

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Newid Hinsawdd,
Amgylchedd a Materion Gwledig
Memorandwm Cydsyniad
Deddfwriaethol (MCD) mewn
perthynas â Bil Amgylchedd y DU
NHAMG (5) EB08
Ymateb gan Cyfoeth Naturiol Cymru

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

CCERA(5) EB08
Evidence from Natural Resources
Wales



Natural Resources Wales welcomes the opportunity to provide written evidence to the National Assembly for Wales' CCERA Committee on the UK Environment Bill.

In preparing our response we have drawn on our wider work in relation to Brexit, our close liaison with other regulators and advisory bodies throughout the UK and environmental NGOs and sector representatives in Wales. We have also drawn on our response to Welsh Government's consultation on Environmental Principles and Governance in Wales Post European Union Exit, and previous correspondence with this Committee as evidence to the Inquiry into Environmental Principles and Governance. This has helped us to better understand the potential issues, risks, gaps and impacts of the proposals set out in the UK Environmental Bill.

The majority of the proposals in the Environment Bill 2019-20 relates to the law of England and Wales but applies only to England. Around half of the provisions in the Bill extend and apply to Wales, with two clauses, 82 and 87, that apply to Wales only.

In principle, Natural Resources Wales is supportive of the clauses and provisions that apply in Wales set out in the Environment Bill 2019-20. The Committee sought a response on four specific parts of the UK Environment Bill and additional comments on the wider Bill. We have the following comments:

Environmental governance (Part 1)

In our response to Welsh Government's consultation on *Environmental Principles and Governance in Wales Post European Union Exit*, and in previous correspondence with this Committee as evidence to the Inquiry into Environmental Principles and Governance, we identified a number of points associated with cross-border and transboundary issues. We are supportive of the need for environmental oversight, clear and unambiguous environmental principles and strong environmental governance in Wales and the UK.

Currently there are proposals for a Welsh body and a separate Defra proposal, set out in the Environment Bill, for the Office of Environmental Protection as an English body. This may result in different processes, interpretations and functions either side of the border. This risks a lack of 'level playing field' for businesses and organisations. It is important that we have clarity on the regulatory floor and any regional variances to allow Natural Resources Wales to be transparent in our regulatory functions. This will support existing and future cross-border working and interpretation and delivery of policy and regulatory decisions. This is important, for example, in the management of cross border rivers, where there is a need for a consistent approach in catchments that cross the border.

Clause 24 (4) of the Environment Bill 2019-20 provides that the Office of Environmental Protection should consult a devolved environmental governance body if the work that it is undertaking is of relevance to the devolved body. It is essential that the Office of Environmental Protection and the proposed Welsh body are able to work together closely and with the equivalent oversight bodies elsewhere in the UK. This will reduce the risk of regulatory divergence and provide a common baseline to landowners and industry, regardless of location. It would also reduce the risk of a 'race to the bottom' and encourage a more collaborative approach to cross-border issues. For example, transboundary environmental damage where the point of origin and the location where impacts are observed could be in different administrations. In these cases, collaboration with other UK regulators and oversight bodies will be essential to ensure good outcomes for the environment. This will necessarily require close working relationships that may benefit from being set out in legislation or in Memorandums of Understanding.

Clause 16(1) requires the Secretary of State to prepare a policy statement on the environmental principles and how they should be applied by Ministers of the Crown. Environmental principles help to drive environmental standards and inform the development of policy and legislation. The EU environmental principles currently apply to all administrations in the UK equally and are the legal

framework for the development of policy and legislation by UK government and the Welsh Government. Without a shared approach to a common, overarching objective and environmental principles, Welsh Government's stated aim of a commitment to non-regression and enhancing environmental standards is likely to be more difficult to achieve. The Environment Bill 2019-20 clause 16 as currently written, may result in environmental principles being interpreted differently in England and Wales, if the guidance set out in the policy statement allows for different exemptions or interpretations of how the principles apply.

The Environment Bill 2019-20 also includes provisions that require UK Government to report on the impact of all new environmental primary legislation and requires UK Government to report on environmental legislation across the world on a two-yearly basis.

Whilst NRW is supportive of the principle of these provisions, it is essential that UK Government and the Office of Environmental Protection work closely with Devolved Administrations and bodies. This help to ensure that environmental principles and governance are applied effectively across the UK and that environmental legislation in the UK is robust and fit for purpose. This collaborative approach will also allow the Office of Environmental Protection and equivalent bodies to identify issues and improvements with environmental law in the UK and work collaboratively to address complaints and opportunities effectively.

