



Our ref: MA/P/LG/0472/19

Mike Hedges AM
Chair
Climate Change, Environment, and Rural Affairs Committee
National Assembly for Wales

7 February 2019

Dear Mike,

Many thanks for your letter of 10 January seeking my views on the UK Government's draft Environment Bill and a request for an update on the Welsh Government's proposals for environmental governance following the UK's exit from the EU. Please accept my apologies for not responding sooner, our work on ensuring we have a functioning statute book on exit day is at a critical stage and resulted in this delay.

I have continually sought to engage with the UK Government on possible collaborative approaches to addressing the environmental governance gaps arising from the UK exiting the EU. In doing so, I have underlined the different position in Wales, where our existing legislation means there is a difference in the environmental governance gap we will have in comparison with the other UK nations. Any UK-wide proposals to address environmental governance gaps must, therefore, not only respect the devolution settlement, but also be compatible with our existing Welsh legislative framework.

As the environment is a devolved matter on which the Assembly has already passed ground-breaking legislation, we start from very a different position to the one the UK Government faces with respect to its responsibilities for England. This difference can be illustrated through a comparison between the current EU architecture and the legislative framework already in place in Wales.

The EU Treaties represent a two tier approach. This consists of an overarching context to promote sustainable development, which applies across all policy areas, within which the four EU environmental principles sit. In Wales, the overarching sustainable development context is enshrined through the Well-being of Future Generations (WFG) Act. The Environment Act, which integrates the management our natural resources into the WFG Act's sustainable development architecture, introduced a further set of principles, which apply to the management Wales' natural resources. In this way, a two-tier architecture exists in both Wales and the EU. This legislative architecture does not however exist at a UK-wide level or in other parts of the UK. Furthermore, our approach in Wales has is not just aligned more closely with the EU's architecture, but is also to the international level, in particular, the UN sustainable development goals, Framework Convention on Climate Change and the UN Convention on Biological Diversity's ecosystem approach.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The scope of our existing framework is, therefore, wider and more integrated than the model proposed in the UK Bill, particularly as sustainable development applies across all policy areas without exception. It is also supported by specific statutory duties on Welsh Ministers and Welsh public bodies and puts in place provision at both a national and local level.

No clarity has been provided by the UK Government on what it believes will or will not constitute a reserved matter in terms of the environment. As it stands, the Bill does not reflect the current devolution settlement. Rather than being drafted in line with the existing devolution settlements, where everything is devolved save for those matters specifically reserved, the Bill seeks to carve out devolved competence. In addition, the Bill places a focus on the role of Ministers of the Crown, who of course operate in Wales. Given a substantial area of land in Wales is for example managed by the Ministry of Defence, as drafted, Ministers of the Crown, whilst operating in Wales, will be required to carry out functions in line with the requirements under the Bill. This would, for example, encompass the policy statement as defined by the Secretary of State. This can create a conflict where existing legislation passed by the Assembly has already placed a duty on these Ministers. The Environment Act having placed a duty on Ministers of the Crown in relation to the management of Wales' environment (section 6), thereby ensuring alignment in Wales with the wider legislative framework. There are also potential issues with for example how the courts may use the principles as interpretative tools in deciding cases on environment law.

A number of Welsh bodies also operate functions within reserved areas and therefore as the Bill is currently drafted could be subject to scrutiny by the new OEP even though as constituted, it is focused on the governance gap in England. Any environmental oversight body operating in Wales would however need to work with, rather than cut across, the primary legislation in place in Wales. This is particularly the case in relation to the Well-being of Future Generations, Environment and Planning Acts. It would also need to complement and align with existing bodies and their roles in Wales, which are also different to other parts of the UK, in particular Natural Resources Wales, the Future Generations Commissioner and the role of the Auditor General for Wales.

In summary, given our starting point is very different, the model the UK Government have developed within the Bill for England is not a workable approach for Wales. As it currently stands, it is also not compatible with the devolution settlement or our existing legislation.

I remain ready to work collaboratively on potential UK-wide approaches to this important issue and we continue to proactively engage with the UK Government.

In parallel we are working to finalise our consultation for publication this month. With the prospect of a catastrophic no deal outcome looming, our foremost priority is however to ensure there is a workable statute book in place to provide stability and maintain our environmental standards.

Post exit day, our existing principles (5-ways of working and the principles of sustainable management of natural resources) will continue to apply. Further, our exiting accountability bodies, such as the Public Services Ombudsman, will continue to receive citizens' complaints and our Future Generations Commissioner will continue to act as the guardian of sustainable development.

Regards,

A handwritten signature in cursive script that reads "Lesley". The signature is written in a light grey or blue ink on a white background.

Lesley Griffiths AC/AM

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs