

Cynulliad Cenedlaethol Cymru  
Y Pwyllgor Newid Hinsawdd,  
Amgylchedd a Materion Gwledig  
Memorandwm Cydsyniad  
Deddfwriaethol (MCD) mewn  
perthynas â Bil Amgylchedd y DU  
NHAMG (5) EB09  
Ymateb gan Y Gymdeithas Cadwraeth  
Forol

National Assembly for Wales  
Climate Change, Environment and  
Rural Affairs Committee  
Legislative Consent Memorandum in  
relation to the UK Environment Bill

CCERA(5) EB09  
Evidence from Marine Conservation  
Society

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The Marine Conservation Society welcomes the opportunity to provide further written evidence to the Climate Change Environment and Rural Affairs Committee, in lieu of oral evidence. We have responded to the questions provided where applicable.

1. Views on the Welsh Government's rationale that provisions for Wales on waste and resource efficiency (e.g. deposit return schemes, single use plastic) should be made in the UK Bill rather than a Welsh Bill - including views in relation to timescales, administrative systems, and the need for a cross-border approach.

This Welsh Government publication defines its legal abilities:

*Welsh Ministers have full devolved powers for producer responsibility under the provisions in Sections 93 and 94 of the Environment Act 1995, and through direct implementation of EU producer responsibility legislation through a designation under Section 2.2 of the European Communities Act (ECA). It is the devolved administrations' choice that there are UK schemes. Policy and legislation are developed jointly with the four administrations through choice. Wales has devolved policy responsibility for developing its own legislative approach, should Welsh Government wish to do so. On taxation, the Welsh Government can make proposals for a new environmental tax that then have to be approved by both Houses of Parliament and by the UK Government.*

<https://gov.wales/sites/default/files/publications/2019-05/options-for-extended-producer-responsibilityfood-and-drink-packaging-waste.PDF>

Therefore, as far as MCS understands, Welsh Government can already introduce charges, for example the well-received and emulated carrier bag charge, through national legislation and can introduce further measures; however, approval must be sought on any new taxes. The UK Environment Act will allow them to implement these measures and will provide for extended producer responsibility, deposit return systems, single use plastics and the so-called "latte levy".

Although we believe that Welsh Government could take these measures, it would require primary legislation, which would be time consuming and take up capacity

within Welsh Government, including their legal team, which is already overstretched because of Brexit and Covid-19 constraints. Once drafted, it would require approval from UK Government, which is itself under the same delay constraints. Therefore, in this instance, we feel it is more appropriate for the UK government to pass a UK act for all necessary amendments, giving Welsh Government powers to deliver these measures.

We would advocate that as soon as they are able, Welsh Government act upon these powers, earlier than the forecast of 2023, which we feel is an unacceptable timeframe due to the daily environmental damage caused by these materials.

A UK Act could promote consistency for standardisation of measures in the UK and provide ease of use across borders.

We would wish for the Act to be worded in such a way as to allow individual countries to be able to go further, should they wish, whilst meeting the requirements of the act as a minimum.

Regardless of the outcome of the negotiations over the OEP, Welsh Government must ensure that it has sufficient powers within Wales and adequate funding to deliver the best outcomes.

Any targets, including interim, must also be legally binding and Welsh Government should set targets using independent experts applying scientifically robust data.

## 2. Views on the scope of the waste and resource efficiency provisions in the Bill.

Under the Waste section, the Bill does provide for Welsh Government to implement the key asks for reduction of waste and increased resource efficiency: Extended Producer Responsibility (EPR); Deposit Return System (DRS); ban Single Use Plastic (SUP) items and transfrontier shipments of waste. The Bill does cover a wide range of provisions; however, as detailed below, we would like to see amendments to the following:

We would recommend that this legislation is compatible with existing and emerging legislation, e.g. the definition of disposal within the Waste Framework Directive. We would like to see more of a focus on reduction and redesign rather than end of life solutions. The circular economy will have material and energy loss within it - even if efficiency is improved. To be compatible with Well-Being for and Future Generations Act WFGA), we must reduce consumption ([see below](#)).

The focus of the Bill at the moment is on plastic but we need to see a shift away from all single-use items to a reusable economy ([see below](#)).

The move to prevent waste being exported should not result in increased incineration, but should be used to not only increase recycling, but to

fundamentally ensure less waste is produced through better product design enforcement ([see below](#)).

