

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Newid Hinsawdd,
Amgylchedd a Materion Gwledig
Memorandwm Cydsyniad
Deddfwriaethol (MCD) mewn
perthynas â Bil Amgylchedd y DU
NHAMG (5) EB11
Ymateb gan Wyese Consulting Ltd

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

CCERA(5) EB11
Evidence from Wyese Consulting Ltd



Summary

1. I am grateful to the Committee for this opportunity to give evidence. Of course, at present, the background to any evidence on any Bill must be of great gratitude to everyone battling the coronavirus pandemic, and thoughts for all those affected by it.
2. My personal view and interest in the *Environment Bill* is that we should have good and effective environmental laws in place to replace those EU environmental laws that are being given up – Treaty provisions, Regulations, Directives and enforcement by the Commission and Court of Justice. That is not yet delivered by the current draft of the governance provisions of the *Environment Bill*, where significant improvements are needed. If they cannot be delivered and Wales opts to develop its own governance legislation, my suggestion is that it needs to avoid some of the mistakes being made with Part 1 of the *Environment Bill*, and the signs are that it may do so.
3. I favour respecting the devolution settlement, but working for effective consultation and close cooperation on environmental standards and principles between all the constituent parts of the UK: it is not clear how the environment or economy would benefit from four uncoordinated regimes applying widely different standards and approaches. The Welsh Government appears to have taken this fully into account.

4. In the end, the environmental laws which work best, and last longest, are the ones which people identify with and support. The implications of climate change, and moving towards a net zero emissions economy are that there will be very wide impacts on many aspects of everyday life. We should not take public support for these laws for granted, but should redouble and energise efforts to take the public with the law making process, and to secure public support.

Aims for environmental legislation after Brexit

5. I do not argue that current UK environmental laws, based mainly upon EU environmental laws, are perfect, still less that they have been perfectly applied. For example, the Court of Justice of the European Union has been working on the definition of waste for several decades; while in several parts of the UK there are deficiencies in enforcement of laws and regulations in areas including illegal landfill sites, pollution of rivers, air quality and the placing of vehicles with misleading emissions test equipment on the UK market. However, EU based environmental laws constitute a coherent framework, with a statutory expectation that they will be enforced, and legal obligations on EU governments to ensure that happens.

6. After Brexit both the UK and Wales need robust, clear, enforceable environmental standards, underpinned by a clear legal framework – which could be enhanced, for example, by writing standards into the UK *Environment Bill*, and not just leaving them to Ministerial discretion and pious hope.

7. We need scientists to continue to undertake strong, independent science of the highest quality, but also to be prepared to explain it clearly, so that the rest of us can understand its full implications.

8. We need good and effective environmental laws, clear standards, clear statements of environmental principles and objectives, effective monitoring, and robust enforcement, all of it informed by strong science, and with clear public support.

Changes needed to the current *Environment Bill*

9. The main changes needed to the current draft of the governance provisions of the *Environment Bill* are as follows –

- (i) the Office for Environmental Protection needs to be properly independent, in terms of appointments and financing, if it is to be given the job of holding government to account – it should not be wholly appointed and funded by the Secretary of State;
- (ii) the Bill needs an overall statutory aim to inform the application of principles and the discharge of functions by Ministers and public bodies, whether that is to be “non regression” from current standards (as promised by the Prime Minister at one stage of the Brexit debates) – (the current Clause 19 is a very weak formulation and does not deliver any binding commitment to non regression); or
 - a high level of protection of the environment (as reflected in, for example, Article 191 of the Treaty for European Union, which will not be carried over into the UK Bill); or
 - the government’s own professed aim of leaving the environment in a better state than we found it;
- (iii) targets need to be consistent across environmental media, not simply selected and applied by the Secretary of State, picking and choosing ‘at least one’ from the different media (Clause 1(2));
- (iv) principles need to be applied by Ministers and public bodies in the discharge of their functions directly, not simply applied and filtered through a Policy Statement written by the Secretary of State;
- (v) the unjustified exemptions of application to the armed forces and tax and spending (see Clauses 18(3), 43(2)) need to be removed – they have never been properly explained, are completely at odds with current practice, (for example applying environmental laws to the armed forces), set back environmental law by several decades over which defence exemptions have been removed, and are completely unnecessary given the very general and high level expression of the environmental principles;
- (vi) common frameworks and coordination between the different parts of the UK need to be energised and made effective;
- (vii) the definition of “natural environment” (Cl. 41) is too narrow, and excludes, for example, the urban environment, where most of us live; and indoor air quality, which most of us breathe, most of the time. It is very unclear why the definition of “the environment” which has been in place for 30 years since enacted in section 1(2) Environmental Protection Act 1990 (and copied into the Environment Act 1995) needs to be changed: this read -

“(2) The “environment” consists of all, or any, of the following media, namely, the air, water and land; and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground”;

- (viii) the definition of “environmental law” (Cl. 43) is unduly restrictive and should apply to all legislation that relates to the environment (as defined in the EPA 1990): the exclusions are unjustified.

