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Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs



Hannah Blythyn AC/AM
Gweinidog yr Amgylchedd
Minister for Environment

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-P/LG/2658/18

Mike Hedges AM
Chair
Climate Change, Environment, and Rural Affairs Committee
National Assembly for Wales

24 August 2018

Dear Mike,

Thank you for your report on Environmental governance arrangements and environmental principles post-Brexit.

Please find attached a response on behalf of the Welsh Government to the Committee's recommendations.

Yours sincerely,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

A handwritten signature in black ink that reads "Hannah Blythyn". The signature is cursive and somewhat stylized, with the first name and last name clearly distinguishable.

Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a
Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

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Gweinidog yr Amgylchedd
Minister for Environment

Written Response by the Welsh Government to the Climate Change, Environment and Rural Affairs Committee's report: Environmental governance arrangements and environmental principles post-Brexit

June 2018

Recommendation 1

The Welsh Government should clarify whether it supports the establishment of a UK-level governance body.

Response: Accept

To determine the appropriate geographic scope of a new environmental governance body, we must first fully understand the issue and the gaps. These gaps are not universally the same across the UK and, therefore any solution must compliment and respect existing structures within each of the administrations. Whether a UK-level governance body is, therefore, appropriate will depend on a number of factors, including its functions, how it fits with existing Welsh governance structures including the role of the Assembly and how it respects the devolution settlement.

The UK Government has launched its consultation on Environmental Principles and Governance post EU Exit, which is for England only and reserved areas – which are different for each of the devolved administrations. This consultation is based on its analysis of the gaps as they exist in England. However, the gaps in Wales are different to those in other areas of the UK due to the nature of the devolution settlements and the unique legislative landscape we have here in Wales. We are currently undertaking our own analysis of the governance gaps as they relate to Wales in light of our own legislative framework and of course our existing mechanisms to hold public bodies to account.

How we address these gaps needs to be fit for purpose, which includes ensuring we maintain and enhance our environmental standards and also that we remain in line with our progressive approach in Wales provided in the Well-being of Future Generations (Wales) and Environment (Wales) Acts.

Discussions are on-going with both the UK Government and other devolved administrations on the potential for a UK-wide approach and what this could entail. Currently, further information is required on the detail of its proposals, particularly in relation to 'reserved' areas to fully determine where its proposals provide a suitable basis for a UK-wide body rather than an England-only body or whether an alternative model is required.

Until further information is provided on the detail of the UK Government's proposals and our own analysis is finalised, including discussions with our Welsh stakeholders, it is too early to give a definitive response on whether a UK-level body is the most appropriate solution. We will provide an update to the committee when we have reached a proposed decision on whether a UK level body is appropriate or not.

We will continue to engage with the UK Government and other devolved administrations on this matter. However, in light of the UK Government proposing to publish a draft Bill in the autumn, the timescales for discussing a potential co-designed response are incredibly short.

I can assure the Committee, I am committed to addressing these gaps and will consider all potential options to address these gaps, which will respect the devolution settlement and compliment our progressive legislation for sustainable development and our natural resources

Financial Implications: None.

Recommendation 2

The Welsh Government should report back to this Committee as a matter of urgency on discussions that have taken place with the UK Government about the potential for establishing a UK body.

Response: Accept

We have been engaging with the UK Government and other devolved administrations, both at a ministerial level and at an official level, to consider potential options for addressing the governance gaps. Any UK-wide body would need to be agreed by all administrations and it is not for me to comment on the views of the other devolved administrations.

Despite meeting with the UK Government including discussions with the Secretary of State for Environment, Food and Rural Affairs at our regular quadrilateral meetings, the UK Government did not engage us on their consultation. We received an advanced copy of the consultation the same day as its publication, just prior to launch, with no opportunity to input to this.

Discussions are currently on-going with the UK Government to better understand its proposals in its consultation '*Environmental Principles and Governance Post EU Exit*' and to consider options for addressing the gaps arising from exiting the EU, including the different geographical scales for a new environmental oversight body.

Financial implications: None.

Recommendation 3

The Welsh Government should report back to the Committee as a matter of urgency on any exploratory work it has undertaken to assess the resources that would be required to establish a Welsh body and any discussions with the UK Government on this matter.

Response: Accept

We agree assessment of the resource implications is an essential factor in the establishment of any new body. Work on the response to these gaps is still at an early stage and too soon to commence an assessment of the resources, which may be required.

We will of course consider all of the resource implications when considering the various options to address the governance gaps, this will be informed by the type of model as well as the functions to be undertaken by the body and the geographical scale.

We have not had any formal discussions with the UK Government on resources relating to its proposals for an England-only body. As discussions are on-going in relation to whether or not a UK-wide body may be appropriate, no discussions have been held on the resources which may be required, as this too would be dependent upon the functions to be undertaken by a UK-wide body.

We will provide an update to the committee in the autumn on the potential resourcing implications of any body as the potential requirements become clearer.

Financial Implications: None.

Recommendation 4

The Welsh Government should report back to the Committee as a matter of urgency on any work to explore potential transitional arrangements for environmental governance, if no governance body is established before the UK leaves the EU.

Response: Accept

We will be looking at all potential options to addressing the governance gaps, which will include the need for transitional arrangements. This is necessary as there is still uncertainty on the arrangements in force when the UK will leave the EU, and particularly what transitional period rules apply in respect of relations with the EU.

It will not be possible by March 2019 to put in place a body to oversee environmental law by that date as the introduction of a new body involves a substantial amount of analysis to ensure it is fit for purpose and does not conflict with existing governance structures.

However, the proposed transition period from April 2019 to December 2020 – subject to agreement on the Withdrawal Agreement between the EU and UK – would provide us with additional time to address this. During this period, existing EU environment legislation would continue to apply and be subject to the jurisdiction of the Court of Justice of the EU.

We commit to continuing to apply the core EU environmental principles post exiting the EU until legislation is in place. In addition, our principles in both the Well-being of Future Generations (Wales) and Environment (Wales) Acts will continue to apply.

Existing scrutiny bodies such as the Public Services Ombudsman will continue to scrutinise the work of public bodies and the Future Generations Commissioner will continue to ensure public bodies are meeting their commitments under the Well-being of Future Generations (Wales) Act.

We will continue to engage with stakeholders to consider what alternative mechanisms are available, which will help to address the gap until legislation can be introduced.

Financial Implications: None.

Recommendation 5

A UK-level governance body must meet the following criteria:

- **it must be co-designed by all the different countries of the UK;**
- **it must be accountable to legislatures, rather than governments;**
- **it must be resources appropriately; and**
- **there must be appropriate mechanisms to resolve disputes**

Response: Accept

If it is determined a UK-level body is the most effective mechanism to address governance gaps, then we agree the body must be co-designed and also co-owned by all administrations.

This should be the case if the body is to apply to only some, rather than all, of the administrations. It is not for Welsh Ministers to comment on the position of other devolved administrations.

We also agree any such UK-wide body should not restrict, interfere in or over-ride the role of the National Assembly and any such body should be accountable to the legislature. This should apply even if it is a Welsh-only body.

For the success of any such body, we also agree it is important for it to be appropriately resourced, whether it is UK-wide or a Welsh-only body.

In relation to disputes, we do agree it is essential there are mechanisms to resolve any disputes between the various administrations, if a body has a geographical scope beyond one administration. We agree there should be a clear mechanism to address disputes which arise in relation to the body's operation.

In addition, we also believe any UK-wide body must also operate in a way which is in alignment with the devolved settlement and does not conflict with the existing governance structures and bodies within Wales. Its purpose and remit must also be compatible with our Well-being of Future Generations (Wales) Act and our Environment (Wales) Act.

Financial Implications: None.

Recommendation 6

The new environmental governance architecture must include the following functions:

- **promoting environmental protection among government actors and the wider community;**
- **monitoring and reporting on progress in the implementation of environmental laws and providing essential scientific data;**
- **taking action where targets/objectives are not met, for example through the imposition of economic sanctions;**
- **providing citizens and civil society organisations with access to the complaints and enforcement systems; and**
- **adopting a long-term strategy transcending political cycles.**

Response: Decline

We agree the remit and purpose of any environmental governance body must be clear and it should be to maintain and enhance the environment. Significantly, its architecture must be in line with the existing legislative framework within Wales and not act contrary to the achievements already delivered in Wales by the Well-being of Future Generations (Wales) and Environment (Wales) Acts. It should also complement the scrutiny and accountability roles of the Welsh Assembly.

What the architecture includes will be contingent on the model which is agreed. It is too early to state whether this will be a Welsh-only body, a UK-wide body or some form of hybrid.

We would not wish to postulate the architecture of a new governance body until a full analysis is undertaken to determine the specific gaps in relation to Wales, taking into account our existing legislative framework, our existing accountability bodies and the type of model which would best address these gaps. The issues outlined in this recommendation are key things to consider in this process. However, at this stage there has been insufficient analysis to be definitive on the precise roles and powers which would be appropriate for any body.

We will also seek the views of stakeholders on potential governance architecture. Our current engagement with our stakeholders through the Brexit Roundtable and its working groups has identified a number of potential functions for any such body including independent accountability, accessibility and enforcement mechanisms. We do agree the architecture needs to be independent, holding government to account and providing citizens with a complaints procedure.

The remit of a new governance body must be clear and whether this includes it acting as an enforcement and advisory body is a matter we will raise for consideration in consultation with stakeholders.

We feel this recommendation does not take into account the nature of the gaps which exist in Wales and does not align with what we currently have in place. In particular, we have already taken a long-term approach to policy-making through placing sustainable development at the heart of governance in Wales. Our legislation puts in place seven well-being goals which provide a shared vision for public bodies in Wales, and five ways of working to help us take into account the impact of the work we do now on the Wales of the future.

Financial Implications: None.

Recommendation 7

The Welsh Government should bring forward legislation at the earliest opportunity that will enshrine the environmental principles in law. The principles should be included on the face of the Bill.

Response: Accept

We have already committed to address any gaps in relation to the four core EU environmental principles and we commit to applying these principles until legislation can be introduced to fill the gap.

We already have a progressive approach to the application of environmental principles in Wales, which means we are in a different position to the other UK administrations. Through our Well-being of Future Generations (Wales) Act and Environment (Wales) Act, we have placed sustainable development at the core of our decision-making and have also placed international environmental principles on a statutory footing.

There is already a statutory duty on Welsh Ministers to apply the Well-being of Future Generations 5 ways of working in the development of policy in relation to the environment as well as all areas within our devolved competence.

Through the Environment (Wales) Act, we have placed a duty on Welsh Ministers to apply the principles of sustainable management of natural resources in relation to the development and implementation of policies provided in the Natural Resources Policy. These principles drawn from international environmental principles include public participation, collaboration, resilience of ecosystems, long-term and of course the preventative approach as well as ensuring decisions and actions are based on evidence. These principles will continue to be applied after exit from the EU. These principles are wider than the four EU environmental principles and apply to Natural Resources Wales, when it is carrying out its functions.

Financial Implications: None.

Recommendation 8

The Welsh Government should clarify and report back to this Committee as a matter of urgency about when and how it intends to bring forward legislation to enshrine the environmental principles in law.

Response: Accept

As the Committee has outlined in its report on '*Environmental governance arrangements and environmental principles post-Brexit*', this work should not be rushed as it involves important decisions which could have long-term implications.

Similar to the matters relating to an environmental body, we also need to consider potential options for the application of environmental principles, as well as the potential implications if there are different environmental principles operating in England to Wales, particularly as there is a common legal jurisdiction.

We are continuing to discuss with the UK Government and the other devolved administrations how these potential conflicts could be avoided.

With the volume of legislation required to address the UK's exit from the EU, it would be more advantageous to have a single piece of legislation addressing governance matters. Therefore, we will introduce legislation once we have undertaken a thorough analysis to ensure our proposals are fit for purpose and align with the existing statutory framework.

In the First Minister's recent legislative statement for the legislative programme over the next couple of years, he committed to flexibility within the programme to allow for Brexit Bills.

In the meantime, we will continue to engage with our stakeholders to develop our approach, and will consult on this in the autumn.

Until legislation is in place, we commit to continuing to apply the four EU environmental principles in Wales.

Financial Implications: None.

Recommendation 9

The Welsh Government should report to this Committee as a matter of urgency on discussions it has had with the UK Government to resolve the issue of the UK potentially making decisions on reserved matters in Wales that conflict with Welsh environmental principles or standards.

Response: Accept

The UK Government have committed to engage on devolved matters as part of the Inter-Governmental Agreement. I have made it clear in my meetings with UK Government this means they should be engaging with us to ensure any legislation which effects reserved matters takes into account the Welsh legislative landscape and does not conflict with environmental principles in Wales.

While something may be reserved it can have impacts on devolved functions, wider than conflicting only with environmental principles or standards. Therefore, we are actively engaging with the UK Government and the other devolved administrations at both a Ministerial and official level to gain clarity on the UK Government's proposals relating to what they identify as reserved areas. We are continuing to discuss how this body would operate in relation to reserved areas which relate to Wales.

Through our engagement we are also ensuring there is an understanding of the different legislative approach taken in Wales and how the functions of an England-only body would need to operate to ensure it does not conflict with our existing legislation.

Financial Implications: None.