

# Covering paper – PTN 5.5

March 2019

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## Purpose

1. The purpose of this paper is to provide context for the attached letter from the Minister for Environment, Energy and Rural Affairs on environmental principles and governance.

## Background

2. Following the publication of its report, *Environmental governance arrangements and environmental principles post-Brexit* (June 2018), the Committee has taken a keen interest in developments within the UK Government and Welsh Government in this policy area.
3. In January, the Committee wrote to the Minister for Environment, Energy and Rural Affairs seeking her views on the UK Government's Draft Environment (Principles and Governance) Bill. A copy of the letter can be found [here](#).
4. At its meeting on 6 March, the Committee considered the Minister's response to its letter. A copy of the letter can be found [here](#).
5. Given that the response failed to address some of the issues raised by the Committee, Members agreed to write back to the Minister asking her to address these issues and to provide additional information and/or clarification on points made in her response. A copy of the letter can be found [here](#).
6. The Minister's most recent letter is attached to this paper.

## Action

7. The Committee is invited to note:
  - the attached letter from the Minister,



- that the Welsh Government will be publishing its consultation on environmental principles and governance on Monday 18 March,
- that it has agreed to undertake further work in this policy area early in the summer term to give stakeholders an opportunity to consider and respond to the Government's consultation.



Ein cyf/Our ref: MA/P/LG/0897/19

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

14<sup>th</sup> March 2019

Dear Mike,

Thank you for your letter of 28 February seeking further information on my views on the UK Government's draft Environment Bill and more information on the Welsh Government's proposals for environmental governance following the UK's exit from the EU.

This is an important and complex issue which requires careful consideration and engagement. However, the continuing lack of any clarity over the future relationship between the UK and EU creates significant further complications to this work.

### **Analysis of the environmental governance gap in Wales**

In terms of the analysis of the environmental governance gap in Wales, we will be summarising our analysis of the governance gap within our consultation, which will be published on the 18<sup>th</sup> March. Fundamentally, the work underlines the significant difference in the governance gap in Wales to the rest of the UK. It also highlights the legislation passed by the Assembly through the Future Generations Act and the Environment Act has already put in place core elements of the governance, which exists at an EU level.

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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.

## **Contingency plans for a no deal Brexit**

First and foremost our approach has been to ensure there will be no gap in relation to the EU environmental legislation that is currently in place. We have, therefore, over the last six months, delivered the most extensive programme of legislation ever undertaken by the Welsh Government to achieve this aim. This will ensure the continuation of existing protections and in a no deal situation will mean existing environmental standards continue to apply from exit day.

With existing environmental standards and protections in place, what additional governance is required to oversee the continued implementation of that legislation is a key part of the consultation. As such, engagement with existing bodies will be a key part of the consultation. As a Government, we are also mindful the scrutiny of the Welsh Government's implementation of environmental legislation is ultimately a matter for the Assembly.

In relation to your questions on the reference in my letter to existing Welsh bodies and the governance role they already provide in Wales, I would like to clarify some misconceptions, which have arisen. In relation to the impacts of a no deal Brexit and the ability of citizens to raise complaints, there have been reports stating on exit day there will be no procedures for citizens to raise complaints. This is not an accurate account of the current provisions operating in Wales as citizens will not lose their right to challenge government. Citizens will, even in a no deal scenario, still be able to raise complaints, not only to bodies such as the Public Services Ombudsman but also to the National Assembly. However, they will no longer have access to the citizens' complaint procedure provided within the EU, which enables the EU Commission, where appropriate to act on their behalf, including the ability to refer cases to the European Court of Justice. This system of governance at the EU level was established to address the specific constitutional arrangements of the EU, for us to provide effective governance at a domestic level, we must therefore design a structure, which reflects our domestic constitutional arrangements.

This is why the existence of bodies such as the Future Generations Commissioner is an important consideration and another illustration of the difference in gaps in Wales to those in other parts of the UK. In my letter I was not proposing the solution was to place additional functions on the Commissioner or the other bodies in place, but their current role shapes the nature of the gap in Wales.

In terms of the nature of any transitional arrangement, which may be required, in some scenarios this could be addressed by the continuing role of arrangements provided under EU membership. The nature of the UK's exit therefore directly impacts upon the nature of any additional environmental governance required and the continued uncertainty brings a significant amount of added complexity to the work.

## **A new environmental governance body**

Fundamentally, the approach to new environmental governance arrangements post EU membership must align with international requirements and aligns with and complements our existing governance arrangements. Central to this is sustainable development as legislated for by the National Assembly in the Well-being of Future Generations (Wales) Act and the role of the Assembly as the body which holds government and public bodies to account.

In contrast, the UK Government's proposed 'Office of Environmental Protection' addresses the specific gaps in England where there is no equivalent framework for either sustainable development or environmental policy currently in legislation. The role of the OEP is focused around the UK Government's 25 Year Environment Plan for England and the Secretary of State's policy statements, which in Wales is of course a devolved area of competence and where the Assembly has already passed primary legislation. There is, therefore, a risk of the Bill negatively impacting on our devolution settlement by cutting across devolved areas. For example, adopting the UK Government's proposals for England would, therefore, mean the Secretary of State would be setting the policy direction for the principles and policy delivery for Wales, which notwithstanding the constitutional issues would conflict with the legislation we already have in place, remembering, of course, this is an area where we have been internationally recognised for our good practice. In addition, it would mean the Assembly would need to agree oversight of Welsh legislation being undertaken by a body appointed and financed by the Secretary of State with responsibility for the environment in England.

Despite this, I have consistently stated my willingness to discuss UK-wide approaches and have had numerous discussions on this issue with my UK counterparts. I remain willing to work to co-design arrangements with the other Governments in the UK. However, for those arrangements to apply to the UK as a whole they must recognise the different starting point in Wales and allow for at least the same level of flexibility we have had within the EU as committed to by the Prime Minister.

Discussions with the UK Government regarding the Bill are on-going. Ultimately the timetable for their legislation is a matter for the UK Government, however, we have consistently highlighted the risk of a rushed timetable restricting the ability to work to properly co-design UK-wide proposals as opposed to the legislation looking solely at the gaps in one administration. We will continue discussions with the other Governments in the UK and the engagement associated with the consultation and stakeholder input to our consultation events will be key in informing our approach.

The consultation will run for twelve weeks from 18 March and we are planning for all potential outcomes including the potential need for Welsh primary legislation.

### **Legislative Programme**

We continue to keep the need for Brexit-related Bills under review and work is ongoing to develop such Bills. The consultation on Environmental Principles and Governance is an example of that ongoing programme of work. I am sure the Committee supports our working closely with stakeholders and giving proper consideration to their views to ensure legislation is fit for purpose.

Regards,

A handwritten signature in black ink, reading 'Lesley Griffiths'. The signature is fluid and cursive, with the first name 'Lesley' and the surname 'Griffiths' clearly distinguishable.

**Lesley Griffiths AC/AM**

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