Cyswllt Amgylchedd Cymru | Wales Environment Link

Consultation response: White Paper on Rural Proofing and Environmental Sustainability

Deadline: 14th October 2026

Rural proofing

1. Do you think Wales needs a new rural proofing duty? Please explain your response.

No. Whilst we are not against it in principle, and the needs of rural areas are important to consider in general policy development and provision of services, we are not convinced of the need for a formal duty at this stage, in addition to existing rural proofing requirements. First, we would recommend an analysis of whether the existing assessments that Welsh Government carry out for each piece of legislation and budget is proving helpful, accurate or influential on the policy development process.

In addition to rural proofing requirements within Integrated Impact Assessments, Welsh Government and local authorities (and other public bodies like health boards, fire and rescue authorities and National Parks authorities) already conduct impact assessments for:

- the Wellbeing of Future Generations Act – including the five ways of working and the impact on all seven wellbeing goals;
- the Public Sector Equality Duty and Equality Act – considering the potential positive and negative impacts of a proposal on the 9 protected characteristics of age, disability, gender reassignment, marriage and civil partnership, race, pregnancy and maternity, religion or belief, sex and sexual orientation;
- Welsh Language Standards – to consider possible effects on opportunities to use the Welsh language and ensuring Welsh is treated no less favourably than English;

- the Socio-economic Duty – to deliver better outcomes for people who are socio-economically disadvantaged, considering current and future trends for inequalities;
- United Nations Convention on the Rights of the Child (UNCRC) – ensuring that children and young people (up to age 25 years old) have their interests protected and are not discriminated against;
- Section 6 of the Environment (Wales) Act 2016, the Biodiversity and Resilience of Ecosystems Duty – this requires authorities to "seek to maintain and enhance biodiversity so far as consistent with the proper exercise of their functions and in doing promote the resilience of ecosystems", including building and land management, procurement, communications and governance;
- climate change – a responsibility to anticipate risks and impacts from climate change and adapt/prepare as much as possible. Authorities have their own Net Zero plans for departments to follow;
- the environmental principles of precaution, prevention, rectification at source and polluters pays, in the context of a high level environmental objective; and
- Data protection – following General Data Protection Regulations, these are required in using relevant technology and processing of personal data

These are all very important and safeguard on both issues and individual protected characteristics. To us, it feels as though there are multiple tools that should already be delivering for rural areas.

2. Do you agree with the proposed form of the rural proofing duty (a duty to have regard to rural needs)? Please explain your answer.

Disagree. The challenges set out in the White Paper could be drafted more specifically. For example, it is indeed much harder to access certain public services in rural areas, and instead a duty to 'consider access to public services', could be more helpful. For example, when a local authority is considering a new housing estate, they could reject it if access to sufficient services and transport options aren't also built into the planning proposals and wider integration of access to those.

The White Paper also identifies the discrepancies in how 'rural' alone is defined, which Welsh Government would need to decide upon going forward so the guidance can be clear.

3. Do you agree with the proposed list of public authorities to whom the duty should apply? Please explain your answer.

Whilst most of the public authorities on this list make sense, we would like to more specifically understand how this duty might work when applied to NRW. Given that this appears to be a largely socio-economic duty, it could potentially conflict with some of NRW's statutory environmental duties, so this needs careful consideration of prioritisation in relation to NRW's other duties.

We support National Park authorities being included and think they should be consulted early on how to develop the guidance, as they are arguably the most experienced authorities at dealing with the day-to-day impacts on rural areas intersecting with tourism and outdoor recreation areas, alongside protected sites and vulnerable ecosystems.

4. Do you think public authorities subject to a rural proofing should be required to periodically report on what actions they have taken, or propose to take, to comply with the duty? Please explain your answer.

Yes. In some form, but in a way that isn't burdensome. Local authorities in particular have expressed in recent years the difficulty of any additional duties or responsibilities, without associated funding, as they have struggled with capacity and resource to deliver their primary functions on education and social care.

5. Do you agree that the Welsh Ministers should be required to provide statutory guidance to support the new rural proofing duty? If so, what is your view on what should be included in that guidance. Please explain your answer.

Agree. As set out in these recommendations to the Northern Ireland Executive on their own guidance under the Rural Needs Act: "Considerable confusion was

expressed about the terminology used in the Rural Needs Act. People are unclear how to define ‘rural’, ‘need’, and ‘due regard’.” Definitions and examples will be important in guidance, as the White Paper itself acknowledges (page 15), there are varying and sometimes contradictory definitions of what a ‘rural area’ is, so guidance will be very important on making this duty effective.

We also feel it is essential that the guidance makes clear rural proofing is not only a duty to consider socio-economic factors, which could be interpreted as a need to counter-balance environmental policies and plans. Nature recovery and environmental resilience are vital to the security of rural communities as well as representing economic opportunities.

6. What is your opinion about how a duty might work with existing arrangements between public bodies for joint working?

Universally applied guidance would support integration with other joint working arrangements. Looking to how Public Service Boards (PSBs) work, there is a lack of consistency and dedicated resource for these. Each PSB seems to conduct their work in their own way, which may support local approaches and decision making, but does create confusion for stakeholders that are trying to interact with them.

PSBs’ Well-being Plans for each area should also be looking to solve the problems that the Rural Proofing Duty seeks to solve, in providing an integrated plan for each area which encompasses public services, transport and the environment. Well-being Plans have the advantage of being applicable to all areas of Wales, whether rural or urban. Their lack of visibility or influence seems likely due to the lack of dedicated resources available to produce and implement them, but there could be an opportunity to improve these.

