

Cynulliad Cenedlaethol Cymru / National Assembly for Wales
Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol / The External
Affairs and Additional Legislation Committee
Bil y Diddymu Mawr / The Great Repeal Bill
EAAL(5) GRB 09
Ymateb gan Gyswilt Amgylchedd Cymru / Evidence from Wales Environment
Link

Summary

Based on the current devolution settlement, WEL would assume that any powers repatriated from the EU relating to currently devolved areas will remain the competence of the devolved administrations. Any UKwide policies, to replace the common framework currently provided by EU law, covering agriculture, land management, marine management and the environment would need to be jointly agreed on by all four countries.

1. Rather than answer each individual question in this consultation, broad points are set out below that we believe are necessary for the Great Repeal Bill to function as intended. For more information, the [Environment Links UK response](#)¹ to the House of Lords EU Select Committee gives further detail on how the devolved nations could operate going forward. The paper notes that leaving the European Union could give rise to a much greater degree of policy and legislative divergence between the four nations and that it is likely to re-open questions about the distribution of powers between governments and the funding arrangements for devolution. It is also worth highlighting the Welsh Government's written evidence² to the same House of Lords inquiry, following an oral evidence session³.

Legislation for Brexit across the UK and devolved nations

Most areas that EU environmental legislation covers – such as air quality, biodiversity and water – are cross-border and a collaborative approach will be essential to ensure it is workable. The UK's four nations must and need to be able to work together as we leave the European Union. Following 'Brexit day' (when the Great Repeal Bill comes into force and EU law no longer applies), the Assembly will

¹ Written evidence from Environment Links UK to the House of Lords EU Select Committee, March 2017. Inquiry: 'Brexit: Devolution'.

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/european-unioncommittee/brexit-devolution/written/48411.pdf>

² Written evidence from Welsh Government to the House of Lords EU Select Committee, March 2017. Inquiry: 'Brexit: Devolution'.

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/european-unioncommittee/brexit-devolution/written/69182.pdf>

³ Oral evidence from Welsh Government to the House of Lords EU Select Committee, March 2017. Inquiry: 'Brexit: Devolution'.

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/european-unioncommittee/brexitdevolution/oral/48984.pdf>

be required to introduce a wide range of primary and secondary legislation to make the 'technical' and policy changes necessary to respond to this. The Great Repeal Bill itself, and further primary and secondary UK legislation made in response to Brexit, may also have important consequences for Wales and should require a Legislative Consent Motion (LCM).

3. LCMs operate under the Sewel Convention. The Sewel process is an important one, but it is a political convention; whilst it should be noted that it is now reflected in devolution law (following the passage of the Wales Act 2017) it is not an absolute legal requirement⁴. This was brought to light in the Supreme Court's recent judgement in the Miller case⁵, where the Court ruled unanimously that there is no legal requirement to secure the consent of the devolved nations in triggering Article 50. With this clarification, it is even more important that Ministers work together cooperatively to ensure the Brexit process is not impaired by a lack of consultation between the nations.
4. As part of the 12 principles set out in its Brexit White Paper, the UK Government has clarified that "no decisions currently taken by the devolved administrations will be removed from them".⁵ However, questions remain as to how the standard setting functions currently exercised at EU level will be delivered in future.
5. It will be important for the UK and devolved governments to work collaboratively in order to maintain high standards of environmental protection and effectively address environmental issues – which do not respect borders – in line with the UK's international obligations.
6. It is a concern that the White Paper makes no mention of plans to develop new domestic governance arrangements to ensure such an approach to standard setting or the continued robust provision of the regulatory, monitoring, oversight, accountability, enforcement and other functions currently provided by the EU institutions.

Issues for environmental legislation being re-written for Wales

8. All existing EU environmental law (including preambles and principles) – particularly the EU Directives which protect species, habitats, water and air quality – need to be retained and enforced in Wales.

⁴ Geldards Briefing, February 2017. 'Legal View: Wales Act 2017'.

<https://www.geldards.com/wales-act-2017.aspx> ⁵ Supreme Court judgement, January 2017.

Miller v Secretary of State for Exiting the EU.

