

Agenda – Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig

Lleoliad:	I gael rhagor o wybodaeth cysylltwch a:
Ystafell Bwyllgora 3 – y Senedd	Marc Wyn Jones
Dyddiad: Dydd Mercher, 26 Mehefin 2019	Clerc y Pwyllgor 0300 200 6363
Amser: 09.15	SeneddNHAMG@cynulliad.cymru

1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau

2 Egwyddorion Amgylcheddol a Llywodraethu ar ôl Brexit – sesiwn dystiolaeth 5

(09.15–10.15)

(Tudalennau 1 – 29)

Anne Meikle, Head – World Wide Fund for Nature (WWF) Cymru

Llinos Price, Swyddog Polisi Cymru – Coed Cadw

Annie Smith, Rheolwr Datblygu Cynaliadwy – Y Gymdeithas Frenhinol er Gwarchod Adar (RSPB) Cymru

Dogfennau atodol:

Briff Ymchwil

Papur – World Wide Fund for Nature (WWF) Cymru (Saesneg yn unig)

Papur – RSPB Cymru (Saesneg yn unig)



3 Papurau i'w nodi

3.1 Gohebiaeth gan Weinidog yr Amgylchedd, Ynni a Materion Gwledig – Grŵp Rhyngweinidogol ar Ynni a Newid Hinsawdd

(Tudalennau 30 – 31)

Dogfennau atodol:

Gohebiaeth gan Weinidog yr Amgylchedd, Ynni a Materion Gwledig –
19 Mehefin 2019

4 Cynnig o dan Reol Sefydlog 17.42(vi) i benderfynu gwahardd y cyhoedd o eitemau 5, 6 a 7 yn y cyfarfod heddiw

Sesiwn Breifat (10.15–11.45)

5 Egwyddorion Amgylcheddol a Llywodraethu ar ôl Brexit – Ystyried y dystiolaeth a gafwyd o dan eitem 2

6 Blaenraglen waith – Trafod yr amserlen ar gyfer Bil Anifeiliaid Gwylt a Syrcasau (Cymru)

(Tudalennau 32 – 35)

Dogfennau atodol:

Papur Preifat

7 Cyflwyniad: Mynd i'r afael â'r bwloch o ran polisi hinsawdd yng Nghymru

(Tudalennau 36 – 57)

Dr Filippos Proedrou, Cymrawd Ymchwil – Prifysgol De Cymru:

Dogfennau atodol:

Papur Briffio (Saesneg yn unig)

Mae cyfyngiadau ar y ddogfen hon

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig | Climate Change, Environment and Rural Affairs Committee

Ymchwiliad i lywodraethu ac egwyddorion amgylcheddol ar ôl Brexit | Inquiry into environmental principles and governance post-Brexit

Ymateb gan : Bywyd Gwyllt Byd (WWF)

Evidence from : World Wildlife Fund (WWF)

Thank you for the opportunity to provide written evidence ahead of my appearance in front of the Committee in June. For the purposes of this evidence I have limited my comments to the areas specified in your invitation.

WWF Cymru recognises that leaving the European Union will create an environmental principles and governance gap. To prevent this, the minimum necessary is for domestic legislation to be brought forward which replicates EU environmental principles and builds a new and equivalent governance structure. WWF Cymru's view is that the Welsh and other governments of the UK should not limit their ambition to the minimum necessary. Instead it is our ambition that this should be used as an opportunity to build on what we have and create a stronger and more effective environmental principles and governance structure which is bespoke to our needs and is able to protect and restore nature for future generations.

Summary

Principles

- All EU environmental principles should be clearly defined in Welsh law. We do not agree with the Welsh Government's assessment that two of the four core environmental principles are sufficiently present in existing Welsh law.
- These principles must be legally enforceable; overarching in scope and be should be accompanied by an overarching objective of achieving a high level of environmental protection, towards which their application can be assessed.
- There are several additional European principles which currently support the core environmental principles. These also need to be considered and incorporated into Welsh law.
- The SMNR duty should be extended to all public bodies operating in Wales, including reserved bodies with functions falling within devolved competence and public body/private sector coalitions. But to do so effectively the duty and/or principles will need to be amended.
- Procedural rights for the public to environmental information, participation and access to justice should also be enshrined into the law.