7. What practical matters, such as evidence and research, networks and human capacity building, would need to be addressed to make a rural proofing duty successful?

Cultivating a pool of stakeholders to be consulted on to implement this could be helpful, with groups most active in rural areas. This could include biodiversity

partnerships, farming unions, any other landowners, nature reserve managers, access fora, Natural Resources Wales, and any other relevant local groups.

The environment, whilst important to all of Wales, is very much the foundation to rural areas, for farming resilience, tourism, and the value people place on living in beautiful areas. We need to ensure that this isn't siloed, on the assumption that this is covered off in other duties and to, as we suggest above, review how these are operating first before adding more duties.

The White Paper frames the rural proofing duty as a primarily socio-economic duty. If this new duty is introduced then it will be important to understand how this duty will work alongside environmental duties such as those focused on the Sustainable Management of Natural Resources and the new duties relating to the environmental principles, particularly if Natural Resources Wales is to be captured by this duty. It is vital that the duty recognises the importance of nature recovery and environmental resilience to rural areas.

8. What benefits, costs, risks or unintended consequences do you think could arise from introducing a statutory rural proofing duty?

As explained in the previous section, it will be important to understand how a rural proofing duty that appears to be primarily socio-economic will interact with environmental duties. This element is not mentioned in the White Paper and has the potential to cause unintended consequences in relation to the hierarchy with which duties with different aims may be perceived to have. For example, there is currently no clarity of how the legal requirements for water and nature will be delivered if the rural proofing duty were to challenge this on the basis of rural economic burden. Considering rural need separate from other duties fragments prioritisation and moves us further away, rather than closer, to an integrated catchment approach for water, for example. Clear guidance on prioritisation and integration with other duties will be important if the new duty is implemented.

Confusion over how to address a 'rural need' may arise; for example, too much tourism to a vulnerable area that causes erosion could lead to the decision to ban the public from that area for the foreseeable future. However, another equally valid

decision could be to use a tourism tax to raise funds that can be invested in environmental infrastructure (paths, signage, restoration work) and information/education to ensure people understand their impact.

Another issue may be that many 'rural needs' are identified through this duty, but without the funds to address them, it would stay a desk-based assessment without any implemented solution. As the White Paper indicates, there are already many tools in place that could address rural needs if they were used consistently by local authorities and other public bodies. Does the Welsh Government understand the barriers to using these existing tools effectively?

If the duty is implemented, managing expectations and working to ensure it is embedded in all day-to-day decisions, rather than creating extra work, will be important (again, through guidance and examples). However, it is important to understand if this could be addressed through better training for public bodies, rather than a new statutory duty, or if the real issue is lack of resources, which a new duty will not necessarily change.

Climate Change

Climate Change Act 2008

12. Do you agree that the section 80(1) report should focus on the impact of climate change only, because Wales now has a separate statutory framework for greenhouse gas emissions reduction through the Environment (Wales) Act 2016? Please explain your view.

WEL members agree with this proposal as it will bring reporting into line with the Environment (Wales) Act 2016 and reduce duplication, as set out in the White Paper.

13. Do you agree that assessments of progress in addressing the impacts of climate change should be separated from the section 80(1) report on objectives, actions and future priorities? Please explain your view.

WEL members agree with this proposal as it will avoid duplication.

Environment (Wales) Act 2016

Amend section 34(3), net Welsh emissions

14. Do you agree that the definition of Welsh removals should be amended so that it includes removals from the atmosphere "due to processes, mechanisms or activities"? Please explain your view.

WEL agrees with this amendment to the definition of Welsh removals. It brings Wales into line with UK legislation and allows for new technological removal processes to be counted.

15. Do you have views on the implications of counting engineered removals in the net Welsh emissions account? Please explain.

Whilst we agree that all types of removals should be counted, we are concerned that this could bring a risk of government policy becoming overly focused on technology to reduce greenhouse gas emissions. Removals through land use change, and nature-based approaches will still be the most effective ways that Wales can remove greenhouse gases from the atmosphere, provided the land or nature-based approaches focus on habitat protection and restoration and avoid large scale bioenergy and BECCS.

Technological solutions must not be relied upon as a means of continuing with business as usual: they should be considered as one approach within a range of approaches to reducing emissions, so we are pleased to see that the White Paper talks about technological approaches working alongside nature-based approaches, and states "The proposal does not determine future policy choices on engineered removals but ensures the accounting framework can accommodate them if they are used."

Amend section 39, proposals and policies for meeting carbon budgets

16. Do you agree that section 39 should be changed so that each plan contains policies and proposals for meeting two carbon budgets on a rolling cycle? Please explain your view.

WEL agrees with this proposal. This long-term planning approach will help determine the best long-term outcomes, in line with the ways of working set out in the Future Generations Act. It is important that governments think beyond their current term and have a route map to net zero that takes into account that some sectors may take longer to transition, but that transition needs to be planned now, with early steps taken, to ensure that action is not continually delayed. Lack of long-term planning can result in difficult issues becoming more urgent as time goes on.

17. Do you have views on the practical implications of producing plans on this basis, including for stakeholders who use the plans? Please explain.