<http://www.bailii.org/uk/cases/UKSC/2017/5.html>

⁵ HM Government, February 2017. 'The United Kingdom's exit from and new partnership with the European Union'. <https://www.gov.uk/government/publications/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-unionwhite-paper>

9. The recent introduction of the Environment (Wales) Act 2016 and the Wellbeing of Future Generations (Wales) Act 2015 has led the way in the UK and further afield in the development of law in this area. This will form an important framework for the development of future approaches to environmental law. There are few environment issues that are not of global concern, therefore, it is vital that Wales continues its work with the EU and other international partners.
10. International agreements – such as the Convention on Biological Diversity; the Convention on Wetlands of International Importance (RAMSAR); the Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention); the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention); the European Landscape Convention; the Aichi Biodiversity Targets; carbon budgeting and climate change targets – will be even more important after Brexit. It is to Wales' benefit that aspects of some of these are embedded in its legislation already, but continued adherence to their core principles going forward is essential.
11. Work and commitment to increasing recycling rates, pursue circular economy ambitions, achieve the suitable management of natural resources, and reduce carbon should continue at the same rate, as well as bringing forth forward-thinking initiatives as seen through the 5p single use carrier bag charge. Wales should be no less ambitious or agenda-setting in embarking on ways to protect our environment.
12. Appended to this response is WEL's [Six Key Asks for a future land management system in Wales](#). It outlines the necessary steps for Wales to move towards more sustainable policies and payment systems, in line with the framework provided by the Well-being of Future Generations Act and the Environment Act to support a biodiverse natural environment with healthy functioning ecosystems. Greener UK has also put together a briefing on ['Delivering Sustainable Fisheries Management'](#) post-Brexit⁶.
13. There needs to be an adequate financial settlement for Wales to enable delivery of new environmental legislation and protection. We know that to ensure the continued protection and enhancement of our wildlife and natural resources, we need to increase investment. A settlement based on the Barnett formula would result in less funding than currently comes to Wales for conservation and consequently would be an insufficient allocation of funds to enable the transition to a sustainable future for the Welsh environment.

⁶ Greener UK Briefing Paper, January 2017. 'Delivering Sustainable Fisheries Management: A Sustainable Future for UK Seas'. http://greeneruk.org/resources/Greener_UK_Fisheries_%26_Marines.pdf

14. A key issue is the more general financial implications for Wales, which will be significant as it loses access to EU funding streams. The way this funding is replaced will be critical; Wales is the greatest beneficiary across the UK of EU Structural Funds⁷, alongside the agricultural sector's dependence on CAP payments. WEL believes that a new agricultural framework should be based on the idea of public funding for public goods, with land managers who deliver the most, receiving the most.
15. As the House of Lords Sub-Committee on EU Energy and Environment has noted⁹, Brexit should allow devolved nations to tailor agriculture policies more closely to their individual circumstances. However, their report warns that "the UK has an internal single market, in which agri-food plays a significant role. It is in the interest of all in the agri-food sector, as well as of consumers, that the integrity of the UK market be preserved. This will require either a UK-wide framework or the negotiation of co-ordinated agricultural policies by the UK Government and the Devolved Administrations. We encourage the Government to pursue dialogue on this issue as a matter of urgency." Coordination of each nation's new policies will be important to protect both farmers and consumers.

Oversight in the drafting of the Great Repeal Bill and subordinate legislation

16. The drafting and response to the Great Repeal Bill and any other future legislation dealing with the legal technicalities of Brexit will have significant implications for both Welsh Government and the third sector in terms of both resource and capacity. This should not be underestimated; the focus on post-Brexit legislation will also have a sizeable impact on what other issues the Welsh Government and National Assembly for Wales are able to focus on.
17. There is also considerable concern around the nature of the use of secondary legislative powers. It is essential that 'technical' legislative change does not result in a reduction in current protections and that careful thought is given to relevant powers of UK and Welsh Ministers. These issues need to be highlighted and

⁷ Institute for Government Briefing Paper, October 2016. 'Four-nation Brexit: How the UK and devolved governments should work together on leaving the EU'.

https://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG_four%20nation_Brexit_briefing_v6.pdf

⁹ House of Lords EU Energy & Environment Sub-Committee, May 2017. Report: 'Brexit: Agriculture'.