### 3. Views on the **regulation making powers granted** to the Welsh Government by the Bill on waste and resource efficiency policy areas, including views on the detail in the LCM on **policy intention and how the powers would be used**.

The policy intent within the Bill appears to be well intentioned, enabling Welsh Government to set charges and levies on specific areas of waste minimisation, as well as taking into account the unintended consequences of exporting waste. There are several amends that are tabled, and we would refer you to the attached Greener UK Wildlife and Countryside Link document for the specific amendments being proposed. In summary:

#### Clause 50 – Resource efficiency requirements

*Clause 50 grants a general power to the relevant national authority to set resource efficiency requirements for products, focusing on the products' impact on the natural environment.*

We would suggest that both environmental and social costs need to be considered. Should the amendment not be passed, we would assume that Welsh Government would ensure that they would adhere to principles of sustainable development and put in place measures in line with social and environmental considerations.

#### Clause 52 – Charges for single-use plastic

We hope that this amendment to change from only *plastic* single-use items to other single-use 'materials' again will pass. If not, Welsh Government's aspiration towards zero waste would need to ensure that this clause did not result in material substitutions that are actually detracting from the overall aim of reduced consumption and less waste and impact on the planet, and instead need to drive cradle to cradle solutions.

#### Clause 59 – Transfrontier shipments of waste

*Clause 59 shows the Government's recognition that a rich country like the UK should 'stop the exports of polluting plastic waste to developing countries'.*

Under the Wellbeing for Future Generations Act we have a duty to be a globally responsible Wales and should never be exporting our waste to where it could damage local environments. In addition, preventing our waste from being exported should not have the unintended consequence of increasing incineration and we would support a moratorium on new incinerator capacity.

We would also highlight that the definition of disposal needs clarifying: please refer to Eunomia's submission with regard to this issue.

We welcome that Schedules 4 and 5 allow for producer responsibility power but the significant omission is that it is currently worded to include only disposal costs but needs to take account of full lifecycle impacts. MCS supports full net cost recovery to ensure that producers are fully responsible for the recovery, recycling and disposal of their products including any costs incurred through litter prevention and clean-ups. This should go above and beyond tyres, textiles, bulky wastes and products used in construction but include all packaging and consumer facing products.

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

#### Reduction of consumption and production, income from fees and labelling

The Welsh Government must recognise the danger of the unintended consequences and consumer confusion of the production of new materials or products that, on the outset sound like an important part in creating a more circular economy, but are actually detracting from the overall aim of reduced consumption and less waste and impact on the planet. For example, those items labelled as 'compostable' or 'biodegradable' often require specialist facilities to compost and must be captured in a separate waste stream. In reality, this rarely happens and therefore such products usually go to landfill/incineration. Should these products be permitted on the market, the producers must pay for separate collection, which provides for the appropriate waste stream and minimum recycling rates that are set independently - but the ultimate goal should be to move to a reusable model.

We advocate greater consideration of reduction in consumption and production of packaging. In addition, at present this schedule does not restrict and/or penalise the use of virgin materials. We would advocate that these factors be adopted by Welsh Government.

Modulated fees will ensure producers pay more for packaging which is unrecyclable, thus incentivising the phasing out of these materials and encouraging replacement with more sustainable materials.

Any income from the charges implemented under this enabling power should be used to support wider circular economy measures to reduce material consumption and pollution, including investing in community action against litter.

All waste has a value and businesses should be encouraged to incorporate this within their economic business plan model. Reducing waste will ultimately reduce business costs and increased recycling will provide resources that can be

re-invested. Such measures should include: clear, standardised labelling on how to recycle packaging on products; mandatory full material disclosure; promoting awareness and financially rewarding consumers to make environmentally conscious decisions in line with new policies; remove 'display until' signs from produce and instead give only a best before date and provide food redistribution to charities.

4. Views on the provisions in the Bill in relation to waste and resource efficiency that give the **Secretary of State power to legislate for Wales** in areas of non-devolved competence (with the consent of Welsh Ministers), including views on the fact that regulations made under these powers would not be subject to Assembly scrutiny.

Whilst ideally Welsh Government should legislate for Welsh devolved matters as indicated in question 1, at this time with the current capacity it would expedite measures to have them delivered through a UK Bill.

Wales has been shown to be a leading example in some areas such as recycling and ensuring that Wales can go beyond the minimum; it is important that Welsh Government continues to have the legal ability to continue this.

5. Views on how the waste and resource efficiency proposals within the Bill fit **with existing** Welsh Government policy in this area, and with the proposals set out in its **circular economy strategy**.