Evidence based policy becomes more difficult the longer into the future plans are supposed to work for, which means they will need an iterative process and flexibility to change if new evidence shows the need. We agree that planning longer into the future will help to give certainty to businesses that are having to make changes to how they operate and what they invest in.

As an environmental network, we would also appreciate the opportunity to understand Welsh Government's long-term thinking in relation to how greenhouse gas emissions will be reduced into the future. Rolling plans will also make gaps in activity to reduce emissions less likely. Long-term planning should take account of adaptation needs to ensure that future policies and proposals are resilient to the long term impacts of climate change, including on infrastructure and nature.

Amend section 41(11), final statement for budgetary period

18. Do you agree that section 41(11) should be changed so that a final statement uses the most recent consumer emissions data available? Please explain your view.

WEL agrees with this proposal. This appears a common-sense approach to ensure that, combined with annual consumer emissions estimates, progress can be tracked within the relevant time period and within the data constraints that exist.

19. Do you agree there should be a new requirement for the annual publication of an estimate of consumer emissions? Please explain your view.

WEL agrees with this proposal and particularly safeguarding the annual publishing requirement within the Environment Act 2016 to guard against a future government removing consumer emissions from the national well-being indicators. An annual estimate is essential to keep this issue high up the agenda and to enable scrutiny of Wales' progress on emissions.

Forestry Act 1967

Notices to stop and information requirements

20. Do you agree that NRW should have a power to issue a notice to stop to a person felling trees without a felling licence while the matter is investigated and to prevent further environmental damage? Do you have any alternative approaches? Please explain your view.

Agree. These proposals are welcome, NRW should have the power to issue a stop notice to prevent environmental damage and to better enforce non-compliance with licensing rules. Not only will this avoid harm to wildlife and their habitats, it will also be a more efficient and effective approach from a conservation point of view as it is generally much quicker, cheaper and easier to prevent rather than to retroactively fix environmental harm.

21. Do you agree that there should be power to include in a notice a requirement that timber/arisings remain on site while NRW investigates, to preserve evidence and enable accurate assessment of the offence? Please explain your view.

Agree. Although we'd welcome this being more nuanced than a notice that requires either 'all timber/arisings left on site' or none, as there could be circumstances where leftover timber can increase fuel load (and therefore risk to safety, wildlife and habitat in the event of fire), or block access or increase the risk of pest or disease outbreaks. NRW should be able to include such a notice but allowed to caveat it with conditions like 'except at points x y and z, timber/arisings can be moved to ensure

access isn't blocked or a fire break isn't mismanaged'. In this instance, NRW should also be able to add a condition to enable effective evidence gathering e.g. photographs are to be taken prior to or immediately after the movement of timber/arisings.

22. Do you agree that NRW should have the power to issue a further notice requiring the person responsible to provide information necessary to NRW's investigation to establish whether the felling was unlawful and the extent of the unlawful activity? Please explain your view.

Agree. This seems sensible and standard as part of a new general power to issue stop notices. There are several reasons why someone would fell unlawfully, and gathering information is important to help NRW prevent future such incidents.

A court order to restock

23. Do you agree that courts should be able to issue a court order to restock in Wales in addition to financial penalties? Please explain your view.

Agree. The court order should also specify what kind of restocking should take place, if relevant. For example, on sites where the illegal felling is of native trees, the restock should aim to replace with native woodland habitat. However, if the illegal felling is of non-natives on a Plantation on Ancient Woodland Site (PAWS), the opportunity to restore the native canopy through restocking should also be taken. In some scenarios, this could reflect unintended consequences from a landowner trying to remove conifers to create better mixed broadleaved cover; the best approach is for more gradual and sustained restoration rather than rapid felling. We advocate for sustainable approaches to restocking in our Woodland Opportunities for Natural Colonisation and Regeneration paper.

However, if the original trees were established on inappropriate land, or land that was appropriate at the time, but following policy changes is now deemed inappropriate, then the most appropriate land use management should be mandated

(e.g. restoring other habitats, like peatland or grassland). An ecological view as oversight will be needed for the most appropriate restocking orders.

We also note that young trees are particularly vulnerable to wildfire. When re-stocking or creating larger areas of woodland, control measures will need to be designed in.

24. Do you agree that courts should be able to issue a court order to restock for an alternative area of land (where the felled site can no longer be replanted e.g. through sale or site conditions have been changed)? Please explain your view.

Agree, but only on the basis that an ecological view can be taken on this alternative area of land. This will depend on its suitability for tree cover establishment, whether currently under the same ownership or intended to purchase. There is a danger of unintended consequences with this approach. NRW should have the power to recommend whether there are suitable places, or whether other land use change or management options such as peatland restoration would be more appropriate. The kind of tree cover being established should also be considered; for example, felling native woodland should not be replaced with commercial plantation. Any felling of designated or Ancient Woodland must result in re-establishment on the original site.

Enable restocking notices issued under section 17A, enforcement notices issued under section 24 to be registered as land charges.

25. Do you agree that restocking and enforcement notices to restock should be registered as local land charges, so they are visible during property searches? Please explain your view.

Agree. People buying property should be fully aware of any conditions attached to the land before they buy so that disputes over land use don't arise.

26. Are there other steps you think could be taken to ensure compliance with restocking and enforcement notices and strengthen the link between enforcement and woodland restoration?

