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Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
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Alun Ffred Jones AM
Chair of the Environment and Sustainability Committee
National Assembly for Wales
Cardiff Bay
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29 September 2015

Dear Alun

ENVIRONMENT (WALES) BILL

I am writing following my appearance before the Environment and Sustainability Committee on 16 September. During this session, I committed to provide further information in response to some of the queries raised by the Committee to inform your consideration of the Bill.

Annex 1 to this letter contains the additional information requested during the Committee session.

One of the topics discussed related to the three 'area trials' that have been led by Natural Resources Wales (NRW). The area trials were designed to help to take forward NRW's approach to integrated natural resource management in line with the Welsh Government's commitments to achieve the sustainable management of natural resources, in addition to helping to inform the associated practical processes looking ahead to implementation of the Environment (Wales) Bill – particularly in relation to area statements – as well as the Well-being of Future Generations (Wales) Act requirements.

I have asked NRW to provide further information on the results of these trials to date, and more specifically, detail on what can be learned and developed in relation to the implementation of the area statements.

Annex 2 contains the letter issued by the Secretary of State to the First Minister on 11 September setting out his position in relation to the relevant consents for the Bill.

I hope that the attached information helps to inform further your forthcoming Committee report.

I would like to take this opportunity to thank you for your detailed consideration of the Bill during Stage 1.

Yours sincerely

A handwritten signature in cursive script that reads "Carl Sargeant". The signature is written in a dark ink and is positioned above the printed name.

Carl Sargeant AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources

Annex 1: Responses to further questions from Committee

This Annex sets out responses to the questions and clarifications raised in the Environment and Sustainability Committee session held on 16 September.

Part 1: Section 6 – Biodiversity and Ecosystems Resilience Duty

1) Provide information on how much of the land in Wales would be affected if Minister of the Crown consents is not provided in relation to section 6 of the Bill.

On the basis of our initial assessment, the estimated total coverage of Crown land in Wales is 151,605 ha (or 374,624 acres). This equates to around 5% of the land mass of Wales.

If the Secretary of State for Wales does not give consent then any land in Wales which is Crown land may be exempt from the requirement to comply with the duty in section 6.

In Wales, Crown land includes a diverse property portfolio, including substantial areas of common land, agricultural holdings and a range of mineral interests. It also includes 65 per cent of the foreshore and the seabed out to 12 nautical-miles.

Land that is managed by the MoD is a substantial part of the Crown land, with an estate equal to over 1% of the UK land mass. The MoD holds 228,000 hectares of land and foreshore (either freehold or leasehold), with access to a further 204,900 hectares from various rights and grants, much of this forms the training estate. In total this is about 1.8% of the UK land mass.

There are also other UK Government departments and agencies holding land in Wales to which section 6 of the Bill would apply, if consent was given. This includes property managed by Her Majesty's Prisons Service, police forces, courts, Home Office, Driver and Vehicle Licensing Authority, Department for Work and Pensions. This would be additional to the estimate above. However, our initial assessment indicates that this is unlikely to add more than 1% to this figure.

2) Provide information on the current law in relation to existing controls to prohibit and rectify serious pollution on Crown land.

The current legislative framework for pollution control that governs how pollution is regulated and monitored in Wales will continue to apply and will not be affected by the new biodiversity duty under section 6 of the Bill. Such legislation covers air, land and water pollution and includes the Environmental Permitting (England and Wales) Regulations 2010, the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009, the Water Resources Act 1991 and the Pollution Prevention and Control Act 1999, to name but a few. Government departments managing Crown land in Wales will continue to be under a duty to comply with this this legislation which, if consent is given, will apply along side the biodiversity duty.

3) Provide information on the impact of the biodiversity duty on public authorities.

What would be different under the Bill is the strengthening of the existing biodiversity duty under section 40 of the Natural Environment and Rural Communities Act 2006. The current duty requires public authorities to 'have regard' to the purpose of conserving biodiversity and therefore it merely requires a public authority to consider biodiversity rather than require action to be taken. The new duty under section 6 of the Bill will require public authorities to be more proactive in relation to biodiversity, by obliging them to 'seek to maintain and enhance' biodiversity.

It is intended that the new duty will also illustrate to public authorities the vital role of biodiversity in ecosystem resilience and enable them to apply a more holistic approach to maintaining and improving biodiversity.

Not extending the duty would increase the risk of Wales not meeting its commitment to halt the loss of biodiversity. Declining biodiversity in turn increases the risk of declining ecosystems and consequently declining quality of ecosystem services and therefore a loss of economic, social and environmental benefits.

Examples of what public authorities could do to seek to maintain and enhance biodiversity are below.

- Letting grass grow longer at certain times of year and in certain places, before cutting it, to provide a more varied structure, encourage wild flowers, and enhance wildlife habitats (something we believe that certain UK Government Departments are doing);

- Consideration of biodiversity as part of a site's Environmental Management System (something we believe that certain UK Government Departments are doing).
- Allowing some weedy areas to provide food for birds and animals;
- Use of native tree and plant species.

Many of these examples can already fall under how a public authority at present may contribute to the section 40 duty so I do not believe that the enhanced duty will present a significant increase to their current responsibilities.

Specifically, while the new duty will include a reporting requirement, this is not expected to be a detailed or lengthy report. Public authorities could, for example, comply with it by including a couple of pages about biodiversity within any of their existing reports. The aim of this reporting duty is that public authorities should report every three years in a specific document or another suitable report on what steps they have taken to comply with their statutory obligations. There is a similar reporting requirement in Scotland.