Governance

- The EU environmental governance structures have proven to be to the benefit of the Welsh environment and Welsh citizens for decades.
- It is vital that their replacement continue to be as powerful and give effect to citizens' rights to access justice by challenging governments – free of charge and liability.
- Successor bodies (watchdog) adopting the EC's functions must retain the power to require corrective action to put right any environmental damage.

- Any new body must have the resources; remit; expertise; and independence to deliver its duties effectively. A new body should be created to do this as no current body fits these criteria.

UK-wide Approach

- A joint UK wide body is advantageous. However, it must respect the devolution settlement and existing Welsh law.
- If unachievable, there must be a new inter-governmental co-ordination and dispute resolution function between the nations of the UK.
- Part of this approach could be to define UK wide principles in relation to an overarching objective, but then afford nations the flexibility to seek to obtain that objective and operationalise those principles, in a way which is bespoke to their needs.

Detailed Response

Principles

WWF Cymru is in broad agreement with the Welsh Government's analysis insofar that two of the four core environmental principles (Rectification at Source and Polluter-Pays) are not currently included in Welsh legislation. However, we disagree that existing Welsh legislation provides equivalence for the principles of Precaution and Prevention. Our reasoning for this is based on how the principles function within the European Union, contrasted with the scope and effect of the sections of the Well-being of Future Generations Act and Environment (Wales) Act (the Acts) that the consultations suggests contain Prevention and Precaution.

When the Acts were being developed, WWF Cymru argued for the inclusion of clearly defined environmental principles. However, at the time we were informed that to do so would be duplication and that the Acts needed to provide additionality to what we had within the EU. This additionality resulted in the 'operationalisation' of Prevention and Precaution within the scope of the Acts. It is therefore surprising that the contents of those Acts alone are now suggested to be sufficient to ensure non-regression from EU position.

We remain concerned that the Acts will not remain fit for purpose without an overarching framework, as currently provided at EU level.

Our main concerns are:

1. Scope

As the Committee stated in its report last year "The EU environmental principles are intended to shape the development of EU law and policy to ensure high environmental standards and are used in the interpretation of EU law".

Within the Treaty of the Functioning of the European Union, Article 11 states that "Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development". The Government consultation seems to suggest that the approach in our existing Acts provides equivalence. The principles are operationalised in part in both WFG and Environment Acts. We do not believe that the current approaches in either of these Acts applies the principles to all policies, laws and activities. We do not consider the scope of the Ways of Working in the WFG Act, to match this as their effect is restricted to the setting of Well-being Objectives to achieve broad Well-being Goals, rather than requiring integration of environmental protection across the definition and implementation of all policies and activities.

Article 191 (2) states that EU environmental policy shall be based on the precautionary, preventive, rectification at source and polluter pays principles.

The SMNR principles (in Environment Act) have been designed to function at an operational level in specific contexts. However, in the EU Treaties the core environmental principles are aimed at an overarching objective of ‘a high level of environmental protection’. The SMNR duty is centred on the objective ‘to maintain and enhance the resilience of ecosystems and the benefits they provide’. We do not consider this to be equivalent and interpret the SMNR duty to be weaker.

Our view is that for genuine equivalence with existing EU legal protections to be secured, it is essential that all four core principles are specifically named and enshrined in Welsh primary legislation. This can provide legal clarity as to their status and application, and ensuring that they are applicable to all public bodies.

We also believe to ensure clarity in interpretation of the principles, legislation should replicate the EU approach by providing an overarching environmental objective towards which their application can be assessed.

