Cyswllt Amgylchedd Cymru | Wales Environment Link

Counsel General and Minister for European Transition Jeremy Miles MS
Welsh Government
Tŷ Hywel
Cardiff Bay
CF99 1NA

CC: Rt Hon First Minister Mark Drakeford MS & Minister for Environment, Energy & Rural Affairs, Lesley Griffiths MS

12th October 2020

Dear Counsel General and Minister for European Transition Jeremy Miles MS

Re: Environmental Governance and Principles post Transition

We write to you in your role as Counsel General and Minister for European Transition in relation to environmental governance arrangements in Wales following the Transition Period – January 2021 onwards.

With around eighty percent of our environmental laws and policies emanating from the EU, and the architecture of EU environmental governance that provides oversight and accountability mechanisms to be lost, the implications of Brexit are significant for environmental protection. From the outset the Welsh Government has recognised the need to close the environmental governance gap that will emerge as a result of Brexit, stating support for non-regression of environmental standards[1] with a commitment to bring legislation forward. The Welsh Government's Task Group Report on environmental governance and principles published in March this year was clear that measures would need to be in place by the end of the transition period.

As you know, a number of Brexit related legislation have been deferred until after the 2021 Senedd election. This includes legislation required to establish statutory environmental principles and governance arrangements, which the First Minister confirmed in his statement on the Legislative Programme, would be brought forward after the election if the Welsh Government was "in a position to do so". This is deeply regrettable as it leaves Wales facing the prospect next year of having the weakest environmental governance arrangements of any western European country.

In lieu of the necessary legislative action, the Welsh Government intends to apply environmental principles and establish interim governance arrangements on a non-statutory basis only, with the recruitment of an Environmental Protection Assessor for Wales in progress[2]. The detail of the interim arrangements and guidance on the application of principles are yet to be finalised. There also remains lack of clarity on the future role of the Senedd in relation to both interim and longer term governance arrangements, which requires consideration as a matter of urgency.

[1] https://gov.wales/written-statement-environmental-principles-and-governance-post-european-union-exit-consultation

[2] Vacancy –Interim Environmental Protection Assessor for Wales https://cymru-wales.tal.net/vx/lang-en-GB/mobile-0/appcentre-3/brand-2/xf-4ae214241f4a/candidate/so/pm/1/pl/8/opp/6860-Interim-Environmental-Protection-Assessor-Wales/en-GB?fbclid=IwAR0DKS4afDXDK2rVFnBJuK6F3zFQQCKiwwmhBfqpps4EnwCYegLiEBIsW4k

This urgency is all the more acute given that the delay in bringing forward primary legislation means that the interim arrangements, which were initially intended to last for only a few months in a worst case scenario, now risk being in place for several years, and could even become permanent should inaction continue.
This Interim Assessor (as currently proposed) will have no powers to investigate complaints and, except from the most serious and urgent complaints, will hold the complaints for future investigation by the statutory environmental governance measures when established. This could mean that serious environmental damage, be that a persistent pollution incident from a power station, to a systemic failure to protect key species or habitats is permitted to continue without an effective investigation or potential remedy – shy of the prohibitively expensive route of judicial review by civil society organisations, which itself lacks the corrective remedies currently available through the CJEU.

In addition, citizens' complaints will be stockpiled and remain un-investigated so that any public failures to uphold and enforce laws may remain unchallenged, leaving Wales' environment especially vulnerable and citizens being unable to effectively discharge their rights under our existing international commitments. While coronavirus has impacted the legislative schedules in Westminster, Stormont and Holyrood, legislation has nevertheless been published and will be passed either before or shortly after the end of the transition period.

The Scottish Government's UK Withdrawal from the European Union (Continuity) (Scotland) Bill[3] will enable Scottish Ministers to make provision to allow Scottish law to 'keep pace' with EU law in devolved areas; to enshrine guiding environmental principles in statute, and to establish an environmental governance body, Environmental Standards Scotland to continue the role and functions of the European institutions in ensuring the complete and effective implementation of environmental law. The UK Government's Environment Bill[4] includes environmental principles and provisions establish the Office for Environmental Protection. The bill also provides a legal base for new governance arrangements in Northern Ireland which the Assembly can then commence and take forward.[5]

As things stand, from 1 January citizens in Wales will have more limited access to environmental justice than citizens elsewhere in the UK. Without independent scrutiny, advice and enforcement of environmental law, the system of accountability will lack independence, durability, resources and teeth. The Welsh Government's commitment to ensure that Wales' environmental standards are maintained and enhanced, rather than weakened, as a result of our leaving the EU will not be met.

As you have alluded to in your plenary statements and Parliamentary committee sessions, the UK Internal Market bill adds a further dimension to this, with the principles of mutual recognition and non-discrimination potentially restricting devolved administrations from pursuing policy intentions.

We would urge you to reconsider the priority given to this as part of the Welsh Government's transition programme, including scope to bring forward legislation in advance of the Senedd election in 2021. This must be seen as a key strand of our Brexit legislation, to ensure Wales' environmental standards are maintained and enhanced, rather than weakened, as a result of our leaving the EU. We have also written to the Presiding Officer on this matter, with particular reference to the role of the Senedd in the interim and longer term arrangements for environmental governance.

Yours sincerely

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[3] https://beta.parliament.scot/bills/uk-withdrawal-from-the-european-union-continuity-scotland-bill-2020
[4] https://services.parliament.uk/bills/2019-21/environment/documents.html
[5] https://www.gov.uk/government/publications/environment-bill-2020/30-january-2020-environment-bill-2020-policy-statement

Alex Phillips
Co-Chair of WEL's Governance Working Group
WWF Cymru

Steve Lucas
Co-Chair of WEL's Governance Working Group
Bat Conservation Trust