4) Provide information on how the Bill will demonstrate how it measures progress made to halt the decline in biodiversity.

An integral component of the new duty on public authorities is to report on how they are delivering on the biodiversity duty in section 6(5) of the Bill. They will therefore be under a requirement to report on what actions they have taken. Public authorities should report every three years and can elect to report in either a specific document or another suitable report on what steps they have taken to comply with their statutory obligations - the first report would need to be published by the end of the 2019.

By linking biodiversity to the resilience of ecosystems, it will assist public authorities to have an increased understanding of the multiple benefits that biodiversity and ecosystems provide, for example, tackling climate change, improving health and well-being and providing opportunities for green growth.

Measuring progress is a key component of the Bill and is integral to the delivery framework for the sustainable management of natural resources. The State of Natural Resources Report, the National Natural Resources Policy and area statements, each contribute to measuring of such progress.

The State of Natural Resources Report will include an assessment of the state of natural resources (including the biological) in Wales and how their sustainable management is being achieved; this will include an assessment of the resilience of ecosystems and therefore the biological diversity.

The National Natural Resources Policy and area statements will consider all of the natural resources as defined in the Bill and will provide the overall natural resource management context both nationally and for specific areas, within which biodiversity action can be delivered.

In meeting the “resilience goal” in the Well-being of Future Generations Act (Wales) 2015 public authorities will also be required to consider biodiversity. Public bodies will have to demonstrate how they are working towards all of the goals. The new duty under section 6 of the Bill will need to be considered within this framework, in particular the well-being goals and the indicators and milestones introduced by that Act.

Part 4 – Collection and Disposal of Waste

5) Provide an explanation on the decision to exclude enzyme bio-digesters from the assessment undertaken to inform the Regulatory Impact Assessment (RIA).

We did not consider food waste bio-digester systems within the IRIA. The two following scenarios were modelled:

- Firstly, a baseline reflecting the existing situation, whereby 21,000 tonnes of food waste is disposed of to sewer via macerator by businesses and the public sector. Bio-digesters, which are a method of treating food waste prior to disposal to sewer, have little market penetration within Wales, and were therefore not included within the baseline modelling.
- Secondly, a situation whereby food waste disposal to sewer was banned, in support of our policy of maximising the amount of food waste available for energy production and high quality fertiliser. As enzymic bio-digesters result in the disposal of food waste to sewer, they were not relevant to the option and therefore were not included within the modelling.

We are aware that the Mechline Waste₂O bio-digester has received certification from WRc regarding the safety of its discharge of effluent to sewer. However, the purpose of the proposed ban to sewer is to maximise the amount of food waste available for energy production and high quality fertiliser. The safety of disposal of treated waste to sewer, though an important consideration to the water authorities, is not an issue.

Part 6 – Marine Licensing

6) **Confirm that NRW will be able to retain the fees raised from marine licensing charges for reinvestment in that service?**

As I outlined in the Committee session on 16 September, marine licensing fees are currently retained for the benefit of the marine licensing authority. It is intended that this arrangement will continue for both existing fees and the extended charging powers set out in Part 6 of the Bill. However, any proposal to retain marine licensing fees, rather than paying these fees to the consolidated fund, will continue to be subject to approval pursuant to the financial provisions of Part 5, Finance - of the Government of Wales Act 2006.

Alongside the introduction of the Bill, and working in partnership with Natural Resources Wales, officials are undertaking a review of applicable fees. The review will consult on the level of fees and the use and level of the new charging powers. The overall aim of the fees review is to provide a fit for purpose, robust, proportionate, fair and transparent regime for charging for costs associated with marine licensing.

With adequate cost recovery, it is anticipated that the marine licensing authority will be able to respond to requests from applicants more readily, giving applicants more certainty that timescales will be met and that the service provides value for money.



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Ref: 397SUB 15

11th September 2015


Environment (Wales) Bill

You wrote to me on 7 August 2015 seeking formal Secretary of State consent for the functions of Ministers of the Crown to be modified by sections 6, 11(3)(b), 21 and 22(2) of the Bill as introduced. I am content to provide consent for sections 11(3)(b), 21 and 22(2). I am, however, withholding consent for section 6 at this time.

As well as a duty to seek to maintain and enhance biodiversity in the exercise of their functions, section 6 includes a new duty on those public bodies (including Ministers of the Crown) to report every three years on what has been done to comply with the biodiversity duty.

Since the Bill's introduction, my officials have discussed these provisions with a number of departments. Concerns have been raised about the duties imposed by section 6 and the additional burdens this may place, not just on Ministers of the Crown, but also on bodies carrying out wholly or mainly non-devolved functions in Wales.

We have sought to gain further clarity on these duties from your officials and suggested minor amendments to address shared concerns. However, it remains our view that the duties imposed in this section will be more onerous than the duty on which they are based, in section 40 of the Natural Environment and Rural Communities Act 2006.

I know our respective officials, and those across Whitehall, have worked hard to resolve issues with the Bill and I am encouraged by the joint working that has taken place. Through further negotiation I am confident that our officials can reach a resolution to the remaining issues in the Bill which will allow you to meet your policy objectives.

Rt Hon Stephen Crabb MP
Secretary of State for Wales