10. Many, if not most, of these points have been made before in reports from the CCERA Committee of the NAW itself; and in reports in 2019 from the House of Commons Environmental Audit Committee and Environment, Food & Rural Affairs Committee. If the points made by those Committees in those reports were properly reflected in the governance provisions of the *Environment Bill*, most of my own concerns would be met. However, my impression is that the Committees’ work has been largely ignored in the Bill as re-introduced.

11. My understanding is that if the Welsh Government opts to follow the recommendations of its Stakeholder Task Group, many of these objections may be avoided in better Welsh legislation on governance than will apply in England: For example if that includes –

- an overarching objective against which specific functions can be measured;
- removal of exclusive reliance upon the Secretary of State to interpret environmental principles, and reliance instead on the Principles themselves, applying not just to policymaking but also to the exercise of functions by the Ministers and public bodies;
- removal of the unnecessary and unjustified exemptions from the application of the Principles for the Armed Forces and taxation and spending;
- functional independence of the OEP/Environment Commission in terms of appointments and funding; and
- the political will and human and financial resources to carry out proper enforcement.

12. I accept that in due course Brexit will result in each part of the UK having the environmental laws and standards that will ultimately be determined by the expression of the political will of the public, and how much they mind about environmental quality, and expect to have their environment protected. However, the legislation now before the UK Parliament and that which may be under

consideration in the NAW has to address a difficult transitional period, before that political will has been properly expressed, and at a time when environmental laws and principles may be buffeted by the conflicting pressures of trade negotiations with the EU, USA and other countries. It is all the more important, therefore, to have the main principles and robust protection of the environment well established in law before facing those headwinds.

13. It is striking that very similar conclusions have been reached about the need at this time to embed standards in legislation, for the *Agriculture* Bill – (environmental and welfare standards relating to agriculture), and for these to be consistently applied to imports as well as agriculture in the UK - see the letter sent to the Prime Minister on 27 January 2020 by the NFU and the heads of 62 environmental and welfare organisations.

Comments on the Committee's specific questions

On the specific questions raised by the CCERA Committee for this inquiry, from discussion with other groups giving evidence, I would expect them to answer the Committee's specific questions in more detail, so I would therefore limit my comments to the following of the Committee's questions

Environmental governance:

- Views on the role of the Office of Environmental Protection (OEP) in Wales

In my view, either the current OEP provisions need to be improved on the lines outlined above, or Wales would be better off applying its own standards to the independence of appointment and funding for its own body, such as an Environmental Commission, then looking for the most effective means available for coordinating its approach and operations with its English counterpart.

- Views on whether the Bill provides for appropriate co-operation between the OEP and devolved environmental governance bodies.

This is of high importance in practice. I suggest that the provisions should be strengthened to place a duty on the OEP to coordinate and cooperate with bodies with comparable functions and responsibilities in other parts of the UK: and similar provisions should apply in each jurisdiction.

- Views on the policy statement in the Bill on environmental principles which only applies in England (the Committee has previously heard calls for a UK co-ordinated approach)

As above, I believe the policy statement (Cl.16) itself to be an unnecessary

over-interpretation and control measure by the Secretary of State, and the principles could speak for themselves.

- Any other concerns relating to the environmental governance provisions with the Bill.

As set out above.

Overview:

- Views on provisions in the Bill that relate to England only (eg: conservation covenants, environmental targets) and whether they should be extended to Wales.

Conservation covenants could be useful, and biodiversity net gain in planning. Environmental targets could be important, but I have concerns look at the way they are watered down, and selectively, applied, in England, as set out above.

- Any other issues you wish to highlight in relation to the overall approach to the Bill or LCM

There is much to welcome in the Environment Bill, and I do not make criticisms for their own sake, but Parliamentary Committees in the House of Commons and NAW have worked hard to identify and try to remedy shortcomings in the Bill's governance provisions, and there needs to be evidence that the UK government is listening and responding to these concerns, or this will remain legislation that represents a lost opportunity and in need of future improvement and amendment. If that does not happen, and if the UK government resists constructive amendments of the Environment Bill, there is a greater likelihood that different parts of the UK will feel pressure to develop their own, and better legislation, to fill the governance gap that will open up after the end of the Transition Period, and it will be harder to develop a coordinated approach that is nevertheless much needed by the environment.