This has proven to be an effective tool in the European context which has supported the interpretation of environmental principles from policy making through to EUCJ judgements. It is important to highlight that this objective should be couched in broad, overarching terms.

2. Issues with existing approach to core principles

2a Precautionary principle

- The precautionary principle at EU level clearly encompasses the potential for environmental harm to occur. The heart of the precautionary principle ensures that scientific uncertainty should not be a reason to avoid taking action on a potential harm.
- The Welsh approach under the SMNR principle (h) refers to taking action to prevent *significant* damage to ecosystems. The inclusion of significance narrows the application of the prevention principle so that it is not equivalent to EU definition of the principle in regard to preventing damage to the environment.

We are doubtful that the reference to *ecosystems* is sufficiently broad to cover all aspects of the environment given that the environment is not defined within Welsh legislation – which instead talks in terms of Natural Resources. 2B. As a partial solution to these issues, the Consultation proposes extending the SMNR Duty and the applications of the SMNR principles to more Welsh public bodies. Subject to the comments detailed above, WWF Cymru support this proposal and argue that it offers a much-needed opportunity to revisit SMNR based on what is now known about the practicalities of its implementation. One immediate observation is how difficult it has been for Welsh Government and NRW officials to understand its requirements; what successful implementation looks like; and how to demonstrate it. This is largely due to the complex drafting of the Act and the very specific way it was ‘operationalised’ within its very limited scope of application to NRW and Welsh Ministers in specific circumstances.

As this scope is expanded, it will be vital to make amendments to both along the lines discussed above. Without such amendments the current drafting will, by design, be unfit for its new scope and will cause great difficulty for any Public Bodies without technical environmental expertise to engage with.

2c Other EU principles

Within the EU, while these core environmental principles are stand alone and overarching in meaning, they are not applied in isolation and several non-environmental principles have developed along-side them which are relevant to their application. These include:

- Non-Regression
- Progression
- Proportionality
- Subsidiarity
- Integration

We urge the Welsh Government to look closely at the definitions and applications of such principles at EU level - in particular to ensure a minimum of equivalence/**non-regression**, but also internationally, and to ask how that can be used to add value to our post-Brexit approach. Thus far, Welsh Government have argued that the purpose of SMNR is sufficient to reflect principles such as non-regression. We argue that the very limited scope of the SMNR duty (notably the difference between what is enhancement and what is restoration), and the application framework laid out in the Environment (Wales) Act, where duties are restricted to development of the Natural resources policy, means that this is not the case. As a way to go further we would suggest consideration is given towards adding a principle of Progression which will ensure that we are constantly trying to achieve a higher standard, rather than maintaining what we already have.

The application of the **integration** principle is also a concern, as it occurs within the WFG Act with a specific definition. Further investigation is needed to decide whether this definition and its scope of application give real equivalence to its intention at EU level.

2d Procedural rights

The UK Government's Draft Environmental (Principles and Governance) Bill) also refers to the rights of the Aarhus Convention (although it does so as principles). While we recognise that the UK will not cease to be a signatory of that convention because of leaving the EU, we note that this does not prevent the Welsh Government from incorporating these rights into primary legislation. The preamble to the Aarhus Convention makes clear that it aims to integrate sustainable and environmentally sound development with rights to an environment adequate for human health and well-being and the enjoyment of basic human rights. **Article 1 of the Convention requires Parties to guarantee the rights of access to information, participation and access to justice in environmental matters "in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being."**

Without enshrining these rights into law, true public participation in environmental decision-making and the ability to hold public bodies accountable risks remaining an aspiration rather than a requirement of Welsh law. We encourage the Welsh Government to legally enshrine enforceable rights in Welsh law, and as a statement of our national values. This action has the potential to further strengthen governance arrangements subsequently discussed in this consultation.