The Bill will enable Welsh Government to progress on their targets within the circular economy strategy by providing the mechanisms to progress. We would advocate that in addition to becoming world leaders in recycling, Welsh Government sets targets for reuse and repair.

#### Business Waste

As under the Beyond Recycling consultation, we are fully supportive of businesses having a legal obligation to separate all waste materials, as undertaken by households, as well as legal obligations under EPR to reduce packaging.

It is important that businesses address leakages of resources at all stages of the supply chain to prevent the loss of materials to the environment (both terrestrial and marine), for example plastic pellets. Failure to prevent loss of pellets from the plastics supply chain at all stages, including recycling facilities and transport of recycled material, will undermine a closed loop circular economy.

The business owner should be responsible for ensuring the re-use or recycling of surplus stock so business models should be adapted to design out surplus and waste. It should be made clear that landfill or incineration are not options to deal with surplus.

There should be mandatory reporting of all waste and surplus over a certain quantity going forward within business, the food sector, clothing and textiles (including surplus mail order related packaging), in order to strengthen monitoring and reporting of waste across all sectors.

## 6. Views on whether the proposals in the Bill will enable the Welsh Government to reach its ambition, set out in its circular economy strategy, to become the first country to send zero plastic to landfill.

The emphasis needs to be on reduction in production and consumption to achieve this. Additional charges and payments outlined in the bill will not achieve this alone; a shift to reusables is required, repair needs to be straightforward, and it needs to be more cost effective to reuse/repair than to dispose of and purchase new. Recycling rates will also facilitate this but should not be the focus of the solution. Importantly, zero to landfill should not be accompanied by significant increase in incineration but rather drive decrease in both landfill and incineration. Further details are given below:

### Ecodesign

The Ecodesign Framework Directive (often referred to as the “Right to Repair Directive”) should be transposed into Welsh legislation. The Ecodesign Directive provides consistent EU-wide rules for improving the environmental performance of products, such as household appliances, information and communication technologies or engineering<sup>1</sup>. Although it would not increase the rate of recycling it would increase the rate of re-use and the lifespans of products, which would be more desirable for a circular economy. Investment in skills development for the re-manufacturing sector should also be included.

### Incineration

The zero to landfill policy must not have the unintended consequence of increasing incineration and the clause ‘obtaining energy from them by any means’ should be deleted from the draft environment bill. In addition, incineration is a last resort and through EPR and ecodesign the number and quantity of non-recyclable items should decrease over time.

We support the idea of an incineration tax and would advocate a moratorium on new incinerator capacity.

### Repair and reuse

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<sup>1</sup> Internal Market, Industry, Entrepreneurship and SMEs - European Commission. (2020). *Ecodesign - Internal Market, Industry, Entrepreneurship and SMEs - European Commission*. [online] Available at:

[https://ec.europa.eu/growth/industry/sustainability/ecodesign\\_en](https://ec.europa.eu/growth/industry/sustainability/ecodesign_en)

If a circular economy is to be realised in Wales, fees generated from EPR and Government budget allocation should be distributed to support investment in enterprises that already re-use, repair and recycle materials to encourage growth in this sector.

## 7. Views on how the Welsh Government is engaging with stakeholders in the development of its circular economy policies.

Raising awareness of the changes and their impacts to manufactures and producers as well as the public needs to be increased. To date, most education has been to school children and whilst 'positive pester power' does work it cannot be relied upon. MCS believes that most businesses are unaware of the dramatic changes Extended Producer Responsibility needs to bring to deliver the WFGA and need to be given maximum lead-in time, not only to adjust but to play a proactive part in this change to make Wales sustainable.

The drop-in sessions appear to be been fairly successful but we are unsure if they have reached the audiences required.

Due to the COVID-19 outbreak these have been cancelled but the webinar was useful, although again, given the timing it is doubtful if many businesses joined so the consequences of EPR, SUP and DRS have not reached the wider community,

## 8. Views on the ban in England (from April 2020) on certain plastic items and whether the Welsh Government should speed up its plans here.

Welsh Government has announced that they intend to ban these items by the first half of 2021 <https://gov.wales/single-use-plastics-be-banned-wales>

Wales led the way with the carrier bag charge and to be behind both Scotland and England in developing measures is contrary to the WFGA and the EA(W). Welsh Government should have everything in place so that when the Environment Bill is passed they can immediately roll out these measures.

