams to encourage investment in UK infrastructure.

### **Deposit schemes (Schedule 8)**

17. WESA supports the introduction of a DRS which focuses on materials which are not widely captured in kerbside collections, or are difficult to manage in the waste stream.
18. Coffee cups would be a strong candidate for inclusion in a DRS, as would domestic batteries which are a fire risk and can lead to the leakage of heavy metals if not managed properly.
19. A DRS for other items should be limited to items which are either commonly littered or consumed on the go.

### **Charges for single use plastic items (Schedule 9)**

20. WESA is concerned about the unintended consequences that could result from imposing charges on single-use plastic items only. These fees could incentivise producers to replace plastic with other environmentally harmful materials for single-use items, which would result in worse environmental outcomes and fail to address the need for waste minimisation. We believe the scope for charges for single use products must be extended to other materials. A clear definition of "single use" should also be established, in line with the definition used in the EU Single-Use Plastic Directive.

### **Electronic Waste tracking**

21. WESA supports proposals to implement an electronic waste tracking system across the UK. An electronic system would help in the fight against waste crime, reduce administrative burden, as well as providing valuable data to measure waste flows. It is important that any system that is developed can interface easily with existing electronic systems operated by WESA members to avoid duplication of efforts/redundant IT systems.

### **Transfrontier shipments of waste**

22. WESA welcomes the introduction of rules concerning the export of mixed plastics to non-OECD countries. This must be accompanied by measures that will unlock investment in domestic markets and demand for recycled product.