

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^{1,2}.

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

¹ 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>

² 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.