As indicated in question 1, we believe that the 2023 timeframe is unacceptable, and that Welsh Government has the cross-party support of the Assembly and the public to initiate DRS EPS SUD and the 'latte levy' as soon as possible.

We also believe that the Environment Bill should be written so that Welsh Government have the capacity to legislate above those items within the Single Use Plastic Directive (SUPD).

In addition to:

- straws
- stirrers
- cotton buds
- balloon sticks
- plates & cutlery, and
- food and drinks containers made of expanded polystyrene
- products made from oxo-degradable plastic; such as certain types of carrier bags

#### Wider ban single use items not just made of plastic

To date the European Legislation includes a ban on the following items: single-use plastic cotton buds, straws, plates, cutlery, beverage stirrers, balloon sticks, oxo-degradable plastics, and expanded polystyrene food containers, beverage containers and beverage cups by 2021.

We advocate that under the SUP provision, as well as banning the proposed items with the amendment, other single use items could be included. We would also advocate for the inclusion of beverage containers, single use sachets and longer-term plastic food and drink containers, not just those made of expanded polystyrene foam.

For closed settings (such as cafes etc.), these items should be replaced with reusable alternatives. For non-closed settings, reusable alternatives and the associated infrastructure should be the norm, such as reusable coffee cups, rental schemes and reusable take-away packing return schemes.

This will require some investment in infrastructure to ensure that carbon footprint is not increased by choosing ethical eco-designed products and clear, standardised labelling and collection.

#### 9. Any additional points you wish to make relating to any other provisions in the Bill e.g. electronic waste tracking, hazardous waste etc)

We think it is highly important that the UK remain part of REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) to ensure the protection of the environment and humans. REACH helps to improve the protection of human health and environment from chemical risks. REACH has 600 employees and a budget of 116 million Euros, which the UK would struggle to replicate. By remaining part of it, it would prevent any unnecessary work, time and money being spent which could otherwise be used to deliver good environment status within Wales. Welsh Government should allocate sufficient funding when setting budget allocation to remain part of REACH, since it offers a highly cost-effective option.

## Built in obsolescence

Planned obsolescence means that the useful lifecycle of products is deliberately shortened to increase consumer consumption. In order to achieve less waste and resource use, products must be designed to be in use for as long as possible. Under the new Circular Economy Action Plan for Europe, the Commission aims to establish sustainability principles to regulate premature obsolescence by widening the current Ecodesign Directive beyond energy-related products ([see Right to Repair](#)).

Along with the energy rating compulsory on some products, a similar labelling could be developed to indicate to consumers the lifetime of the product; that is, similar to how some products have a lifetime or limited time guarantee.

## Electronic Waste

Clause 55 of the Bill would amend the Environmental Protection Act 1990 (the EPA1990) to allow for the introduction of electronic (digital) waste tracking in Great Britain, and to create associated criminal offences (punishable by a fine) and civil penalties. Subsection (1) of the new section creates a power for the relevant national authority to make regulations about the tracking of specified waste, including the establishment of an electronic waste tracking system. The regulations could require waste controllers and regulation authorities (Natural Resources Wales) to ensure specified information, such as how waste is processed, treated or moved, is entered into the system. The regulations may include provision about who is to operate the system and how information is to be accessed or disclosed. Fees or charges could be imposed on anyone subject to the regulations to reflect costs incurred in establishing or operating the system, and grants or loans could also be provided to the person designated to run the system.

## Enforcement

The Bill makes further provision about the enforcement of these regulations through the insertion of Section 34CB into the EPA1990. It allows regulations to be made to create criminal offences (punishable with a fine), also civil sanctions. The regulations may include an appeals process and set out which factors should be taken into account by an enforcement agency in determining the amount of the penalty. Clause 55(4) of the Bill would allow Natural Resources Wales to make charging schemes to recover costs incurred in performing their functions under new electronic waste tracking regulations.

