

## LCM in relation to the UK Environment Bill

Part 1 on its scope regarding the marine environment

Part 3 on Waste & Resource Efficiency

Part 5 on Water Quality

March 2020

### Summary

Wales Environment Link is pleased to provide a paper on the LCM for the UK Environment Bill. There are two main parts of the legislation we have focused on: environmental governance and waste. A separate paper focuses on Part 1 of the Bill on Environmental Governance. This paper looks at marine matters in Part 1 and Part 3 on Waste & Resource Efficiency.

The [Legislative Consent Memorandum](#) concludes that this Bill is an appropriate vehicle to “*progress the circular economy strategy*” but does list some outstanding areas of concern around the devolved competence and duty on the Office for Environmental Protection (OEP).

There are also some flaws relating to how the Bill refers to the marine environment. At a minimum, the Bill should explicitly state that it relates to the marine environment for key provisions of Part 1, covering the Office for Environmental Protection and targets.

## Environmental Governance as it relates to marine – Part 1 of the Bill

### Clarity of scope of the Environment Bill regarding marine matters

There is a lack of clarity as to how the Bill would work in the marine areas, both offshore and cross-border.

WWF sought legal advice in regard to the clarity of the powers of the Secretary of State (SoS) in regard to Wales. As the Environment Bill is currently drafted, in preparing an Environmental Improvement Plan (EIP), the SoS must not seek to make provision for water “*in Wales*”, which falls within the definition of “*the natural environment in Wales*” as per s7(6).

However, what is meant by water ‘in Wales’ for this purpose is not defined by the Bill, e.g. the extent to which sea waters are included. The term is used only in the Explanatory Notes, which do not have legal effect. Due to this:

- There is a lack of clarity on the extent to which the SoS’s EIP may deal with Welsh sea area.
- Certain functions in the Welsh sea area have been transferred to Welsh Ministers e.g. some marine licensing functions in the Welsh inshore and offshore regions in s113(4) Marine and Coastal Access Act 2009 and, via the Wales Act 2017, the designation of Marine Conservation Zones in the offshore, as well as inshore, area. However, the broad language of the qualification sits uneasily with the breadth of the apparent prohibition in the Bill on preparing a plan for water “*in Wales*”.

To deal with this issue, we want to ensure that EIPs for the sea adjacent to Wales don’t ‘fall between two stools’ and we have to avoid ending up in a position where the SoS cannot prepare an EIP because it ‘relates to the natural environment in Wales’ but the Welsh Ministers are unable to take equivalent action either,

because it is a part of the Welsh natural environment that isn't entirely devolved, nor is covered by the provisions of the Environment (Wales) Act 2016.

For instance, the Environment Bill as drafted may mean that the SoS cannot exercise EIP functions in relation to, say, pollution which is more than 12nm offshore from Wales (because it may fall within the broad definition of 'in relation to the natural environment in Wales') but it falls within Part VI of the Merchant Shipping Act 1995 and therefore the appropriate licensing authority is the SoS rather than Welsh Ministers under s113(5) MACAA 2009 (i.e. it is not devolved).

In addition, there is a need to consider how the Severn and Dee Estuaries can be managed according to the ecosystem approach as required by the UK Marine Policy Statement (MPS). National boundaries run through these estuaries, yet they clearly function and need to be managed as single ecosystems. We have been disappointed in the way in which the Marine Planning process has failed to effectively deal with this. Despite the MPS indicating the need for estuary-scale marine planning, the Wales National Marine Plan and the emerging NW and SW England Marine Plans give insufficient regard to how this will be achieved. There is a need to develop thinking and mechanisms to enable Welsh Government and UK Government to work together to effectively manage these ecosystems that span the Wales-England borders – wildlife does not recognise these boundaries.

### **Definition of 'natural environment'**

As written, it is currently unclear whether or how the UK Environment Bill relates to the marine environment. Greener UK has recommended that Clause 41 – the definition of 'natural environment' – is amended to make it explicitly clear that it includes the marine environment. Paragraph 61 of the Explanatory Notes indicates that the definition does extend to the marine environment, as well as the terrestrial and water environments, but for legal clarity this should be stated on the face of the Bill. MPs have put forward amendments clarifying that 'natural environment' includes referencing to the marine environment and is not just confined to inland waters.

The definition of 'natural environment' is relevant to the whole of Part 1 of the Bill, so covers targets, environmental improvement plans, environmental principles and the Office for Environmental Protection.

### **Targets for the marine environment**

The Environment Bill requires the setting of long-term targets for air, land, water and biodiversity. There should be at least one target on each, but as marine is not explicitly included as a matter for target setting on the face of the Bill, the UK Government would not be required to set targets recovery of marine areas.