Governance

The environmental governance structure of the European Union has proven to be to the benefit of Welsh environment and Welsh citizens for decades. It has reduced the environmental damage caused by human activity and has provided a strong and effective avenue for citizens to access justice; correct damage and punish those responsible. A loss in the strength and effectiveness of any aspect of this structure would constitute a regression from the perspective of citizens and their ability to discharge their rights. This is unacceptable to WWF Cymru.

The consultation broadly identifies the gaps. However, it understates the strength of the EU system with regards to how it:

- can require remedial action to correct environmental damage;
- protects citizens from financial liability. This means that they can make complaints without the fear that they will be subject to future action by those they complain against, or would face costs should the complaint not proceed, or be ruled against;

- functions to extensively monitor and collect data. While we do have some national data collection and analysis it is not as expansive, nor does it proactively monitor compliance with objectives and regulations in the same manner.

Wales currently lacks an independent champion for environmental law which ensures that Welsh nature is resilient for future generations. Instead we are reliant on the oversight, advice and enforcement powers of the EC. Given the vital role the environment plays as the foundation of social, cultural and economic well-being this is a significant gap which needs to be filled.

The simplest way of building this role into existing structures is to make any new body responsible for advising on; investigating; and enforcing compliance with environmental law (to include all law covering the matters discussed above in the context of the SMNR duty as well as the overarching objective and principles) and require existing bodies to report to it on these matters; any additional matters the new body deem necessary; and for others to abide by its guidance and decisions.

In undertaking this role, we agree with the consultation and applaud Welsh Government's honesty, that a body should be transparent; accountable to the National Assembly for Wales; independently audited; independent of Government with regard to appointments; and for it also be independent of Government with regard to funding. Throughout this process we have heard the Welsh Government refer to existing bodies as being in a position to take on this role – in whole or in part. WWF Cymru strongly disagree with this proposal. We argue that there is no body currently operational in Wales which has the resources; remit; expertise; and independence to do this role. Changing an existing body to do this would be as complex as establishing a new one and risks fundamentally changing/losing the purpose that existing body currently has. We also note that the constitution of several existing bodies (including the Office of the Future Generations Commissioner) fail the independence standard provided by the consultation.

WWF Cymru argue that a new body should have a series of informal and formal enforcement powers akin to those available within the EU. These should include the issuing of advisory notices, binding notices, interim measures and stop notices and initiating legal proceedings for failure to comply.

A key point in the effectiveness of the current structures is the knowledge that the enforcement structures are strong and carry with them a 'stick' (financial, practical and reputational) which is sufficient to discourage a lack of effective implementation so that cases do not arise very frequently. This does not currently exist in Wales given the weak environmental enforcement structures and lack of remedy and sanction for non-compliance in our existing Acts. This is a key opportunity to strengthen existing protection as well as replacing EC functions.

A key improvement which could be made to the status-quo would be to improve the transparency and speed of the informal methods. Under the current system at EU level, informal methods can go on for several years without a public statement on progress. We would recommend a publicly accessible log of the details of all informal processes underway, and frequent updates on work underway in relation to them. These processes need to be responsive to the scale and severity of the case at hand, with swift action being taken to stop any damaging action while a longer investigation can be conducted.

UK-wide Approach

The environment does not respect borders with the decisions of one nation easily affecting another. This is the reason why Member States chose to empower the European Union to act on the environment, and why leaving the EU creates such a significant gap in environmental law and governance. The same is true of the UK and therefore there are clear advantages to a UK wide approach to environmental governance and principles.

However, any approach must respect the devolution settlement and be co-developed and co-owned by the nations of the UK that are part of it. The proposals made by DEFRA, as currently drafted, do not fulfil this requirement. Nor are they sufficient to prevent regression from EU standards. Were

this to change there is potential for Wales to participate, but only in a way which does not diminish the environmental ambition contained within our existing legislation.