## Modular Design

Some manufactures are moving to modular design, or modularity in design, which encompasses component bit, or modules, designed to be independent. This allows for easy creation but more importantly, a modification can be inserted without replacing the whole unit, and the replacement of damaged or faulty modules and multi-use modules between different item can be facilitated. An example of this is the Fairphone <https://www.fairphone.com/en/>

## Leakages of pre-production pellets: supply chain approach

Pre-production pellets are the raw material used to make the majority of plastic products. However, throughout the supply chain they are lost to the environment (and manufacture) through losses experienced during, for example, storage and transportation. It is estimated that they are the second largest direct source of microplastics to the ocean. We recommend a supply chain approach is used to tackle this as outlined in “Our oceans needs actions not promises: Towards a regulatory approach to prevent plastic pellet loss in the EU” - [https://www.breakfreefromplastic.org/wp-content/uploads/2020/02/bffp\\_rpa\\_pellets\\_paper.pdf](https://www.breakfreefromplastic.org/wp-content/uploads/2020/02/bffp_rpa_pellets_paper.pdf)

[The Scottish Government has already begun work on the supply chain approach including producing a report “Preventing plastic pollution from pellet loss Taking a supply chain approach to reduce pollution and waste”](https://www.gov.scot/publications/preventing-plastic-pollution-pellet-loss-taking-supply-chain-approachreduce-pollution-waste/pages/1/)

<https://www.gov.scot/publications/preventing-plastic-pollution-pellet-loss-taking-supply-chain-approachreduce-pollution-waste/pages/1/>

## Marine Environment

At present the Bill does not properly provide for the recovery of the marine environment and we are advocating that the UK Government must clarify that key provisions, including targets, will cover the sea as well as the land and air.

Unfortunately, marine is not explicitly included as a matter for target setting on the face of the Bill, and the UK Government is not currently required to set targets for the recovery of the marine environment. Indeed, the UK Government could legally set a target for a single aspect of terrestrial biodiversity or freshwater and meet its legal obligations without setting any targets for the recovery of the marine environment. This should be resolved.

Within the Bill amendments, the UK Government will need to clarify that any targets developed for the water and biodiversity chapters will also include targets for the recovery of the marine environment, and include at least one target relating to the recovery of the marine environment (as well as for freshwater and biodiversity on land respectively). Should these amendments not be provided for in the face of the Bill, Welsh Government should ensure that any devolved legislation developed as a result of the UK Environment Bill addresses this shortfall.

The requirements under chapters for biodiversity and water are also overwhelmingly terrestrial and should also reflect their application to the marine environment. For example, there are no new duties for marine regulators or proposed changes to marine legislation, compared to the significant changes affecting the management of “land” and for biodiversity gain to be a condition of land planning. Again, Welsh Government will need to address this shortfall if not revised on the UK Bill.

The Bill does not include any reference to, or support for, the UK Marine Strategy Regulations 2010, or the duty to achieve Good Environmental Status (GES) of UK waters by 2020. The UK failed on 11 of 15 indicators for GES in the latest UK Marine Strategy assessment. Amendments have been suggested to ensure the UK Government clarifies how it plans to use this Bill to further support the achievement of this duty beyond 2020, and how it will apply to local and public authorities. Given the WFGA Act, Welsh Government would also need to address this with legislation and targets.

There are also concerns around target setting and Welsh Government should address this with national legislation if not amended on the UK Bill. The current framework for target setting does not guarantee adequate ambition or protect against needless regression. In theory, the framework could be used to set narrow, unambitious targets. To prevent this, an objective will need to be added to the bill to guide both the content and the scope of the targets. Together, the targets should aim to achieve an environment that is recovering, healthy, diverse and resilient for the benefit of people and wildlife. This would help ensure that a sufficient number of targets is set in each priority area, and that those targets have a sufficiently broad coverage of the policy matter at hand. Key measures of environmental success must not be overlooked. For example, biodiversity targets should include species abundance and diversity, species habitat extent and condition, and a measure of human- caused extinctions. Air quality targets should cover the emission of, concentration of and exposure to all key harmful pollutants. Separate targets should explicitly cover both the marine and terrestrial environment within the priority areas.

Although we have the Wales National Marine Plan, the current bill does provide for marine planning and clarity must be made to ensure there is synergy with the two Bills and no lessening of protection. The suggested amendment provides for the scope of Clauses 90-92 to be amended to include the marine environment, with consequential amendments, for example to the Marine and Coastal Access Act 2009, to make biodiversity gain a condition of marine planning.

Within the Bill, the definition of the natural environment in Clause 41 risks excluding significant elements of the natural world. The extent to which the marine environment is provided for in the bill is unclear. In addition to the need for the marine environment to be included within the scope of the target setting framework, Clause 41 should be amended to make it explicitly clear that the meaning of the natural environment 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. Should this not be amended, Welsh Government would need to ensure that any legislation from this Bill is specifically worded to include marine.

Thank you once again for the opportunity to further contribute to this debate. Should you have any further question or require clarification please contact me.