<https://www.publications.parliament.uk/pa/ld201617/ldselect/lddeucom/169/169.pdf>

¹⁰ National Assembly for Wales, Research Service Briefing Paper, 'Wales and the EU: what does the vote to leave the EU mean for Wales?' June 2016.

<http://www.assembly.wales/Research%20Documents/16-037-Wales%20and%20the%20EU%20What%20does%20the%20vote%20to%20leave%20the%20EU%20mean%20for%20Wales/16-037-Leave-English.pdf>

explained to stakeholders, as well as the public more generally, so they can feed into what will undoubtedly be a fast-moving but crucial process.

18. In addition, there is significant concerns on the potential of losing the 'right to challenge' when it comes to environmental legislation after leaving the EU. The Assembly's Research Service¹⁰ has pointed out that it is "unclear" how courts will interpret legislation: "While the UK is a member of the EU, domestic implementing legislation must be interpreted so as to give effect to the purpose of the underlying EU Directive (and indeed the Treaties). Once the UK was no longer a Member State, that interpretive rule would no longer apply automatically. The UK Parliament could nevertheless legislate to require the courts to continue to operate the interpretive rule for the time being. It is unclear whether the Assembly could do likewise in relation to devolved subjects." It is also difficult to predict what role or impact rulings from the European Court of Justice will have on the UK following withdrawal. The Research Service notices that their decisions would be "at most, of persuasive authority, and UK courts could be faced with new arguments about the interpretation of legislation that originally stemmed from the EU."
19. The Great Repeal Bill is expected to delegate powers to Welsh Ministers to bring EU legislation into domestic law via Statutory Instruments. The Bill should confine any delegated powers to the purpose of faithful transposition of existing EU directives, to ensure that any policy changes are given the due scrutiny that they require. As much new legislation as possible should be made through primary legislation, in order to give a full and proper oversight role to the National Assembly for Wales. It is inevitable that with such a large body of law to transpose, some will be made through secondary legislation; in this case, we would emphasise the need for as much early stakeholder engagement as possible and mechanisms put in place to allow enhanced scrutiny, potentially through the Constitutional and Legislative Affairs Committee or the External Affairs & Additional Legislation Committee.

Wales Environment Link (WEL) is a network of environmental, countryside and heritage Non-Governmental Organisations in Wales, most of whom have an all-Wales remit. WEL is officially designated the intermediary body between the government and the environmental NGO sector in Wales. Our vision is a healthy, sustainably managed environment and countryside with safeguarded heritage in which the people of Wales and future generations can prosper.

This paper represents the consensus view of a group of WEL members working in this specialist area. Members may also produce information individually in order to raise more detailed issues that are important to their particular organisation.

Appendix 1

Key headline asks for future land management support in Wales 24th November 2016

Set out below are six key asks calling for a future land management system in Wales that applies the principles enshrined in Welsh law to all forms of land management. As we transition out of the EU, we must move towards new policies and payment systems that enable Wales to fully implement these principles in order to support a biodiverse natural environment with healthy functioning ecosystems.

1. The Welsh Government must be able to set land management support in context of its own legislation – the Well-being of Future Generations Act and the Environment (Wales) Act - and provide a place-based approach through the National Natural Resource Policy and Area statements.
2. We want to see environmental standards that are stronger than they are now, and the Welsh Government calling on the UK Government to provide strong leadership on environmental standards at an international level.
3. There should be a financial settlement for Wales to enable the full delivery of environmental objectives. A settlement based on the Barnett formula would result in less funding than currently comes to Wales and consequently would be an insufficient allocation of funds to enable the transition to a sustainable future for the Welsh environment.
4. Pillar 1 payments are unsustainable and should not be taken forward into future support mechanisms. In the context of Welsh legislation, public money should only be made available for delivery of public benefits. There should be an end of support to farming and forestry that externalises costs as this compromises Wales' ability to deliver sustainable management of natural resources and invest in restoration of ecological resilience to deliver the greatest public benefit.
5. Build a robust and well-resourced enforcement system based on high minimum standards.
6. Alongside delivery of public benefit, there should be a move to developing new and innovative supply chains for existing and new quality sustainable products. This will require upskilling of land managers to encourage innovation.