Cyswllt Amgylchedd Cymru | Wales Environment Link

CCERA Committee Legacy Report

January 2021

Introduction

Wales Environment Link is grateful for the opportunity to input into Committee's Legacy Report for the 5th Senedd.

Statutory Nature Recovery Targets

With regard to the Environment and Biodiversity, Wales Environment Link strongly agrees with the statement by the Committee Chair, Mike Hedges MS in the report on Environmental Governance that: "Air pollution, decline in biodiversity, climate change are, in my opinion, the greatest challenges of our age." We also welcome the recent recognition from Environment Minister, Lesley Griffiths MS, that "[Wales], along with the rest of the UK and the world, have failed to make enough progress against the global targets, and the outcome of reversing the decline in biodiversity"[1].

2021 will see the Convention on Biological Diversity at Kunming in China. Around the world, the hope is that this conference will be for biodiversity what the Paris Agreement was for the climate. The UK Government says it's keen to play a key role but if this is to happen, all Governments in the UK will need to show their commitment to the targets that they want the global community to adopt.

WEL believes that if the Welsh Government is serious about addressing the nature crisis in Wales it will need to show leadership, to support ambitious global targets to restore biodiversity and to commit to embedding targets in domestic law. This will provide crucial accountability and focus Welsh Government's attention on achieving the targets and milestones, in the same way we have seen happen on climate. The Westminster Environment Bill (unfortunately paused) will introduce a framework for legally binding biodiversity targets for England.

This is a win-win situation. Many of the actions that we need to take to protect threatened wildlife will also serve as nature-based solutions to flooding, soil erosion and water and air pollution and also help capture carbon to reduce net greenhouse gas emissions. We need to adopt a nature

[1] https://gov.wales/sites/default/files/publications/2021-01/ministers-written-evidence-to-senedd-scrutiny-committees.pdf . Page 86.

positive approach, recognising the value of nature, placing it on the path to recovery and transforming our world to one where people, economies and nature thrive.

'The Edinburgh Declaration'

The good news is that the Welsh Government, along with the Scottish Government, was a leading signatory of the 'Edinburgh Declaration'[2], which makes clear the readiness of these and many other so-called sub-national governments, cities and local authorities across the world to play a full part in delivering the transformative change needed to turn around biodiversity declines.

WEL was delighted that the issue of nature recovery targets was raised with the Minister Lesley Griffiths by the Committee Chair at the meeting on 12 November 2020. But while the Minister reacted positively, no decisions have yet been made, and WEL hopes that the CCERA Committee will urge its successor Committee to pick up on this issue where it left it.

The Well-being of Future Generations Act rightly recognises a biodiverse natural environment with healthy, functioning ecosystems as crucial to our social and economic, as well as ecological resilience. WEL hopes that CCERA will flag up the need to act in this crucial area during the next Senedd term.

Environmental Governance and Principles

When the EU Transition Period ended on 31 December the role of the EU Institutions in overseeing and enforcing environmental law derived from the EU also came to an end. As the Committee knows well, we do not have legislation in place – or even on the table – to replace their role in the domestic context, and Wales is facing a protracted governance gap. WEL members remain deeply disappointed by the Welsh Government's decision not to sufficiently prioritise environmental governance and principles in the years since the EU Referendum and that as a result Wales has made less progress than the rest of the UK in terms of closing the governance gap created by EU transition. It remains our view, given the reality that Wales' existing legislative frameworks lack the necessary legal strength, that we now have the weakest environmental governance structures in western Europe, and that we do not currently have a timeline to rectify the situation.

Non-legislative interim arrangements for environmental governance have been introduced, as of the 1st of January. Initially, this includes a webpage (published 31st December 2020) and mechanism to raise concerns about the *functioning of environmental law*[3]. This is an interim process while a permanent body to investigate non-compliance with environmental law is being developed, and that its focus is on the functioning of environmental law, *not* individual beaches of environmental law.

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[2] https://www.gov.scot/publications/edinburgh-declaration-on-post-2020-biodiversity-framework/
[3] https://gov.wales/raising-concern-about-functioning-environmental-law

It is clear that this mechanism is not equivalent to a system that enables citizens to bring a challenge that will lead to investigation (or remedy) of potential breaches of environmental law. The Web page states that anyone wishing to make a challenge of this nature would need to pursue "existing means of redress such as judicial review" and seek "independent legal advice for confirmation as to what might be an appropriate means of redress".

The Interim Environmental Protection Assessor for Wales[4] (the Interim Assessor) is yet to be appointed. The scope of their role has diverged somewhat from that originally envisaged (to provide "a platform whereby possible instances of failure to implement or non-compliance with environmental law in Wales may be reported by individuals, private businesses or other organisations") – as noted above, it will now be around the functioning of law rather than individual failures or breaches.

Citizens will be able to raise their concerns with the Interim Assessor via an email address and we understand will be re-directed, if their concerns would more properly be considered by a public body or the Public Services Ombudsman. Issues raised will be logged and compiled into an annual report.

The Assessor will be supported by an expert panel appointed according to relevant expertise on a needs basis. The Assessor will be able to report to the Senedd and advise Ministers on matters that indicate that laws are not being properly enforced or implemented or are not having the intended impact.