Tabled amendments 1 and 85 below seek to address this problem. A further proposed amendment on Clause 6 seeks to require that the 'significant improvement' test applies to the natural environment as a holistic system. Hence, where there is connectivity between land and sea, both should show improvement. Where the Bill refers to improvement "*on land*", we believe it should be amended to include "*and at sea*".

### **Waste and Resource Efficiency – Part 3 of the Bill**

The Environment Bill devolves a raft of powers to the Welsh Government over waste and resource efficiency. It has been unclear whether plastic pollution measures would be tackled at a UK-wide, England & Wales, or Wales-only level, up until this point. If the Bill passes, this will be a significant change to how Welsh Ministers will be able to tackle plastic pollution.

The direction of this Bill suggests Welsh Ministers will be able to:

- Apply levies to single-use plastic items (such as coffee cups, polystyrene takeaway containers or plastic cutlery).

- Reform extended producer responsibility through enabling powers to Welsh Ministers to “*set minimum requirements for manufacturers and producers to provide information about the resource efficiency of their products.*”
- Set up our own Deposit Return Scheme (via Clause 51, which grants regulation-making powers to establish a scheme). However, the intent as to whether this will be taken forward is unclear.

### **Ensuring the Bill supports sustainable development goals**

Greener UK – a coalition of environment organisations working on ensuring that leaving the EU doesn’t damage environmental protections – has suggested amending Clause 50 on Resource Efficiency Requirements. This Clause grants general powers to national authorities (i.e. Welsh Ministers) on products’ impact on the environment throughout their lifecycle.

Welsh Ministers will need to ensure this adheres to the Wellbeing of Future Generations Act and the seven wellbeing goals. The principle of Sustainable Development has been embedded through legislation in Wales but not in UK legislation, so Greener UK has suggested amendments to ensure the transition to a zero-waste economy is done so sustainably.

For example, it would fulfil a ‘Globally Responsible Wales’ to phase out single-use materials. However, a ‘Prosperous Wales’ would not be seen as fulfilled if a business dependent on recycling is put out of business, or if jobs are lost are a result of the transition. But the goal of a circular economy is the only way to have a truly ‘Resilient Wales’. As plastic products are phased out, we need to ensure re transition to refillable, reusable society. This means ensuring:

- That we do not incentive the replacement of single use plastic items with other single use products.
- That there be mandatory, full-material disclosure to ensure clarity on product composition.
- Clear, standardised, consistent labelling on all packaging and waste recycling so ensure ease of use and high level of compliance.
- That – in abiding by the waste hierarchy – the focus is on reducing production of materials and unnecessary consumption and instead provides incentive for reusable products.
- That products are not replaced with similarly damaging products. For example, a single-use product badged as ‘biodegradable’, without any clarity as to how or under what conditions it would degrade (thus leading to consumer confusion, and still filling landfill instead of focusing on the reduction and re-use of plastic).
- The impact on ways of working on business and public sector is not detrimental.
- That ecologically sustainable materials are not financially dis-incentivised due to cost.

### **Charges for single use plastic**

Clause 52 allows Welsh Ministers to create regulations which set charges on single-use plastic items. It does not set a level for charges and says that regulations may only be set for items which are single-use; made “*wholly or partly of plastic*”; and are “*supplied in connection with goods or services*”.

Greener UK has recommended that “*made wholly or partly of plastic*” is amended to “*made of plastic or any other material*” (note: Schedule 9, page 174, line 31).

This would ensure that items made of several materials can be tackled and provides further flexibility for how Wales would set charges. It would also ensure unintended consequences whereby manufacturers create products out of new materials – which are not plastic – but still cannot be recycled. The Bill needs to be ‘future proof’ and anticipate that new single-use products can be created, still out of materials that are very difficult to recycle, degrade or re-purpose.

## Exporting waste

Clause 59 amends previous legislation to allow for regulation-making powers on imports and exports of waste.

There is a need to ensure that Wales does not export its waste problems elsewhere and recognises the limits of the global environment. Whilst we welcome Clause 59 shows the UK Government's recognition that a wealthy country like the UK should 'stop the exports of polluting plastic waste to developing countries', this requires clarity on how the Welsh Government will implement further bans or restrictions that will stop the export of materials that damage environments and people abroad.

International commitments mean it is already illegal for the UK to send 'polluting' waste to non-OECD countries. The international [Basel Convention](#), to which the UK is an independent signatory, obliges the UK to prohibit export of waste to developing countries "*if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner*".

This Basel Convention will be strengthened in 2021, when most plastic will become subject to even stricter hazardous waste controls. Unfortunately, the UK has failed to live up to its international obligations, with a poorly resourced Environment Agency in England unable to stop illegal practices.

Greener UK has been calling for an urgent review of the regulatory process and proper resourcing of regulatory bodies to ensure illegal and contaminated containers do not leave our shores.