Yes. Cross-compliance to prevent perpetrators of illegal felling from being eligible for any other land management grants until restocking has been successfully undertaken and possibly for a further penalty period. This could be as deductions from other existing grant payments. However, again, nuance could be necessary as mistakes made by a landowner on their woodland might prevent them from other grant-funded good habitat management.

27. Do you have views on what rights of appeal or other safeguards would be required in relation to each of these proposals? Please explain your view

There should always be a right of appeal: some cases are straightforward, others may be more complex, and anyone can make mistakes. A landowner may fell trees for many reasons and not all are a deliberate attempt to remove woodland wholesale from their land.

Woodland creation and restoration

28. Do our current processes provide sufficient safeguards to ensure that our communities are protected from inappropriate planting?

No.

29. If your answer to the previous question was no, what other measures would you like to see put in place?

Often, communities can feel that tree planting – especially of commercial plantations – is imposed on them, rather than agreed with them. As a network, we want to see much more healthy, mixed and broadleaved woodland across Wales (and indeed this is part of our net zero pathway). To achieve this sensibly, and sustainably, we need to ensure better co-design of woodlands with communities as part of the approval process. We set out best practice ecologically in our Woodland Creation paper, and one of our recommendations is: “Early engagement with local stakeholders

(particularly rural and farming communities) is resourced and required to ensure support for proposals in terms of local benefits such as biodiversity, access, amenity and landscape character as well as carbon sequestration benefits."

The UK Forestry Standard (UKFS) provides guidance for minimum thresholds for afforestation, like the 25% native broadleaved trees requirement in woodland creation grants, and we think higher requirements should be set to reward better practice in Wales. Rather than sticking to a deep peat definition of >50 cm at which afforestation is prevented, Wales should adopt the more precautionary definition of >30cm. We should be going beyond the UKFS, which is very much a minimum standard in our opinion; truly sustainable forestry management is about increasing species diversity and should be following the Principles of Continuous Cover Management.

The maximum percentage of a single species should be reduced from 65% to 50% with a maximum size for a single species block stipulated to increase acceptability to communities, resilience to climate change and the associated rise in pests and diseases. These changes would encourage quality sustainable woodland creation and management over poorly designed commercial plantation, or plantation for carbon credits which, done badly, can damage ecosystems and release carbon.

We acknowledge that there are also benefits for locking in carbon via homegrown construction timber, when grown using the good management principles and standards mentioned above. Larger scale afforestation (including commercial plantations) may be more acceptable to communities if the current woodland creation grant provided a per hectare payment for the management of the unplanted open ground area present in all schemes.

At present, tree planting grant is paid on a maximum of 20% "open ground", but no planned management is required of this open ground and it is largely seen as a burden on the scheme. This unplanted land is the access and habitat network that is the component of most interest to local communities and other stakeholders. It typically includes access tracks, open areas, stream sides, native woodland and other habitats. It is also vital for fire control, including riparian and native woodland strips, boggy areas and rides and tracks which can all act as fire breaks. An integrated plan

can manage public and permissive access, secure habitat networks contributing to biodiversity targets, and organise fire control.

In summary, consultation with communities should be mandated, and evidence required, in grant schemes. Some specific funding for consultation should be provided. If a woodland is well designed, provides multiple benefits, and is designed with community input, this should result in much better outcomes for all; a better woodland for wildlife, carbon and the local community to access and enjoy.

We are aware of a shortage of skills and experience to ensure good management takes place and to build resilience into existing forests to adapt to climate change, droughts, storms, wildfire and increasing pests/diseases. Investment in these skills should be a growth area for Wales, and the Nature Service Wales is looking to tackle these sorts of skills shortages as well as introducing new people into environmental careers.

30. Would you like to see any additional measures put in place to protect high-quality agricultural land?

No. It is increasingly clear that food production needs to be more resilient to climate change impacts such as drought. Consequently, protecting high-quality agricultural land for the future actually needs some measures to encourage tree cover establishment, rather than business as usual. The phrasing of this question presumes a that all high-quality agricultural land should have no trees on it, which is a very problematic assumption and has led to a huge drop in resilience for many parts of rural Wales. The right tree planting should not be treated as 'taking land out of production' but rather enhancing that production.

Conifer forests must not be put in the same category as mixed native, broad-leaved woodland or increased tree cover on farms. Furthermore, whilst there has been a lot of commentary on 'carbon forests' taking up land in Wales, there is little evidence that this is happening on a significant scale, and an attempt to overcorrect could prevent other much-needed woodland being created.

Improved pasture can actually be one of the best places to plant trees, as there's little wildlife or other healthy habitats (i.e. species rich grassland) to impact. Farmers should receive sufficient ecological advice through Farming Connect that they can make informed decisions as to what they do with their land, including planting woodland.

Agroforestry approaches such as silvo-arable, silvo-pastoral, hedgerows and shelter belts can help provide shade and manage water to maintain food production. The riparian edge of a good woodland can significantly help a farm with its impact on local water courses and the shade and shelter trees provide for livestock is crucial, especially as heatwaves will increase in frequency, duration and extremity.

Whilst we do support protections against whole-farm buy out for afforestation where that farm is high-quality agricultural land, we would not want to see unnecessary barriers introduced that would prevent the right trees on farmland.

Waste

Littering from vehicles

31. Do you support the introduction of legislation that would allow the registered owner of the vehicle to be issued with a civil penalty, even if they were not responsible for the littering offence?

Yes, our members support Keep Wales Tidy's long-term recommendation for legislation to make enforcement against drivers who litter easier to action. This would also bring our legislation into alignment with that of England and Scotland.

