Cyswllt Amgylchedd Cymru | Wales Environment Link

Presiding Officer Elin Jones MS
Tŷ Hywel
Cardiff Bay
CF99 1NA

CC: Counsel General and Minister for European Transition Jeremy Miles MS, Rt Hon First Minister Mark Drakeford MS and Minister for Environment, Energy & Rural Affairs, Lesley Griffiths

12th October 2020

Dear Presiding Officer

Re: Environmental Governance and Principles post Transition

We write to you in relation to environmental governance arrangements in Wales following the Transition Period – January 2021 onwards. In particular we are concerned about both the immediate and longer term implications for the business and functions of the Senedd.

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[1]. The detail of the interim arrangements and guidance on the application of principles are yet to be finalised.

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.

[1] 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

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.

This creates significant uncertainty, including the role of the Senedd in terms of scrutiny and accountability, for example in dealing with complaints about breaches of environmental law by Welsh Government Ministers under these proposals which require consideration as a matter of urgency.

Given this, we are writing to identify the following:

- To what extent is the Senedd aware of and engaged in the development of these interim arrangements, and what discussions have been had with Welsh Government ministers on the matter?
- What work is currently underway to identify and develop the Senedd's role should they come to pass?
- What powers does the Senedd currently have which would permit it to support the Accessor in his/her duties and amplify their capacity?
- What powers does the Senedd have to censure a Welsh Government ministers found to have breached environmental law?
- Given the potential quasi-judicial functions this approach may create, how will it be ensured that the political balance of the Senedd does not give the appearance of influencing proceedings?

We would urge you to consider these matters as a key element of your transition planning for the Senedd, and with Welsh Government officials. We have also written to the Counsel General and Minister for European Transition Jeremy Miles MS outlining our concerns.

Yours sincerely

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