If this is not possible, and a Wales only body is created, there will still need to be a degree of UK wide co-ordination. This must discuss, develop and deliver common standards and coordinate action, particularly on matters with trans- boundary impacts, it is also necessary for the effective scrutiny of international agreements and commitments. This will also require there to be an inter-governmental dispute resolution process. We make this point in recognition that such disputes will not be limited to the environment and therefore argue that this would have to exist within the wider reorientation of the functioning of the UK which will have to occur post-Brexit.

One approach to this would be to agree to define UK wide (or those nations willing to participate) principles in relation to an overarching objective, but then afford nations the flexibility to seek to obtain that objective and operationalise those principles, in a way which is bespoke to their needs. This could afford nations a degree of 'dynamic alignment' which ensures coherence while delivering a shared outcome.

Thank you for the opportunity to give evidence. I look forward to meeting the Committee members in person on July 26th.

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig | Climate Change, Environment and Rural Affairs Committee

Ymchwiliad i lywodraethu ac egwyddorion amgylcheddol ar ôl Brexit | Inquiry into environmental principles and governance post-Brexit

Ymateb gan : Y Gymdeithas Frenhinol er Gwarchod Adar (RSPB)

Evidence from : Royal Society for the Protection of Birds (RSPB)

Inquiry into environmental principles and governance post-Brexit

Statement from RSPB Cymru

RSPB Cymru is part of the RSPB - the UK's largest nature conservation charity, inspiring everyone to give nature a home. Together with our partners, we protect threatened birds and wildlife so our towns, coast and countryside will teem with life once again. We play a leading role in BirdLife International, a worldwide partnership of nature conservation organisations.

Overview

The RSPB is grateful for the opportunity to give evidence to this inquiry.

We welcome the approach taken in the Welsh Government's consultation document to setting out the role and application of environmental principles under the Treaty on the Functioning of the European Union (TFEU) as well as other international agreements. We recognise that Wales has already taken steps to bring many of these principles through into domestic legislation, and appreciate and value the approach taken, with the overarching sustainable development context provided by the Well-being of Future Generations Act 2015 (WFGA), within which the sustainable management of natural resources nests. While implementation is, in many ways, still in its infancy we recognise the legislative framework has had an important impact on the Welsh Government's approach to policy development around sustainable land and sea management, as well as in this week's seminal decision on the M4.

It is important to reflect, however, that Wales' legislation was developed beneath the umbrella of EU membership, and the application of the core principles through the Treaties. While we welcome the positive intent demonstrated in the consultation document to enshrine the principles in Welsh legislation with a meaningful duty on all public bodies, we consider more than the proposed amendments to the SMNR duty and principles will be needed to secure equivalence to those principles' current role. We also welcome Welsh Government's recognition that a governance gap will arise after we leave the EU, and its commitment to ensuring access to justice (via a citizen complaints procedure) and to designing truly independent oversight arrangements.

Securing the environmental principles, along with robust and independent governance, is vital to ensure that our environmental protections and standards are not weakened. However, the evidence – including the recent IPBES report – shows us that simply maintaining existing standards is not enough. We need a more ambitious approach to tackle the catastrophic declines in nature that we are seeing in Wales and across the world. We consider targets for nature's recovery, with legislative underpinning, are needed to drive forward effective implementation of the iterative approach enshrined in the Environment (Wales) Act (EWA) to achieve a Wales that is richer in nature, to the benefit of all.

Principles

The Welsh Government has identified that the ‘polluter pays’ and ‘rectification at source’ principles are missing from Welsh legislation currently, whereas, it argues, the precautionary and prevention principles are included.

We do not agree that the precautionary principle is included. The Welsh Government argues that the key components of EU guidance of the application of the precautionary principle are reflected in SMNR principles a, e, g and h. This is not sufficient, because there is no indication in the legislation that these principles are intended to be applied together and amount to applying the precautionary principle. In addition, we are concerned that the specific wording of principle h (take action to prevent significant damage to ecosystems) suggests significant damage must be shown to require action to be taken. The precautionary principle, in contrast, requires action in response to ‘potentially dangerous’ effects. The precautionary principle is internationally recognised, and a critical component of environmental protection; we therefore consider it is vital that it is set out plainly, as a principle in its own right, on the face of legislation.