Roadside litter in Wales is a widespread issue spanning the whole country, across rural and urban setting and differing levels of deprivation. Using data from Keep Wales Tidy's Geospatial Litter Analysis (GLÂN) surveys undertaken in 2025, it was found that litter was present on 98.8% of A and B roads in Wales.

As well as making enforcement action easier, introduction of the proposed legislation sends a message to the public in general about the seriousness of the offence and the harm it causes. This is particularly important as Keep Wales Tidy behavioural studies and trials have shown that interventions which can be easily placed to deter pedestrian litter, do not work for drivers. Key behavioural findings from Keep Wales

Tidy's research in this area is that messages on roadside litter need to be in areas where people stop – not where cars are travelling.

Whilst this is a welcome amendment to ease enforcement in this area, it is not a preventative measure and will not, in isolation, stop littering from vehicles, especially in rural areas where there are fewer cameras and / or presence of visible enforcement.

The legislation should also be considered in such a way that it is easier and quicker to amend or create additional relevant guidelines or appropriate regulations that may contribute to addressing litter in the future, especially in relation to technological advancement. We note that some technological advancements (such as facial recognition technology) may be ethically dubious and, if used, would need strong regulation, guidance and safeguards. Consultation will remain important when keeping track of advancing technology.

For both this proposal and the planned changes to FPN's for fly-tipping (below), it is essential that fine levels are considered. At the moment, FPN fines for littering can range from £75 to £150, but reduced to £50 for early payment, or up to £2,500 if the offender is taken to court. Fine levels mustn't be so low that they don't act as a deterrent, but if they're too high, people won't be able to pay, which means that, either by choice or as a result of non-payment, the process will end up in court, which can be burdensome and costly for local authorities. This could leave local authorities in a difficult situation whereby they either accept a financial loss in the hope that a successful outcome acts as a deterrent to future offenders or allow FPNs to be seen as redundant as offenders know that the local authority cannot afford to take further action if they refuse to pay.

When environmental crime reaches the Magistrates Courts, the ruling is rarely reflective of the actual cost burden to local authorities or the damage that has been done by the offending act. Guidance to Magistrates is, therefore, key to ensuring that this proposal has the intended impact.

32. Do you have evidence to show the effectiveness of issuing civil penalties to tackle littering from vehicles?

We are not aware of any data on this, and we are aware of data gaps from England and Scotland – Scotland's legislation is relatively recent and more data may be available in future. England appears not to be monitoring impact.

33. Do you have data/evidence on the economic impacts of littering from vehicles/ roadside litter?

WEL does not have data on this but we support Keep Wales Tidy's research and evidence into this issue and we are aware that local authorities spend significant amounts of money on street cleansing alone.

34. Do you have data on the environmental impacts of littering from vehicles/ roadside litter?

Environmental impacts of litter are widespread and well documented. They include but are not limited to:

- Negative impacts on biodiversity and wildlife as a result of direct ingestion, entrapment or through micro- and nano-plastics which affect all of our ecosystems from marine to soils and air.
- Direct injuries from glass, in particular to pets and livestock (as well as people and cyclists), with the British Veterinary Association reporting that nearly 50% of all litter-related injuries to animals involve broken glass.
- Wildlife and livestock are prone to ingestion and entanglement from litter and farmers are acutely aware of the costs of waste disposal and litter ingestion impacts on livestock, although it is difficult to extrapolate these figures directly.
- Vermin control costs associated with food waste.
- The presence of plastics in ecosystems can also impact on ecosystem capacity for carbon sequestration, contributing to climate change.
- Clogged drains and sewage ways can also contribute to surface water flooding events.
- 90% of wildfires are started by humans, with 70% of these being accidental. Litter like cigarette butts, vapes and glass bottles can act as ignition sources,

and the conditions that facilitate the beginning and sustaining of wildfires are expected to become more common and severe due to climate change.

Keep Wales Tidy has further evidence to support the impacts of roadside litter on the environment.

35. Do you have data on the social impacts of littering from vehicles/ roadside litter?

Again, we support Keep Wales Tidy's submissions on this. In particular we note that roadsides are the most difficult to clean due to the hazards of having people work in areas where there are fast-moving vehicles. This means that it is particularly important to deter littering from cars in the first place.

The Environmental Protection (Single-use Plastic Products) (Wales) Act 2023

36. Do you agree that section 4(2) of the Environmental Protection (Single use Plastic Products) (Wales) Act 2023 should be amended so that the reporting mechanism works as intended? Please explain your view.

Agree. WEL supports the proposed amendment to the reporting mechanism. However, we feel there this could be a missed opportunity to pursue the powers in the Act to address SUP products.

Whilst bans are a relatively blunt legislative tool, they do have their uses and can send a very strong signal as to what is and is not 'acceptable' behaviour in the country. WEL members such as Keep Wales Tidy and the Marine Conservation Society continue to find single use items that are not covered under the ban causing widespread litter issues even though, for many of these products, more sustainable alternatives exist. They are also finding some products that are technically already banned, such as non-recyclable plastic cutlery labelled as re-usable but mainly still used as a single use item. River focused members, such as Afonydd Cymru, also tell

us that single-use agricultural plastics are also commonly found littered in rivers in rural areas.

When it was introduced, the Act purposefully went further than the parallel legislation across the rest of the UK to include an 'open door' for Ministers to address problematic items in the future. It is noted that the Internal Markets (UK) Act 2020 (UKIMA) has caused issues for the previous Senedd's intentions for this Act and we are still waiting for 'Phase 2' proposals to come into force which is largely dependent on the UKIMA process. This is unfortunate and UKIMA has had a 'chilling' effect on environmental policy in Wales as a result, however, we do not believe that this should deter Welsh Government from doing the right thing and maintaining the level of ambition that we need to address the persistent issues of SUP and persistent, widespread, non-recyclable waste.

Our members who collect litter data are telling us that that there is a lot more work that this Act could be doing for Wales, even without further bans. It is crucial that this Act continues to reduce the amount of Single Use items on the market, encourages sustainable alternatives (not 'loophole' materials which are harder to recycle and are still treated as single use) and to reduce the amount of plastics in the environment.

Environmental Regulations

Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017 and Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019

Amendment powers for fly-tipping fixed penalties

37. Do you agree that the fixed penalty levels in the Unauthorised Deposit of Waste (Fixed Penalty) (Wales) Regulations 2017 and the Household Waste (Duty of Care (Fixed Penalty)) (Wales) Regulations 2019 should be increased? Please explain your view.

WEL supports Keep Wales Tidy's submission on this question, which raises the difference between the impacts of raising the Household Waste (Duty of Care) fixed penalty and those for the unauthorised deposit of waste. We agree with the need for

nuance here. Increasing household fines may penalise people who are struggling to access waste services, who may be unaware of the law surrounding proper waste disposal, and who often cannot afford to pay fines. More education is important here, along with a proportionate approach to dealing with household waste offences. Higher fines may support deterrence efforts but given the economic barriers to proper waste disposal that already exist, and a continuing cost of living crisis, this will likely increase the amount of fines issued, but not the amount of fines paid.

In contrast, there is a significant issue with criminal organisations fly-tipping large amounts of waste. This is where we feel the focus should be, and increasing fines for this type of criminal behaviour is justified. Arming local authorities and regulators with greater powers and abilities to address this activity would make a difference and the fines need to reflect the criminal intent of these organisations, which are driven by profit and disregard for the law. In most small-scale cases of fly-tipping, this is not the intent of individuals, who can face multiple barriers to proper waste disposal.

Legislation to prevent fly-tipping should focus on criminal fly-tippers and more tools are needed to address this through, for example:

- Being able to take action on traders advertising waste removal services (such as on social media) if they do not have a waste licence.
- Introducing a duty to investigate fly-tipping instances.
- Supporting Court rulings to understand the impacts (and therefore real costs) of fly-tipping which can be reflected in higher sentences and fines.

Keep Wales Tidy has done further research on this and we would urge you to consult in more detail with them to ensure that fly-tipping enforcement is focused on those with criminal intent, and not low-income householders who may not be able to access bulky waste services within their council area, particularly as these services have been reducing in many areas due to constrained local authority budgets.

38. Do you agree with the proposed changes to the fixed penalty notices? If not, please explain your views and proposed amounts.

WEL acknowledges the need to keep fixed penalty notices in line with England to prevent fly-tipping across the border, however, we refer to our answer to Q37 in

relation to the need for additional measures to prevent criminal fly-tipping because we believe this will not be tackled by fixed penalty notices alone.

39. Are our assumptions on costs and savings in the Regulatory Impact Assessment correct for increasing the fixed penalty notice? If not, what is missing, and what are the costs or savings of those missing items/activities and for those listed.

We understand from Keep Wales Tidy's research that there is a lack of clear and consistent information for householders in relation to registered waste carriers. In particular, householders are not given information to tell them that only an upper tier registered waste carrier is allowed to remove waste from a third party. Lower tier operators are only able to carry their own waste.

As the householder duty requires "a householder to ensure they, as is reasonable in the circumstances, pass their household waste to an authorised person", the campaign costed in the RIA should not only be about awareness raising, but should also allocate funding to create consistent, clear and accurate wording for local authorities and NRW to put on their websites to ensure the requirement to see an upper tier licence is clear.

Alternatively, lower tier carriers could be removed from the register to avoid confusion and moved to a separate area which can be accessed after reading cautionary information. Without this, there is a risk that FPNs issued to householders may be redundant as it would be unreasonable to expect them to know the allowances the difference in tiers provides without being given clear information on this. Without action, if this potential loophole is promoted and exploited in the public realm, there could be a net cost to local authorities and NRW as they will still be required to clear the fly-tipping but may not receive FPN payment or prosecution money for their enforcement efforts.

40. Do you have any information that could be useful to help inform the impact assessments that have been prepared to support this proposal?

No

Biodiversity and resilience of ecosystems duty - Environment (Wales) Act 2016

41. Do you agree that section 6(6A)(b) of the Environment (Wales) Act 2016 should be repealed? Please explain your view.

WEL agrees with this.

Power to modify specified regulations made under section 2(2) European Communities Act 1972

42. Should the Welsh Ministers be given the proposed regulation making power to modify specified regulations related to the environment, to be listed in the Bill, that were made under section 2(2) European Communities Act 1972?

WEL disagrees with this proposal in the strongest terms. We are concerned that the proposed broad power in the Rural Proofing and Environmental Sustainability White Paper, for Ministers to amend, revoke or replace environmental laws made under section 2(2) of the European Communities Act 1972 creates an unnecessary and significant risk that environmental protections could be reduced.

The proposed power would give this and future Welsh Governments wide discretion to decide the fate of a long list of important environmental laws, with little justification, oversight or constraint. This includes laws that protect irreplaceable habitats, endangered species and the marine environment.

We are surprised that the Welsh Government's rationale for seeking such a broad power includes the expiry of the majority of the powers of the Retained EU Law (Revocation and Reform) Act 2023. The previous Welsh Government resolutely and rightly opposed this Act because of its regressive and excessive nature and was repeatedly clear it would only use the powers in that Act on a case-by-case basis where there were clear benefits to Wales.

We recognise the need to keep environmental laws under review to ensure they are effective, purposeful and deliver intended outcomes. But this must be done through a considered process based on scientific evidence, public consultation and dialogue, and careful consideration of potential impacts and unintended consequences. It should not be pursued through a 'one-size-fits-all' power. Where a change involves important policy choices, we consider primary legislation to be the appropriate route. Significant policy decisions should continue to receive full Senedd scrutiny and any necessary urgent changes identified through the review process could be addressed directly on the face of this Bill.

The White Paper consultation presents no compelling evidence on why the laws in Annex 2 should be in scope of such a broad power, nor indeed why such a power is needed nor why other environmental laws could potentially be brought within its scope. We are also surprised that the consultation does not recognise the risk of the broad power being used by a future set of ministers for a very different purpose.

In his paper on framework legislation, the University of Leicester's Dr Richard Whitaker refers to the 2021-22 and 2022-23 annual reports of the Senedd's Legislation, Justice and Constitution Committee. These looked at the use of framework bills, with their use of delegated powers, by the Welsh Government. In the 2021-22 report the committee said that if felt that in some cases 'the balance of the legislation is tilted too much in favour of executive power which marginalises the democratic mandate of the Senedd' (paragraph 18).

Dr Whitaker also refers to the House of Lords Delegated Powers and Regulatory Reform Committee's report Democracy Denied, which argued that if governments make too much use of delegated powers within a bill, a parliament's integrity may be undermined. These points further highlight to us the dangers of a broad delegated power, such as is proposed in the White Paper, to the Senedd's integrity. Finally, the House of Lords' Constitution Committee's 2018 report on "The Legislative Process: The Delegation of Powers", stated that governments 'cannot rely on generalised assertions of the need for flexibility or futureproofing' as justification for framework legislation (Constitution Committee 2018, paragraph 58).

Given that there is a long history of issues with framework legislation and delegated powers, and specific examples are also given in the aforementioned reports of the unintended use of such broad powers, we feel this proposal should be removed from the proposals for the Bill. Once a review of legislative need has been completed in detail, proposals could be brought forward in this primary legislation to specifically tackle individual regulations that are considered an immediate priority, if it is demonstrated that a lack of powers will cause an issue that cannot be dealt with under the REUL Act section 15 powers.

43. Do you agree that the proposed power will help to protect and improve the environment and help to respond to the climate and nature emergencies and manage our natural resources sustainably? Do you have any suggestions how the power could be improved to achieve these outcomes?

We believe this power could have the opposite effect because there are no safeguards included relating to its use. Ministers already have the REUL Act section 15 power to amend environmental law for reasons relating to new scientific evidence or to take account of technological improvements. We do not feel the case has been made for why this power is necessary and what improvements to environmental law cannot be made without it. We are alarmed by the implication that this power is intended to allow major changes that might not be supported by scientific evidence. We strongly recommend this proposal is dropped.

44. Do you think any regulations should be added to or removed from the indicative list at Annex 2?

WEL is particularly alarmed to see important regulations relating to habitat and water protection, amongst others, included in this list, but we would urge care in considering any inclusions to this list. Should the proposed power be taken forward against our recommendations, we would need to see a comprehensive independent assessment of the need for and impacts of each regulation to be included in Annex 2.

WEL members are particularly concerned about the inclusion of the Conservation of Habitats and Species Regulations (2010 and 2017) being included on this list because these rank among our most important environmental protections and changes could

affect internationally important wildlife sites and species populations. Some WEL members will be making more detailed submissions on this. We recommend that these regulations are removed from Annex 2 if the Welsh Government decides to include the broad power in legislation.

45. Do you agree with the proposed procedure, the Senedd approval procedure, for making regulations under the proposed power?

We do not recommend taking this power forward. The Senedd approval procedure proposed provides the only slight safeguard that we have for the use of this power, so it must certainly use the approval procedure, rather than the annulment procedure, if it goes ahead. However, we reiterate that this would not provide an appropriate level of oversight for the scale of changes that could result from the application of such a broad power.

46. Should the Welsh Ministers be given a power by regulations to amend the list of section 2(2) regulations to add or remove regulations on the list? If so, do you agree that power should be subject to the Senedd approval procedure?

No. We are extremely concerned at the idea that further regulations could be added at a future date and reiterate that we do not support this power to be taken forward at all, and certainly not supplemented by a potentially limitless power to add new laws within its scope. If a power to amend the scope of the power is taken forward against our recommendations, then, as a minimum, the power should be subject to the Senedd approval procedure. However, we reiterate that this would not provide an appropriate level of oversight for the scale of changes that could result from the ability to bring a large number of additional environmental laws within scope of the broad power.

47. Do you think the proposed broad scope of the regulation making power to enable the Welsh Ministers to modify specified regulations to implement their policy is appropriate?