Waste and Resource Efficiency (Part 3)

NRW's responsibilities within waste are wide ranging and include the regulation of permitted sites and activities concerned with the movement, storage, treatment and disposal of waste, as well as responding to incidents and taking enforcement action.

We provide technical advice to Welsh Government (WG) to support their policy development and to ensure the legislation and regulatory framework is fit for purpose.

We support WG in the development and implementation of their ambitions to achieving a high recycling rate and the move towards a circular economy with consideration of how waste is managed and handled in a legally compliant way, minimising risk to the environment.

Producer responsibility obligations (Schedule 4) Producer responsibility for disposal costs (Schedule 5)

NRW welcomes the proposals to introduce legislation to require producers to pay the full net cost of managing their products at end of life to incentivise more sustainable use of resources and to place fees and charges on producers to cover these costs.

These powers will enable Wales and the UK to meet the requirements of the EU Circular Economy Package and the ambitions set out in Welsh Governments Beyond Recycling consultation through applying Extended Producer Responsibility.

Once developed, the principles of extended producer responsibility can be applied to the other materials currently covered by Producer Responsibility Regulations in Wales, and the UK, such as batteries/accumulators and end of life vehicles. There is scope to expand producer responsibility to other wastes such as mattresses, furniture, tyres, textiles, fishing gear etc.

NRW is working with closely Welsh Government, DEFRA, the other UK Devolved Administrations and UK Regulators on the reform of the current producer responsibility regulations. NRW are committed to supporting the development of producer responsibility systems that are proportionate and fit for Wales. We will need to ensure that any proposals can be effectively regulated and that any regulatory duties placed on NRW are adequately resourced, including the appropriate IT systems.

Resource efficiency information (Schedule 6)

Resource efficiency requirements (Schedule 7)

The Bill proposes to implement legislation to require the provision of resource efficiency information and specify resource efficiency requirements for certain products.

Moving towards a circular economy will help to keep resources in service for as long as possible, maximising their value when in use and then, when no longer useful to society, ensuring that those resources are captured for re-use and recycling, and recovery or reintegration into ecosystems.

NRW is supportive of any measures developed to increase resource efficiency but without knowing the specific details of what this might look like and how it will be delivered it is difficult to make an assessment. We would advise that any measures put in place to increase resource efficiency requirements are reviewed against existing legislation that delivers similar requirements, to ensure that it enhances and adds value to those existing requirements. For example, the resource efficiency requirements for installations within the existing Environmental Permitting Regulations.

NRW supports Clause 50 in relation to water efficiency. The current EU Water Efficiency labelling in the UK doesn't apply to washing machines or dishwashers. The Bill will potentially apply across all water using goods and fittings. The proposed legislation reflects in part the UK Energy Trust Report 2019 cost benefit analysis of water efficiency labelling scenarios, which proposes that the initiative that is likely to provide the best Average Incremental Social Cost is one led by government, as proposed here, but also linked to Building Regulations and minimum standards. A scenario predicted to reduce per capita consumption by 6.3 litres per person per day by 2030. The Bill doesn't refer to water efficiency specifically but allows for interpretation to apply to water using goods.

Charges for single use plastic items (Schedule 9)

The Bill proposes regulations to make provision for charging sellers of goods or services for single use plastic items.

NRW would support consideration of measures that encourages manufactures to make decisions or choices around eradicating unnecessary plastic packaging, particularly where it is limited to single use. Whilst we recognise plastic as a material has its place and use, it single use plastic should only be considered where there is no alternative.

NRW [responded to the UK consultation](#) on Plastic Tax in May 2019. A further consultation on a plastic tax was included in the Budget announcement on 11th March 2020 and HMRC have released a consultation that runs until 20th May 2020, we are working with Welsh Government and HMRC to consider our response to the consultation. Consideration how the proposed new charges would interact with a proposed plastic tax to ensure that they complement each other to drive forward appropriate behaviour change and avoid unintended consequences.

Deposit schemes (Schedule 8)

The Bill proposes powers to introduce regulations establishing deposit schemes. NRW [responded to the UK consultation](#), in May 2019, and highlighted that Wales currently has a high recycling rate as a result of the existing legislation and the infrastructure which supports the current collections systems. Adoption of the 'blueprint for collection in Wales' would have greater benefit than an 'All in' DRS model. There is evidence that the introduction of a DRS could help to reduce litter and improve recycling of drink containers consumed 'on-the-go' in Wales. An 'all-

in' model is not likely to further improve recycling rates of these containers in Wales as there is a well-established kerbside collection recycling infrastructure.