At the time of writing, WEL considers there is an urgent need for greater clarification and guidance as to the role of the Interim Assessor for potential complainants. In addition, clarity is needed on what steps the Interim Assessor will need to take should issues be reported that indicate an urgent need for intervention.

As the committee is aware, the role of the Senedd in the emerging interim and longer-term governance arrangements is yet to be considered in detail, with initial discussions scheduled to take place between the Trefnydd and Presiding Officer. WEL welcomes the Committee Chair's correspondence to the Presiding Officer[5] asking for clarity on the practical operation of the complaints system and the identifying the need to attach Welsh Parliamentary Commission resources to support emerging Parliamentary procedures.

We remain concerned about the delay before permanent and statutory arrangements for a governance body and principles are established, the inadequacy of the existing interim arrangements and the extended timeframe for measures intended as temporary to be in place. It is clear that the interim arrangements do not constitute a route to environmental justice nor do they

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[4] https://cymru-wales.tal.net/vx/mobile-0/appcentre-3/brand-2/candidate/so/pm/1/pl/8/opp/6860-Interim-Environmental-Protection-Assessor-Wales/en-GB

[5] https://business.senedd.wales/documents/s110111/Letter.pdf

provide a substitute for the oversight and enforcement role required to replace that provided by EU institutions, as recommended by the Task Group and accepted by the Minister.

The Minister has committed to continuing to work with the stakeholder task group with the aim of bringing forward a White paper on the permanent (statutory) arrangements after the Senedd election in May[6].

Much of the groundwork for legislation has been undertaken and the urgent need for statutory provisions to get Wales on track to fill the governance gap, WEL believes that it is feasible and necessary to move to a draft bill as the next stage for public consultation and pre-legislative scrutiny. We respectfully request that the Committee support this call.

In addition, the Welsh Government is yet to produce guidance for Ministers on the application of environmental principles after the end of the transition period.

The Welsh Government and the Senedd will must ensure that this work is given priority as a key element of EU transition planning, and secure resources for legal capacity, support emerging Parliamentary procedures for interim and permanent governance arrangements, and secure Parliamentary time for legislation.

In terms of the Committee's legacy, it will be important to continue its work on environmental governance and principles post EU transition, including:

- **Scrutinising the implementation of interim governance arrangements by the Welsh Government;**
- **Developing the role of the Senedd in environmental governance, and in particular potential failures to properly implement, or breaches of environmental law by the Welsh Government. We note the Chair's correspondence to the Llywydd on this matter;**
- **The emerging draft legislation required to establish a body to investigate non-compliance with environmental law and environmental principles. We urge the Committee to call for a draft Bill, based on the proposals of the stakeholder task group which have been accepted by Government, as the next stage for public consultation and pre-legislative scrutiny.**

Update on Environmental Governance and Principles across the UK

The UK Government's Environment Bill provides a framework for environmental governance and principles; and establishes a new green watchdog for England and Northern Ireland – the Office for Environmental Protection (OEP). At the time of writing, the Bill has been paused due to concerns over whether there is sufficient parliamentary time for it to pass in the current session.

[6] https://business.senedd.wales/documents/s110068/Letter.pdf

In Scotland, the UK Withdrawal from the European Union (Continuity) (Scotland) Bill 2020[7] intends to ensure that Scottish law continues to align with EU law after the transition period. The bill gives Scottish Ministers powers to keep devolved laws similar to EU laws; ensures that Scottish Ministers and public bodies pay attention to environmental principles in policy making; and establishes Environmental Standards Scotland to replace the oversight of environmental law provided by the EU[8]. Environmental Standards Scotland came into existence on a non-statutory basis on 1 January 2021, with longer term plans to 'monitor and investigate public authorities' compliance with environmental law, the effectiveness of environmental law and how it is implemented and applied' on a statutory footing [9].

The bill also includes a duty on Scottish Ministers to consult on the effectiveness of governance arrangements, in order to assess the following:

- Whether or not provisions have ensured that there continues to be effective and appropriate governance relating to the environment following the withdrawal of the United Kingdom from the EU;
- Whether the law in Scotland on access to justice on environmental matters is effective and sufficient;
- Whether the establishment of an environmental court could enhance the governance arrangements.

The Bill was passed by the Scottish Parliament before Christmas is due to receive Royal Assent in a matter of weeks. While the decision to pause the UK Environment Bill until the next parliamentary session is disappointing, it is important to stress that the groundwork already undertaken and the status of interim arrangements for England and Northern Ireland remain more advanced what we have in Wales.

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[7] https://beta.parliament.scot/-/media/files/legislation/bills/current-bills/uk-withdrawal-from-the-european-union-continuity-scotland-bill-2020/stage-3/bill-as-passed-uk-withdrawal-from-the-european-union-continuity-scotland-bill.pdf

[8] https://beta.parliament.scot/bills-and-laws/bills/uk-withdrawal-from-the-european-union-continuity-scotland-bill-2020

[9] https://blogs.gov.scot/rural-environment/2020/12/04/update-on-environmental-standards-scotland/

Wales Environment Link (WEL) is a network of environmental, countryside and heritage Non-Governmental Organisations in Wales. WEL is a respected intermediary body connecting the government and the environmental NGO sector. Our vision is a thriving Welsh environment for future generations.

This paper represents the consensus view of a group of WEL members working in this specialist area. Members may also produce information individually in order to raise more detailed issues that are important to their particular organisation.

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