We believe the broad scope of this power is wholly inappropriate and constitutes a sweeping Henry VIII power that could be used to revoke or replace swathes of

important environmental regulations should a future government be minded to do so. We reiterate that we do not believe the case has been made for this power to be pursued.

The power is similar to that proposed under section 2(2) of the REUL Act 2023, which the previous Welsh Government opposed and which was heavily criticised by civil society, trade unions and consumer groups. However, the section 2(2) power was constrained because Ministers were under an obligation to implement EU law. Many EU-derived laws are as important as Acts of Parliament and would certainly have been set in primary legislation at Senedd level had we not been in the EU. The fact that we currently have many important pieces of legislation set in secondary legislation is not justification for them to continue to be set in secondary legislation by itself. We need to understand why each regulation needs to be amended and, if significant changes are needed, we believe that primary legislation is more appropriate to allow for full Senedd scrutiny. Further provision can then be made for ongoing technical amendment.

We feel this proposal should be removed from the Bill. Once a review of legislative need has been completed in detail, proposals could be brought forward in this primary legislation to specifically tackle individual regulations that are considered an immediate priority, if it is demonstrated that a lack of powers will cause an issue that cannot be dealt with under the REUL Act section 15 powers.

48. Do you have any other comments on this proposal?

We would like to understand in detail what the Welsh Government believes such a broad and sweeping power is needed to do, and why existing routes for amending such legislation are not sufficient to ensure environmental legislation remains relevant.

Strengthening Enforcement

Establish a Task & Finish Group to seek views and gather evidence on strengthening enforcement for specified Environment and Agriculture offences in Wales

49. Do you agree that a collaborative Task and Finish Group is the appropriate mechanism for taking forward consideration of reform in this area?

Enforcement has long been under resourced and environmental NGOs feel there has long been a lack of political will to tackle certain offences. A collaborative task and finish group could be a useful way to identify issues and come up with solutions, including setting National Minimum Standards for agriculture – a long-term ask of WEL members. However, noting that some stakeholders may be representing regulated groups, a task and finish group like this would need careful, independent mediation and facilitation to ensure an objective, progressive and inclusive approach.

We note that government is able to move quickly in relation to powers that it feels are important, for example the proposed EU broad power in this White Paper, which has come as a surprise to many. Given the long-standing calls for strengthening environmental enforcement, we would expect this group to be given prominence and a reasonably fast timescale within which to report, because the solutions are not novel.

50. Would you or your organisation wish to participate in, or otherwise support, the work of such a Group, and if so, please explain in what capacity.

Yes. WEL members can provide expert input on the prevalence and causes of environmental and agricultural offences. We are also solutions focused and can draw on our members' on-the-ground experience and expertise.

51. What expertise, evidence or perspectives do you consider would be important to inform the work of the Group?

Legal and scientific evidence, including evidence about the impacts of environmental offences, will be crucial. An understanding of the regulator's role and the current barriers to enforcement will also be important. Behavioural insight will also help understand why certain environmental offences are prevalent and how best to focus penalties so that persistent or repeat offenders are dealt with, whilst providing proportionality for accidental or low impact offences.

52. What issues should the Task and Finish Group prioritise?

There are a wide range of environmental offences that could be considered (pollution, fly-tipping, habitat destruction, offences related to SSSIs etc). Some of these are not being enforced due to lack of resources or expertise, whilst in other cases NRW (and possibly local authorities) lack proportionate powers to act. The first task of this group should focus on giving NRW or local authorities the appropriate powers to act where there are gaps identified in their powers (e.g. the IEPAW has recommended that the Welsh Government should consider amending the Environmental Civil Sanctions (Wales) Order 2010 to include offences under the Wildlife and Countryside Act, not least because this would give NRW the power to seek a restoration order in response to an offence that causes damage to a SSSI). Where lack of powers is not the reason for lack of enforcement, these reasons need to be identified and should form the next stage of the group's work.

53. Which sectors, organisations or interests should be represented in the Group's work?

The key groups for this work should be those involved in environmental regulation (NRW, local authorities), legal experts if necessary, environmental NGOs and regulated industries. It may be appropriate to consider how citizen input can be taken into account in terms of the impact of environmental offences on communities.

Regulatory Impact Assessment and Integrated Impact Assessment

54. Do you have any information or evidence that would be helpful to inform the Regulatory Impact Assessment and/or Integrated Impact Assessment that has been published alongside the White Paper? If so, can you please provide it.

No. Nothing additional at this stage. WEL members may submit evidence that their organisation holds directly.

Please contact Karen Whitfield, Director of Wales Environment Link for further information: karen@waleslink.org. We are happy for our organisation's details to be published alongside our response.

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.

Swydda Caerdydd
Tramshed Tech
Uned D, Stryd Pendyris Caerdydd CF11 6BH
F: 07498 228066 | E: enquiry@waleslink.org
Awyrlas: @waleslink.bsky.social

Cardiff Office
Tramshed Tech
Unit D, Pendyris Street, Cardiff CF11 6BH
T: 07498 228066 | E: enquiry@waleslink.org
Bluesky: @waleslink.bsky.social

www.waleslink.org

Cadeirydd | Chair: Roger Thomas. Cyf-Gyfarwyddwyr | Cyfarwyddwr | Director: Karen Whitfield
Rhif Elusen Gofrestredig | Registered Charity Number: 1022675