## Producer responsibility

The sections around Extended Producer Responsibility (EPR) should enable Wales to create a circular economy. However, with a shared legal jurisdiction and Trade & Industry being a – mostly – reserved matter, the most helpful approach would be for the whole of the UK to work together on similar, high standards. There may be knock-on effects from trade agreements that have been reached after leaving the European Union as well.

The [waste hierarchy](#) promotes the reduction of waste foremost and WEL would advocate that Producer Responsibility schemes should be designed in a way that goes beyond simply 'covering the costs' of disposal and end-of-life solutions, but seeks to reduce consumption of materials in the first place, therefore reducing the full lifecycle impacts arising from sector and product groups. WEL would also advocate that, as a Globally Responsible Wales, we should be encouraging re-use and repair, as well as tackling consumption and production.

Overall, the measures in the Bill itself are too focused on 'end of life' solutions to waste and recycling. Much more emphasis is needed on reduction and design for resource efficiency, including through reuse, at the design stage.

Producers and manufacturers need to incorporate: waste minimization, reduction of use, promoting re-usability, redistribution, recovery / recycling of products and materials. Ultimately, the **use of virgin materials needs to be reduced**. For example, using recycled plastic or recycled paper, rather than extracting oil or cutting down trees, when that material wasn't necessary or could have been made out of an already-existing and recycled resource. As cited above in 'Ensuring the Bill supports Sustainable Development', this will ensure Wales can achieve the 'Globally Responsible Wales' wellbeing goal.

Clause 47 introduces schedule 4 on producer responsibility obligations and enables Welsh Ministers (as the "relevant national authority") to impose regulations under two purposes:

- (a) preventing a product or material becoming waste, or reducing the amount of a product or material that becomes waste;

- (b) sustaining a minimum level of, or promoting or securing an increase in, the re-use, redistribution, recovery or recycling of products or materials.

Greener UK has recommended an amendment to insert “*or reducing the consumption of virgin materials*” into point (a) which WEL would wholeheartedly agree with.

In addition, further into Schedule 4 it’s stated: “*The regulations may make provision about targets to be achieved in relation to the proportion of products or materials (by weight, volume or otherwise) to be re-used, redistributed, recovered or recycled (either generally or in a specified way).*” WEL and Greener UK would welcome inserting ‘prevented’ and ‘reduced’ into the list, so that reduction of material and encouragement / incentivizing of re-usable products is prioritized. Wales has led the way with this on carrier bags and the behavioural nudge to ensure re-usable, sturdier bags with a longer life are encouraged both as a producer **and** consumer responsibility. This priority on reduction and prevention has drastically reduced the production of unnecessary plastic.

### **Energy from waste**

In Schedule 5, the definitions around the ‘disposal costs of products or materials’ is important to note. In this Schedule, the ‘disposal’ of products or materials “*includes their re-use, redistribution, recovery or recycling*”. In the Bill, the interpretation of ‘recovery’ can mean ‘composting’, but also “*obtaining energy from them by any means*”.

Whilst Wales does have high recycling targets, we do also incinerate a lot of waste. This can be classed as ‘recycling’ as the bottom ash waste is then ‘recycled’ into concrete. To avoid unintended consequences – i.e. an increase in incinerating waste – Greener UK and WEL would recommend amending the Bill and removing the line “*obtaining energy from them by any means*” (note: Schedule 4, page 154, line 38).

Energy from incineration should be the last resort as it undermines the principles of circular economy and merely creates another form of pollution; carbon and air pollution.

WEL & Greener UK are opposed to Producer Responsibility fees being used to support new waste incineration capacity, particularly for domestic waste which could be recycled, or could have been removed through design for prevention or reuse. We would also support a moratorium on new incineration capacity. The current market for compostable alternatives to plastic has highlighted the gap in the waste stream, in terms of the lack of commercial composting and in-vessel composting facilities. We would like to see the Bill better reflect the need to consider future potential materials and the infrastructure required for their recycling and disposal.

Ideally, Producer Responsibility schemes should be designed in a way that goes beyond simply ‘covering the costs’ of disposal and end-of-life solutions, but seeks to reduce consumption of materials in the first instance, therefore reducing the full lifecycle impacts arising from sectors and product groups.

These fees should not be used to fund new incineration capacity and the system needs to be designed to ensure incineration is minimised in line with the legally enshrined waste hierarchy.

### **Producer responsibility fees**

Given the way this Bill has been drafted, and Welsh Government’s own work on extended producer responsibility, we’d expect this to be considered on a Wales-only basis in future. However, there is currently a lack of clarity on how and when the Welsh Government would legislate on this. Furthermore, there are concerns in how producer responsibility is defined in the Bill.