Within Article 191(2) of the TFEU the four core principles are set out with the aim/overarching objective of securing *a high level of environmental protection*. They are implemented through environmental law and policy and, with their overarching objective, guide interpretation by the courts. We consider that the four core principles should be clearly articulated as overarching principles in the context of this objective in Welsh law.

In considering whether other principles need to be included we have considered the list of principles included at section 16 of the Withdrawal Act, which have shaped Part 1 the recent Defra Environment Bill:

Sustainable development – we agree with Welsh Government that this is an overarching objective rather than a principle, and that it is already enshrined in Welsh law via the Well-being of Future Generations Act.

Integration – the EU principle that environmental protection should be integrated across all policy areas is vital to ensure policies do not have a detrimental impact. The inclusion of Integration as one of the ‘ways of working’ under the Sustainable Development Principle in the WFGA is insufficient to replicate the impact of the principle at EU level, because it is tied to specific processes within that Act. However, we do acknowledge that the construction of the SMNR duty has the potential to ensure that the SMNR objective is considered in relation to the breadth of activities undertaken by public bodies, and as such is a vehicle for integration. As set out below we believe the SMNR duty, and duty to apply the SMNR principles, will not be a sufficient approach to securing equivalence post Brexit, but they could provide a model approach on which to build in order to achieve this.

Procedural rights- access to justice, access to information and public participation are vital obligations arising from the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters 1998 (the Aarhus Convention). Whilst we recognise that public participation is included within the SMNR principles, the Welsh Government should give serious consideration to ensuring the complete implementation of obligations under this Convention. Specifically, replacement governance functions must consider how best to ensure citizen’s access to justice on environmental matters is secured, recognising the crucial role that the current EU citizen’s complaints process plays, as well as wider public participation in environmental decision making.

Non-regression – We have welcomed the Welsh Government’s commitment to maintain and improve environmental standards after Brexit, but we do not accept that it is effectively secured through the ‘maintain and enhance’ wording of the SMNR objective. The principle of non-regression requires

*‘that there should not be a roll-back in environmental standards, promoting a ratcheting up of ambition in subsequent law reform and policy and preventing any lowering of ambition or protection’.*¹

This principle is now receiving global recognition as an important mechanism for protecting our natural environment and has been included in the UNFCCC’s Paris Agreement.

We welcome the Welsh Government’s view that non-regression (as referred to in relation to the UK’s Withdrawal Agreement) is not enough, and that the UK should agree to progressive alignment² with the EU in relation to environmental standards and workers’ rights. We note, on similar lines, that the Scottish Government has recently announced it will legislate for a ‘keeping pace’ power. We would strongly encourage Welsh Government to consider a similar approach.

Proposal to extend the scope of the duty to pursue the sustainable management of natural resources

The proposal to extend the SMNR duty to other public bodies shows commitment to applying a strong duty on the principles, namely ‘*must apply*’ rather than the weaker alternative of ‘*have regard to*’, and to a wide group of bodies – thus distinguishing the Welsh Government’s approach from those taken either in Westminster or in Scotland to date. We warmly welcome this commitment. However, the proposal is **not currently sufficient to secure equivalence post Brexit**.

As noted above, the EU principles are implemented through environmental law and policy, and they, and their overarching objective, guide interpretation by the courts. We do not agree that the equivalent impact will be achieved domestically by bringing the principles into Welsh legislation under the banner of the Sustainable Management of Natural Resources (SMNR), because we do not consider that SMNR is *equivalent to* an objective to secure a high level of environmental protection, and nor does it adequately *encompass* the objective of protecting the environment in its own right.