Preventing fraud throughout the UK requires further detailed consideration for the DRS and Producer Responsibility system. For example, DRS collected glass bottles that are excluded from a Producer Responsibility system could be included in a Producer Responsibility evidence system (as crushed/broken glass).

Preventing waste arising is the most sustainable use of our resources and is the most preferred option of the waste hierarchy. A DRS does not encourage reduction in single use packaging items owing to the refund of a deposit, so there is likely to be no reduction in waste arisings. Therefore, the introduction of a DRS in isolation will not achieve the best and most desirable environmental outcome for these types of waste streams.

Any requirement for Natural Resources Wales to monitor/enforce a DRS covering Wales would require detailed consultation with us and funding to cover our full costs for undertaking this additional work.

Electronic Waste tracking

The Bill proposes amendments to Section 34 of the Environmental Protection Act 1990 to allow for the establishment of an electronic waste tracking system.

NRW are supportive of the introduction of a legislative amendment that will require mandatory electronic waste tracking. Having the ability to use live data and information to better understand where waste is generated and where it goes, including where it leaks through the system or is handled illegally, either domestically or abroad will enable our regulatory focus to be more effective complementing our monitoring compliance at waste management sites and assisting in our efforts to tackle waste crime.

NRW are working with the UK government, regulatory agencies and Devolved Administrations to create a mandatory electronic waste tracking system which will record all waste movements within the UK, including products derived from waste. This will lead to better waste regulation and policy, helping drive improved business productivity and investment, and supporting effective management of resources.

For example, the data used by the Welsh Government to measure performance against waste prevention is of variable quality. Natural Resources Wales is a partner in discussions about the development of a new single UK waste data collection system to meet the needs of all public-sector data reporting on waste. This would have potential advantages including the recording of more timely, accurate waste data to inform policy intervention and measure progress of each sector in Wales in reducing their waste arisings.

NRW are contributing as subject matter experts, to the steering committee and as UK project board members. This work is currently unfunded but requires considerable input from NRW, we have requested funding for this critical work from Welsh Government for a post to support this project to ensure that a UK system meets the needs of NRW and Welsh Government.

Hazardous waste

The Bill proposes amendments to the Environmental Protection Act 1990. Currently in relation to Hazardous Waste within the Environment Bill, NRW do not have a view on the proposed changes. Although NRW do note that, between waste tracking (section 55 Part 3) and hazardous waste (section 57 Part 3) there are different definitions of “relevant waste controller” in relation to who regulations will apply to. The definition in relation to hazardous waste within the Bill is wider than waste tracking as it also includes examining, testing or classifying hazardous waste.

Transfrontier shipments of waste

The Bill proposes amendments to current legislation, including the Environmental Protection Act 1990, Environment Act 1995 and Transfrontier Shipment Regulations 2007.

We welcome the proposal to reform the Transfrontier of Shipments Regulation and are working with UK regulatory bodies and Government on the proposals but foresee that the reform will result in a great administration burden on regulatory activity for NRW which will need to be appropriately funded and supported by an ICT system. Any new waste tracking system should be designed to support the many waste regimes including TFS.

Waste and recycling must be properly managed whether it is processed at home or abroad and this remains a priority for Natural Resources Wales. We want to see further moves towards greater sustainability for all wastes. Wherever wastes are recycled, whether in the UK or abroad, it should only be done at sites operating in an environmentally sound manner. Whether waste is recycled in the UK or abroad will depend on several factors such as current UK reprocessor infrastructure and global market demand for the specific material type. It follows that waste originating from Wales may be exported abroad from Welsh and other UK ports. More waste arising from Wales leaves through English ports, rather than Welsh, and all ‘deep sea’ (i.e. going beyond Europe) sailings and containerised waste exports leave via English ports not Welsh ports.

‘Green-list’ or non-notifiable waste must be destined for genuine waste recovery reprocessing in countries that have specifically told the European Commission (EC) that they want these wastes (and using only Article 18 controls). The EC regulation (1013/2006) on which the current UK TFS regs (2007) are based requires NRW as the ‘competent authority (CA) of dispatch’ to ensure that all waste exports will be managed in an environmentally sound manner (ESM). The destination

recovery facilities operate to a 'broadly equivalent' (BE) standard to those operated to within the EU.

The existing regulations are not specific on how ESM and BE should be demonstrated, and this is one area that the current 'regulatory review' of the UK TFS regulations is looking to address.

NRW, as the Competent Authority currently, do not have sight of Annex VII documents associated with 'green list' shipments to review these exports (e.g. tyres to India).

We welcome the proposal to reform the Transfrontier of Shipments Regulation and are working with UK regulatory bodies and Government on the proposals but foresee that the reform will result in a great administration burden on regulatory activity for NRW which will need to be appropriately funded and supported by an ICT system. Any new waste tracking system should be designed to support the many waste regimes including TFS.

Air quality and environmental recall (Part 4)

We note the changes proposed within the UK Environment Bill in relation to Local Air Quality Management and Smoke Control areas. We are aware that some of the areas in this Bill relate to England only and that Welsh Government will in due course introduce legislative changes in Wales to support their Clean Air Plan. We have no comment to make in relation to the areas of the UK Environment Bill that relate to Wales as the areas impacted are the remit of the Local Authorities.

Water (Part 5)

NRW welcomes the intent laid out in clauses 72 to 75. In particular, the provision to give Welsh Ministers the power to direct that water companies prepare and publish joint proposals (new Section 39E). However, there is a need to ensure that cross-border requirements can be recognised and managed equally to the satisfaction of all parties.

Consultation to date on the Environment Bill has been led by Defra in England. Implementation of the requirements of the Bill must ensure adequate provision for crossborder and Welsh concerns.

NRW supports the provision in Clause 76 to make the preparation of "Drainage and Sewerage Management Plans" by sewerage undertakers statutory in Wales, along with introducing a timetable for review. These plans will provide a long-term context for wastewater planning, equivalent to the long-term planning framework for public water supply provided by Water Resources Management Plans. We believe there would be some benefit in amending the terminology to refer to "Drainage and Wastewater Management Plans". This will then align with the plans currently under preparation by water companies and the non-statutory guidance which has been developed by the sector. Making provision for public

authorities to “have regard” to the plans could secure wider benefits and a more integrated approach to this area.

It would be beneficial to clarify the provisions in Clauses 81-83 to make it clear whether Ministers and the Secretary of State must seek consent when reviewing substances, in relation to chemical status for surface and groundwater. Setting out a timetable for such reviews that is compatible with any reporting requirements and standards that are required by other legislation (such as the Water Framework Directive) would be desirable.

Additionally, maintaining the improvements in environmental standards that have already been secured by the inclusion of a need for non-regression in standards would provide clarity for all.

NRW welcomes the changes proposed by Clauses 85 to 87 of the Bill in relation to Internal Drainage Boards and Internal Drainage Districts. This allows us and other relevant authorities to ensure up to date and relevant valuations are used to calculate the annual drainage rates for the benefit of all. It will allow the process to reflect change and better adapt to future pressures.

Miscellaneous and General Provisions (Part 8)

We welcome the inclusion of Clause 122 regarding REACH (the Registration, Evaluation, Authorisation and Restriction of Chemicals). Ensuring this work continues in a nationally consistent manner going forward is essential.

Additionally, REACH required the identification and gathering of knowledge about new chemicals or changes in chemical levels in the environment. This function of compiling a

‘watch list’ for future potentially harmful chemicals needs to be provided at a UK level, to ensure that regulation is fit for purpose now and in the future.

I hope this response helps to address the areas raised by the Committee.

Our Roles and Responsibilities

- **Adviser:** principal adviser to Welsh Government, and adviser to industry and the wider public and voluntary sector, and communicator about issues relating to the environment and its natural resources
- **Regulator:** protecting people and the environment including marine, forest and waste industries, and prosecuting those who breach the regulations that we are responsible for
- **Designator:** for Sites of Special Scientific Interest – areas of particular value for their wildlife or geology, Areas of Outstanding Natural Beauty (AONBs), and National Parks, as well as declaring National Nature Reserves

- **Responder:** to some 9,000 reported environmental incidents a year as a Category 1 emergency responder
- **Statutory consultee:** to some 9,000 planning applications a year
- **Manager/Operator:** managing seven per cent of Wales' land area including woodlands, National Nature Reserves, water and flood defences, and operating our visitor centres, recreation facilities, hatcheries and a laboratory
- **Partner, Educator and Enabler:** key collaborator with the public, private and voluntary sectors, providing grant aid, and helping a wide range of people use the environment as a learning resource; acting as a catalyst for others' work
- **Evidence gatherer:** monitoring our environment, commissioning and undertaking research, developing our knowledge, and being a public records body
- **Employer:** of almost 1,900 staff, as well as supporting other employment through contract work