The Bill appears to limit producers’ responsibilities to disposal costs only which, as cited above, can have a restricted definition. Along with taking greater account of the environmental considerations when designing

materials, producers should be responsible for the full costs to the end-of-life. Schedule 5 only provides the general power to introduce charges for producers to cover waste disposal costs.

However, the environmental footprint of products is not limited to disposal costs, as there are environmental and social risks at each stage of the life cycle for all materials – including the extraction of fossil feedstocks for plastic, forest management concerns associated with pulp and paper, and pollution and health risks of mining for metal production. Consumers should not continue to bear the financial costs and producers' charges should incentivize responsible and sustainable product design. We'd urge the Welsh Government to seek to reduce consumption and incorporate full lifecycle costing into products to producers.

As such, Greener UK has proposed a change to the circumstances in which the regulations can be made in terms of producer responsibility. The Bill, as introduced, states regulations may only be made in relation to *"the disposal costs of the products or materials"*. Greener UK and WEL would endorse changing this to *"the environmental and social costs incurred throughout the lifecycle of the products or materials."* Disposal is an environmental issue, so this should be covered by this amendment. (Note, this is in Schedule 5, page 157, line 11).

### **Deposit Return Schemes**

WEL would seek urgent clarity on discussions between Welsh Ministers and DEFRA as to whether there would be an England, Wales, and NI Deposit Return Scheme or a Wales-only Deposit Return Scheme (DRS).

The Bill, as introduced, allows the Secretary of State to make regulations on behalf of Wales and Northern Ireland, subject to their consent. A recommendation from the [CCERA Committee report on plastic pollution and packaging waste](#) is particularly relevant to this: *"The Welsh Government should introduce a DRS that applies to the broadest variety of containers, so that no restrictions are placed on the size of containers eligible for the scheme. If the UK Government decides to introduce a scheme with a narrower scope, the Welsh Government should consult on a specific scheme for Wales, with a DRS with the broadest scope as its preferred and recommended option."* Hence, DRS should include all materials and all sizes.

Scotland is the first part of the UK to introduce a DRS for drinks containers with a deposit amount of 20p. WEL is of the view that, in order to make the scheme as easy to understand as possible, a standardised deposit across the UK should be in place. It would therefore be beneficial to adopt Scotland's deposit of 20p per container. We would advocate that Welsh Government has the ability to go further than other UK schemes to enable incorporating HDPE within a Welsh DRS. In order, to ensure high compliance and ease of use, there should be standardised labelling and mandatory full material disclosure on all products.

This level was decided upon as the 20p deposit will provide a strong incentive for shoppers to return single-use drinks containers for recycling, thereby increasing the number of these containers which are recycled (and reducing the number which could potentially end up as litter).

The deposit level is vital as a behavioural nudge device. As we have seen with the carrier bag charge, the initial 10p cost was a barrier to purchasing a single use carrier bag but over time this appeared to be a less of an incentive. A study by the Environmental Investigation Agency and Greenpeace has found that supermarkets sold 1.5 billion 'bags for life' last year (2019), which is an estimated 54 bags per household. Not only does this suggest that 'bags for life' need to be incorporated into the carrier bag charge, but that costs need to promote behaviour change without being a financial hardship. We are concerned that there has been a replacement of one single use disposable item (10p carrier bag) with another (bag for life). We would hope that a 20p DRS fee would be enough of an incentive in the long run to return the bottles. Ultimately we are aiming at driving behaviour change to adopt more sustainable practices, introducing a DRS has led to reduced littering within all environments and improved recycling rates, where it has been introduced elsewhere.

## Water Quality – Part 5 of the Bill

There is concern that clause 81 of the Environment Bill is a wide ranging power to amend the regulations that implement the EU Water Framework Directive. These include vital rules about how water quality is measured and the different chemicals and pollutants that must be considered. There is a similar power to amend for Welsh Ministers in clause 82.

There may be some justification for a power to make technical updates to regulations, but this should not be a licence to weaken important targets via secondary legislation. Clause 81/82 should be deleted or amended to ensure that targets and standards cannot be weakened without thorough public consultation and scientific advice.

England is already far behind its target of achieving Good Ecological Status in all waters by 2027. The 2015 Welsh assessment shows that only 37% of water bodies met the standard. We are concerned that the Environment Bill could be used to amend difficult targets or the way they are measured.

It will be important to consider this from a Welsh perspective too particularly given the number of river basins that cross the Wales-England border.

Wales Environment Link (WEL) is a network of environmental, countryside and heritage Non-Governmental Organisations in Wales, most of whom have an all-Wales remit. WEL is a respected intermediary body connecting the government and the environmental NGO sector in Wales. Our vision is a healthy, sustainably managed environment and countryside with safeguarded heritage in which the people of Wales and future generations can prosper.

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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