We advocate amending section 1 of the EWA to reflect a broader purpose e.g. *The purpose of this Part is to enshrine the core environmental principles with the aim of securing a high level of environmental protection and to promote the sustainable management of natural resources*, and creating a new public duty that encompasses the SMNR duty (with the SMNR principles) *and* a duty to apply the core principles to secure a high level of environmental protection. For clarity and to ensure full coverage, we advocate utilising a definition of the environment which will ensure all environmental legislation and requirements are included. We recommend that the existing, regularly used and well-understood definition within the Environmental Information Regulations 2004 (originating from the Aarhus Convention) is used. We advocate that the duty be applied to **all public authorities**, as defined under the EWA section 6(9); we recognise that the Welsh Government will need to seek the permission of the UK Government to achieve this.

In addition, recognising that we are facing catastrophic declines in biodiversity and that ecosystems across Wales are currently not resilient, we advocate strengthening the wording of the SMNR objective itself – moving from ‘maintain and enhance’ to reflect protection, restoration and recovery of our natural world.

Governance

We welcome the acknowledgement from the Welsh Government that Brexit will lead to gaps in environmental governance in Wales. The oversight and enforcement of environmental legislation, provided by the EU institutions, has been central to its effectiveness.

¹ ClientEarth 2018, Environmental Principles in UK Law after Brexit

² Assembly debate on the Withdrawal Agreement, 4 December 2018:
<http://record.assembly.wales/Plenary/5369#A47258>

We agree with the gaps identified, but would note:

In relation to ‘a simple and inexpensive mechanism to raise complaints’ we would add that the current system is liability-free for any complainant. This enables them to make complaints without the fear that they will be subject to future action by those they complain against, or would face costs should the complaint not proceed, or be ruled against.

The EU’s enforcement powers also include the rectification of damage caused by an offence. This is a vital aspect of the EU’s enforcement mechanisms and its loss would be a significant regression.

In addition to the above we would also add the extensive monitoring and data collection activities of the EU, including proactive monitoring of compliance with objectives and regulations. The Commission’s role in providing strategic advice and guidance to support compliance with the law and delivery of environmental objectives should also be considered.

We also note the potential for losing access to the forums that the EU and its institutions provide for information sharing between Member States and other stakeholders, particularly through the European Environment Agency (EEA). We advocate that the Welsh Government should explore ways for Wales to remain a member of the EEA, whether individually or by pressing the UK Government to join as a non-EU member.

Status, form and constitution, and role of a new body

We welcome and support the Welsh Government’s view, as set out in the consultation document, that any oversight body should be independent of government, including having independent appointment structures and independent sources of funding. We agree that it should be accountable to the National Assembly for Wales, and be independently audited.

We do not believe it would be appropriate to amend any existing body (e.g. the Future Generations Commissioner or the Public Services Ombudsman) to take on these new functions for Wales. **Wales will need a new environmental governance body to fill the Brexit governance gap.**

We are broadly supportive of the role suggested in the consultation document for a new body. However, in line with our comments above relating to the SMNR duty proposal, we consider the body’s role will need to be broader. It must reflect the objective to secure a high level of environmental protection and the ambition to restore and recover nature in Wales.

Scope of new governance arrangements

We recommend that the scope of new governance arrangements should include all policy areas which have an impact upon the environment, including for example economic, transport, social and health policies. We welcome the intent set out in the consultation document for the scope of governance arrangements to include all natural resources (as set out in the EWA) and other policy areas that intersect with them, e.g. climate change, chemicals, and agriculture. We assume the same would apply to land use and marine planning, fisheries management and forestry. Consideration should be given to the need to reflect the definition of ‘environment’ from the Environment Information Regulations that we have advocated above in relation to enshrining the environmental principles and high-level objective in the legislation.

We recommend that all public authorities operating in Wales (as defined in section 6(9) of the EWA) should fall under the remit of a governance body operating in Wales. We recognise Wales cannot do this without UK Government permission.

