

Ymateb gan Dr Mary Dobbs, Dr Viviane Gravey, Dr Ludivine Petetin, a'r Athro Reid /
Evidence from Dr Mary Dobbs, Dr Viviane Gravey, Dr Ludivine Petetin, and Prof. Reid

This evidence is written by Dr Mary Dobbs (law) from Maynooth University, Dr Viviane Gravey (political science) from Queen's University Belfast, Dr Ludivine Petetin (law) from Cardiff University and Prof Colin Reid (law) from the University of Dundee. All four have expertise in environmental and agri-environmental issues and are part of the [Brexit & Environment network](#), which brings together academics analysing how Brexit is affecting the UK and EU environments.

We have a few central points that we would like to highlight to the committee the Minister's and Deputy Minister's proposed priorities. These are focussed more on the environmental elements, rather than infrastructure:

1) Environmental Governance:

As has been highlighted repeatedly throughout the Brexit process, Brexit will lead to significance environmental governance gaps across the UK, e.g. Lee, 2017; Lee, 2018; Jordan et al, 2017; Cowell et al, 2019. While the Welsh system has key strengths (e.g. the Environment Act and the Wellbeing of Future Generations Act), it nonetheless worked with, and was dependent on, the EU environmental regime – including the role of the European Commission and the Court of Justice. To help offset the impacts of Brexit, several steps could be taken (some of which have been acknowledged by the Welsh Government, Senedd and indeed previously by the Climate Change, Environment and Rural Affairs Committee, e.g. Griffiths, 2020; and CCERA, 2019):

- a. The creation and implementation of a permanent oversight body – the Welsh Government has indicated that such a body will be established (Griffiths, 2020), but this should be done as soon as possible and not delayed any further. In doing so, lessons should be learned from the critiques brought to bear on the frameworks (as they have evolved) for the Office for Environmental Protection in England and Northern Ireland and for the Environmental Standards Scotland in Scotland – independence (including financial), effective tools and a broad remit are crucial (e.g. Reid, 2020a; Lee, 2019a; and Lee, 2019b).
- b. Environmental principles must be enshrined within law (as in Scotland) and not simply a policy statement as undertaken in England. This includes:
 - i. The core environmental principles: polluter pays principle, precautionary principle, prevention, rectification at source/proximity principle and integration.
 - ii. Other environmental principles such as address cross-border matters (e.g. Cowell et al, 2019; and CCERA 2019) ought to be included. On potential principles to include, see the table in Brennan et al, 2019, a p.100.
 - iii. Principles should go hand in hand with objectives such as a high level of environmental protection, environmental improvement and non-regression (in conjunction with sustainability in the Environment Act and references to

resilience in the Wellbeing & Future Generations Act) – facilitating a more ambitious, forward-looking framework to underpin future policy and legislation. (e.g. Cowell et al, 2019; CCERA 2019; Brennan et al, 2019)

- c. Similarly, the rights under the Aarhus Convention (access to information, public participation and access to justice in environmental matters) must be incorporated within the law and adequately supported.
 - d. These points have been debated ad nauseum over the past few years. Great care should be taken not merely in how they are adopted (within binding law), but also in the wording used, their scope, limits on potential exceptions etc (e.g. Lee and Scotford, 2019; and Dobbs, 2019), as it is possible to incorporate the objectives, principles and rights within the law, but water them down to such an extent that they become mere green-washing.
 - e. Beyond a new body, increased effort and transparency is needed in collaborations between the four administrations to deliver high environmental ambition. Common frameworks are essential for a wide range of environmental matters – both substantive and procedural (e.g. regarding air and water quality/pollution, environmental impact assessments, and governance approaches). While we recognise that common frameworks by their very nature are not solely within the remit of the Welsh Government, they ought nonetheless be a priority for the Government – with discussion as to their desired nature and scope and some commitment to developing these. This is essential due to the permeable nature of the environment and cross-border elements that arise, but also in light of the Internal Market Act (IMA). It is worth noting that the mutual recognition principle in the IMA does pose significant challenges for the effectiveness of future devolved policy, **but** Section 10 of the Act does provide for potential exclusions from the mutual recognition principle where a common framework exists (Dobbs and Petetin, 2021) – hence it is even more important to develop suitable common frameworks that can thereby bolster environmental initiatives (and initiatives linked to other legitimate objectives).
 - f. There is a need to incorporate both regulatory baselines and targets (linked to key indicators) to provide specific parameters, thereby providing something to hold actors to and ensure continued ambitions. This will also facilitate the role of any enforcement body.
 - g. As with consideration of an independent enforcement body, reflection on the proposals across the UK (and beyond) and critiques relating to each of these aspects would be highly beneficial, e.g. regarding developments in Scotland, see Reid, 2021; or across the UK see Reid, 2020b.
- 2) Marine energy and biodiversity: While investment in tidal energy is welcome, another key marine priority should be Marine Protected Areas (MPAs). While Wales already meets the 30by30 target of MPAs, many of these MPAs are in bad condition and need additional investment and protection to deliver their benefits for habitats and biodiversity. Furthermore, it would be welcome to

look beyond specific MPAs, e.g. as Scotland are now considering when examining the percentage of areas that are ‘highly protected’. Regarding biodiversity more generally, the UN Biodiversity Conference (CoP15) will be held in October 2021 and consideration should be given to the discussions and outcomes from that Conference – again, Scotland, provide a worthwhile example to consider here: <https://www.gov.scot/publications/fairer-greener-scotland-programme-government-2021-22/documents/>.

- 3) Tree planting & felling: consideration of trees should be in light of net-zero and nature conservation and biodiversity, rather than letting the emphasis fall on the timber industry. This is important for considering what trees ought be planted, where, in what manner and similarly the conditions for them to be felled. Native trees that facilitate habitat maintenance/development, e.g. through promoting suitable undergrowth, are essential. Felling vast swathes at a time can also impact significantly on habitats and is not adequately mitigated by the planting of new trees. Whilst this would hopefully not arise under good practice, even felling relatively small areas can affect connectivity/links between individual habitats or parts of a larger habitat. Thus, felling can impact on the immediate site felled and also on habitats and, for instance, migration paths beyond the initial site. Appropriate objectives and principles need to be applied and suitable experts (e.g. ecologists) need to be consulted in order to develop suitable policies.
- 4) Recycling: Under the rectification at source/proximity principle, as well as considerations of ethics, intragenerational justice, polluter pays etc, responsibility for recycling should fall locally. Sending waste for recycling elsewhere imposes challenges and burdens on other countries/populations, is relying on the recipients recycling effectively and entails the transport of waste to these other countries – which can create fresh hazards and also may not be possible in the future as countries refuse to take more waste. See for instance regarding UK waste in Turkey: <https://www.bbc.com/news/uk-57680723#:~:text=Last%20year%20the%20UK%20sent,now%20need%20a%20new%20home>. There is a need to consider capacity building within Wales and/or the UK as a whole.
- 5) Circular economy: the discussion of this in the document is very sparse, which indicates that it might not be a key priority or that the thinking on it is at very early stages in the government. This issue is vital and merits close examination.
- 6) Funding: we recognise that there is considerable reliance upon UK funding (and also EU funding to date), as noted in the document. Clearly, a high level of funding that is also ring-fenced is needed for environmental aims – including climate change (as well as the Minister’s complementary aims). One priority ought to address the deficits that will arise and consider ways to replace or guarantee existing funding and mitigate against any potential reductions.

10th September 2021.

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