The value and practicality of a UK-wide approach

The consultation document understandably does not explore the question of whether a new Wales-only governance body would be preferable to a body covering the whole of the UK, or at least covering more

than one country within the UK (England and Wales, or England, Northern Ireland and Wales). It is the RSPB's view that there would be benefits to a single UK-wide body that were accountable to the legislature of each country. These include the fact that a body constituted by all legislatures would be less vulnerable to being weakened or disbanded through the action of a single legislature. In addition, with the proviso that the body would have a presence in each country, some efficiency in resourcing would be possible, and each country would benefit from a larger overall resource in terms of expertise. However, risks to this approach would include the body's attention being concentrated where resources are greatest (most likely in England), and this risk could be exacerbated if, rather than being UK-wide, a body were constituted for two or three of the UK countries. We fully recognise that for such a body to be created and operate successfully for each country, it would need to be co-designed by the relevant administrations working together.

If a separate governance body is created for Wales, it remains essential that there is co-design of arrangements to ensure that governance bodies in the UK countries are legally required to co-operate with one another. This co-operation should enable sharing of expertise; coming together to consider common or cross border issues (e.g. Invasive non-native species, or cross-border protected sites); and mechanisms to ensure that a complaint made in any country will be considered by the appropriate governance body, with transparent communication with the complainant.



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-P/LG/2220/19

Mike Hedges AC
Cadeirydd
Y Pwyllgor Newid Hinsawdd, yr Amgylchedd a Materion Gwledig
Cynulliad Cenedlaethol Cymru
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CF99 1NA

19 Mehefin 2019

Annwyl Mike,

Ysgrifennaf atoch er mwyn rhoi rhagrybudd i chi y byddai'n cynrychioli Llywodraeth Cymru yng nghyfarfod y Grŵp Rhyngweinidogol ar Ynni a newid Hinsawdd. Caiff y cyfarfod ei gynnal ym Manceinion ar 28 Mehefin 2019.

Mae disgwyl i'r bobl ganlynol fod yn bresennol yn y cyfarfod:

- Llywodraeth y DU - Chris Skidmore AS, Y Gweinidog Gwladol ar gyfer Prifysgolion, Gwyddoniaeth, Ymchwil ac Arloesi a'r Gweinidog Gwladol Dros Dro ar gyfer Ynni a Thwf Glân.
- Llywodraeth yr Alban - Paul Wheelhouse AS, Y Gweinidog dros Ynni, Cysylltedd a'r Ynysoedd.
- Gogledd Iwerddon - Heb ei gadarnhau, cynrychiolaeth swyddogol

Nid yw agenda'r cyfarfod wedi'i chymeradwyo ond byddaf yn manteisio ar y cyfarfod i geisio sbarduno cynnydd o safbwynt datblygu safbwyntiau negodi ar draws y DU mewn perthynas â'n Partneriaeth Economaidd yn y dyfodol â'r Undeb Ewropeaidd. Byddaf yn parhau i bwysleisio'r angen i Lywodraeth Cymru chwarae rhan amlwg yn y trafodaethau ynghylch materion sydd wedi'u datganoli i Gymru. Mae'r cyfarfod hwn hefyd yn creu cyfle i drafod materion a threfniadau sydd wedi'u diweddarau o dan sefyllfa o ddim cytundeb ac i feithrin gwell perthynas â Llywodraeth y DU.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

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.

Tudalen y pecyn 30
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.

Byddaf yn ysgrifennu Datganiad Ysgrifenedig ar ôl y cyfarfod a fydd yn rhoi crynodeb i'r Aelodau ynghylch y materion a drafodwyd ac yn amlinellu'r safbwyntiau a gafodd eu pwysleisio gan Lywodraeth Cymru.

Cofion,

A handwritten signature in black ink that reads "Lesley". The signature is written in a cursive, flowing style with a large, sweeping underline that curves back under the word.

Lesley Griffiths AC / AM

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

Eitem 6

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon

Eitem 7

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon