Agenda – Climate Change, Environment, and Infrastructure Committee

Meeting Venue:
Committee room 3 Senedd and video Conference via Zoom
Meeting date: 18 September 2025
Meeting time: 09.30

For further information contact:
Marc Wyn Jones
Committee Clerk
0300 200 6565
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Hybrid

Private pre-meeting (09.15-09.30)

Public meeting (09.30-12.00)

1 Introductions, apologies, substitutions, and declarations of interest

(09.30)

2 Stage 1 scrutiny of the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill – Evidence session with the Welsh Local Government Association

(09.30-10.20) (Pages 1 – 29)

Jean-Francois Dulong, Senior Policy Officer (Climate Change Mitigation & adaptation) – Welsh Local Government Association

Attached Documents:
Research brief – Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill
Paper – Welsh Local Government Association

Break (10.20-10.30)

3 Stage 1 scrutiny of the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill - Evidence session with the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

(10.30-12.00)

Huw Irranca-Davies MS, Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

Naomi Matthiessen, Bill Senior Responsible Owner and Policy lead for Governance and Principles, Deputy Director, Landscapes, Nature and Forestry Division - Welsh Government

Alice Teague, Deputy Director, Marine and Biodiversity Division, Policy lead for Biodiversity - Welsh Government

Dorian Brunt, Lead Lawyer, Legal Services, Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill Lead Lawyer - Welsh Government

Joel Scoberg-Evans, Lawyer, Legal Services, Lead Lawyer for the Biodiversity provisions - Welsh Government

4 Papers to note (12.00)

4.1 Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill

(Pages 30 - 50)

Attached Documents:

Response from the Deputy First Minister and Cabinet Secretary for Climate Change to the Chair in relation to the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill

Supplementary written evidence from Green Alliance in relation to the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill

Supplementary written evidence from the Joint Nature Conservation

Committee (JNCC) to the Chair in relation to the Environment (Principles, Governance and Biodiversity Targets (Wales) Bill

4.2 Bus Services (Wales) Bill

(Pages 51 - 71)

Attached Documents:
Letter from Newport bus to the Chair in relation to the Committee's Bus Services (Wales) Bill Stage 1 report
Letter from the Cabinet Secretary for Transport and North Wales in relation to the Committee's Stage 1 report on the Bus Services (Wales) Bill
Response from the Cabinet Secretary for Transport and North Wales to the Chair in relation to the Committee's report: Bus Services (Wales) Bill: Stage 1 report

4.3 Deposit Return Scheme

(Pages 72 - 77)

Attached Documents:
Letter from the Chair to the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs in relation to the Deposit Return Scheme
Response from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs to the Chair in relation to the Deposit Return Scheme

4.4 Licensing of new coal mines

(Pages 78 - 102)

Attached Documents:
Letter from the Coal Action Network to the Chair in relation to the licensing of new coal mines

4.5 Restoration of opencast mining sites

(Pages 103 - 105)

Attached Documents:
Response from the Chief Executive of Natural Resources Wales to the Chair in relation to the Investigation into Allegations of Illegal Toxic Waste Disposal at Ffos-y-Fran

4.6 Legislative Consent: Planning and Infrastructure Bill

(Pages 106 - 108)

Attached Documents:
Response from the Cabinet Secretary for Economy, Energy and Planning in relation to the Committee's report on the Legislative Consent Memorandums for the Planning and Infrastructure Bill
Letter from the Cabinet Secretary for Economy, Energy and Planning to the Chair in relation to the Legislative Consent Memorandums for the Planning and Infrastructure Bill

4.7 Renewable energy developments in Wales

(Pages 109 - 119)

Attached Documents:
Letter from Matthew Davies to the Chair in relation to renewable energy developments in Wales
Follow up letter from Matthew Davies to the Chair in relation to renewable energy developments in Wales

5 Motion under Standing Order 17.42 (vi) and (ix) to resolve to exclude the public from the remainder of this meeting

(12.00)

Lunch break (12.00-12.40)

Private meeting (12.40-13.40)

6 Consideration of key issues arising from Stage 1 scrutiny of the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill

(Pages 120 - 185)

Attached Documents:
Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill: Key issues

7 Consideration of the Supplementary Legislative Consent Memorandum No.3 and No.4 on the Planning and Infrastructure Bill

(Pages 186 - 195)

Attached Documents:
Legal note on the Supplementary Legislative Consent Memorandum No.3 on the Planning and Infrastructure Bill
Legal note on the Supplementary Legislative Consent Memorandum No.4 on the Planning and Infrastructure Bill

Agenda Item 2

Document is Restricted

EPGBTWB 17 - Evidence from: Welsh Local Government Association

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Bil yr Amgylchedd (Egwyddorion, Llywodraethiant a Thargedau Bioamrywiaeth) (Cymru) | Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill

1. What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

The WLGA generally supports the need for the new legislation for the purpose of filling the vacuum post Brexit, especially around the need to formalise accountability.

However, we would like to note that new legislation to meet the aims of Parts 1 and 3 may not have been necessary from a council perspective. Instead, Welsh Ministers could have opted to build on the good working relationship with local government and work more closely with us in these areas.

It is the view of local government that new environmental legislation may not be the best way to drive improvement in environmental protection. This area has suffered disproportionately from real term cuts in funding over recent years. We need to ensure legislation does not place new financial burdens on councils who are already having to make significant cuts to services. The Partnership Agreement recognises that any new legislative requirements need to be properly funded (or else it must be identified clearly what areas of current delivery can be stopped in order to free up resources – in terms of both time and expertise).

We understand that most environmental infringements are caused by individuals or certain sectors. An increase in financial penalties or civil prosecutions might act as deterrents rather than seeking to use new legislation placing duties on councils and other public bodies. Such bodies are usually compliant but often limited in their ability to ‘do more’ due to resource constraints.

2. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

- **Part 1 - Environmental objective and principles (sections 1 to 7)**

WLGA understands the need, post-Brexit to incorporate the environmental objective and principles into national (UK) and Welsh policy and legislation. It is important to note, though, that, the application of the objective and these principles is already common practice in Wales and the UK, as there was compliance previously with the 4 core EU Principles (which are integral to the broader framework of EU environmental law).

We support the emphasis of Part 1 of the legislation on Welsh Ministers and Natural Resources Wales, and a more proportional approach for other public bodies. To ensure consistency of application, there will be a need for Welsh Ministers to issue guidance to other public bodies at the same time as the Bill is enacted on how Part 1 should be considered as part of environmental assessment.

More specifically, the wording around environment objective 1 (1) 'the attainment of a high level of environmental protection and an improvement of the environment' is vague and may be challenging to measure. Success will also depend on how this legislation is integrated with other legislation which has a key role in supporting this objective, for example Environment (Wales) Act, Town & Country Planning Act, etc. It raises the question of whether (if it has not already been undertaken) this new legislation will require WG to review all existing legislation for compliance.

The wording in Part 1 (5) (a) have regard to the environmental principles when carrying out functions is again subjective and open to different interpretations which may lead to disagreement of interpretation between councils, other public bodies and the OEGW. It will be paramount for Ministers in their statement as set out in 3 (a) to clearly define what to have regard means and how it can be evidenced.

3. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

- **Part 2 - The Office of Environmental Governance Wales (sections 8 to 32 and Schedules 1, 2 and 3)**

WLGA understands the need to create the Office of Environmental Governance in Wales to ensure consistency across the UK and replace the EU Commission role in monitoring environmental compliance in Wales.

We support the general principles of Part 2, especially the advisory nature of the Body's role and escalating steps before reaching enforcement. However, considering the suggested level of staffing as set out in Schedule 1 and the breadth of work of the OEGW, we are concerned about its ability to deliver what is required of the Body

Perhaps reflecting on the 10-years anniversary of the Well-Being of Future Generations Act and the major challenges of the Commissioner's Office to drive the changes necessary to embed the Act, the OEGW may face an equivalent challenge as the proposed level of staffing is similar. This in turn may lead to pressure over time for additional funding to meet running costs, if more staff or external support is required to ensure the body is able to fulfil its duty? However, councils' concern is that if this were to reduce the funding available for front line service delivery it is likely have the opposite effect to that intended. Ensuring that the new body operates in a streamlined way, for example sharing back-office functions with other bodies where appropriate, should therefore be a primary objective.

Under 23 (2) (making reasonable efforts to resolve issues or to agree on remedial action) the steps to be followed, and how this would be monitored, are unclear. The draft legislation does not currently seem to cover this element.

4. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

- **Part 3 - Biodiversity targets, etc (sections 33 to 38)**

The concept of setting biodiversity targets in legislation raises a number of issues. While WLGA and councils fully endorse the principles of environmental protection and nature recovery, it is very difficult to measure progress against targets relating to nature and biodiversity. Results may take years before being measurable and there will many other intervening factors over that period beyond the control of councils (and other bodies). For example, good work in habitat restoration could be undone by industrial pollution or coastal flooding of inland waterways.

There are also several existing targets through other legislation, and these do not seem to have worked in reversing biodiversity decline over the years. It is therefore unclear how these new targets and outcomes would be any different. It is also likely to create confusion if there is a lack of integration of various nature and biodiversity related targets. For example, how would the existing targets and indicators relate to the WFG Act and Sustainable Drainage guidance link to these new ones?

Based on the current wording of the legislation it is challenging to identify and foresee how workable the provisions will be and if they will deliver the stated policy intention. WG will therefore need to work in partnership with local government when setting any targets where councils will be required to take action to contribute to meeting them.

5. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

- **Part 4 - General (sections 39 to 45 and Schedule 4)**

No specific comments for this section.

6. What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

Some of the most common barriers to implementation, especially when duties are placed on public bodies and councils, are:

- a lack of clarity leading to differing interpretation and application of the provisions

- lack of supporting tools to enable public bodies and councils to consistently implement and interpret the legislation (these are usually created years after implementation)

- inaccurate financial impact assessment of the legislation, and no additional funding given to public bodies to support any new duty.

Another aspect which is likely to impact on the implementation of the provisions is the ability of the Bill or WG to 'pass on' the delivery of the policy intention to others. As an example, it has been extremely challenging for Local Planning Authorities to impose conditions relating to biodiversity enhancement in planning permissions because they do not have legal powers to do so. Indeed, some have been challenged on appeal for acting outside their powers and being unreasonable.

As is stands then, we anticipate that Part 3 biodiversity targets will require councils to rely on the activity of others, for example developers. We do not believe the legislation in this format will give the powers to councils to require this. The impact assessment of this legislation does not appear to have sufficiently considered the ramifications for, and changes required to, other legislation.

7. How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)

No specific comments. It is anticipated that Welsh Government will follow established procedures for Welsh Ministers when making subordinate legislation, including appropriate consultation.

8. Are any unintended consequences likely to arise from the Bill?

There will likely be an increased burden for councils linked with enforcement for breaches as they embed targets into local policies. We know that enforcement and successful prosecution cases are already few and far between and this is often linked with a lack of capacity for councils and NRW to pro-actively enforce but also the success rate in court.

There could be a range of other unintended consequences which we are not currently able to identify.

9. What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

No specific comments on WG's assessment of the financial implications of the Bill although it is noted that the options considered highlight "no additional costs to local authorities". There is no rationale to explain how this was concluded, and it is important to stress that similar financial assessments have in the past proven to be incorrect. For example, the financial impact assessment for the Sustainable Drainage legislation concluded that there would not be any additional costs to local authorities. Since 2019 however, local authorities have delivered the function at a loss with no financial support to increase resources.

WLGA therefore reserves its view on the assessment of the financial implications until more detail is available.

10. Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

No specific comments for this section.

Huw Irranca-Davies AS/MS
Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd a Materion Gwledig
Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

Llywodraeth Cymru
Welsh Government

Our ref: HID-PO-381-2025

Llyr Gruffyd MS
Climate Change, Environment and Infrastructure Committee
Senedd Cymru
Cardiff Bay
CF99 1SN

4 August 2025

Dear Llyr,

Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill

Thank you for your letter on 08 July. Please see the annex to provide support for the committee's scrutiny of the Bill and points of clarity. I'd like to bring to the attention of the committee; question number 6 appears to not be included.

In addition, further to our scrutiny session on the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill at the Committee session on the 26 June. I promised to provide further information on the number of cases the Office for Environmental Protection (OEP) or Environmental Standards Scotland (ESS) have brought using the enforcement powers in their respective comparative legislation.

From our research we understand that, to date, neither ESS or the OEP have referred a compliance notice (via Section 37 *UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021*) or an environmental review (through Section 38 of *the Environment Act 2021*) to their respective courts, though we note the OEP came close on one particular occasion. We also understand the OEP and ESS confirmed their use of their powers during their recent evidence session with you.

In our view, this supports our escalatory approach to enforcement, as in the majority of cases the public authorities have sought to work with the respective governance bodies to resolve issues of concern constructively, but the threat of enforcement has nevertheless posed an effective deterrent.

Your sincerely,

Huw Irranca-Davies AS/MS
Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd a Materion Gwledig
Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Annex: Response to Climate Change, Environment, and Infrastructure Committee's further evidence questions on the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill – 08 July 2025

1. Can you clarify whether 'making policy' is intended to encompass outputs by the Welsh Government which are not strictly legislation (such as guidance, statements, non-statutory codes of conduct and directions)?
"Making policy" is defined in the Bill to clarify that ""making policy" includes developing, adopting or revising policies" (section 3(3)(b) and article 4A(3)(d), the Natural Resources Body for Wales (Establishment) Order 2012, inserted by section 4(2)). The Bill also defines "policy" so that ""policy" includes proposals for legislation, but does not include an administrative decision in relation to a particular person or case" (section 3(3)(a) and article 4A(3)(c), the Natural Resources Body for Wales (Establishment) Order 2012). The policy intention is to achieve a deliberately broad effect to capture the wide range of activity that constitutes "making policy" and ensure the duties have a strong impact. Policy is intended to have a broad interpretation and, in general terms, may be understood as an intended course of action adopted to achieve an objective or outcome. Proposals for legislation are specifically mentioned to clarify that they are within scope and this is not intended to limit in any way the scope of the provision. Administrative decisions in relation to a particular person or case, however, are specifically excluded. Given the broad and varied nature of policy making it is not possible to provide an exhaustive legislative definition of all policy making. By way of further explanation, the duty imposed on the Welsh Ministers is intended to apply throughout the policy making process, with examples such as: • legislative proposals; • proposals for "quasi-legislation" such as codes and directions; • policy statements, • strategies and frameworks; • ministerial statements setting out the government's formal position on an issue; • or any other policy document that sets out a change in approach to an established policy position. The committee may also wish to note that this approach is also similar to that undertaken in the Environment Act 2021 (section 47(1)) and the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (section 14(1) and (2)).

2. What criteria will be used to determine whether policy proposals developed by public authorities fall within scope of Welsh Ministers' policy making?
Welsh Government policy is usually developed by government departments and then submitted to the Welsh Ministers for consideration and approval. Most public authorities do not make policy for the Welsh Government, but some might occasionally develop policies for specific areas. Where public authorities are developing policy on behalf of the Welsh Ministers, the policy making duty imposed on the Welsh Ministers will apply. This will be assessed on a case-by-case basis and appropriate administrative arrangements will be entered into to ensure the process is managed effectively. For this reason, there is no additional criteria set out on the face of the Bill in respect of public authorities who develop policy on behalf of the Welsh Ministers.
3. In practice, what proportion of public authorities defined in section 5(4) constitute 'responsible authorities' under the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, and are thereby required to undertake SEAs?
In principle, any of the "public authorities" (as defined at section 5(4)) could be a "responsible authority" (as defined at regulation 2(1)) for the purposes of the 2004 Regulations. In practical terms, and based on historic examples, we consider this is most likely to apply to public authorities who own and / or develop land. for example, local authorities and national park authorities. . However, the approach is deliberately broad to capture any "public authorities" (as defined) which fall within the scope of the 2004 Regulations.
4. What arrangements will be put in place to ensure that public authorities who are subject to the duty are complying with it? How is this provided for in the Bill?
The principles duties imposed on the Welsh Ministers, NRW and certain other public authorities are strong and clear. In our view, they clearly form part of the environmental law which will be overseen by the OEGW. If for whatever reason it is considered that the Welsh Ministers, NRW or public authorities are failing to comply with these requirements, this would be a matter for the OEGW to consider and, if necessary, investigate, monitor and potentially take enforcement action against the relevant authority. We also recognise that transparency and accessibility in the application of these duties is fundamentally important to achieve effective and consistent implementation, and to encourage effective scrutiny and accountability.

For this reason, the Bill imposes detailed requirements about the scope and content of the environmental principles and integrating environmental protection statement, including specifically requiring the Welsh Ministers to explain how they propose to demonstrate compliance with the duties placed on them. This will support effective implementation, and monitoring by the OEGW and others.

5. Why have you chosen not to make provision for Senedd scrutiny of the statement, given its significance?

The Bill sets out detailed procedural requirements for the preparation and publication of the statement, or a revised statement, and requires the Welsh Ministers to consult NRW, the Future Generations Commissioner, the OEGW and such other persons as they consider appropriate

The Welsh Ministers must also lay before the Senedd a copy of the statement, or revised statement, and a document giving details of the consultation carried out and summarising the representations received and the Welsh Ministers' response to them. That is the method by which the Senedd will be able to scrutinise the statement or revised statement.

These provisions are sufficient to provide necessary transparency, accountability and engagement, in the Senedd and with others, and support the effective development of the statement.

We do not think it is necessary to make additional provision for a specific Senedd procedure to apply to the statement, as it will reflect Welsh Government policy, alongside guidance for NRW and other public authorities. The Welsh Ministers, NRW and certain public authorities will be required to "have regard" to the statement, or to guidance in the statement, in complying with their duties under Part 1 of the Bill to apply the principles and integrate environmental protection. Typically, other forms of statutory guidance are not subject to Senedd scrutiny, for example statutory guidance under the Well-being of Future Generations (Wales) Act 2015 (sections 14, 22(2) and 51).

Nevertheless, and as I mentioned during my appearance before the Legislation, Justice and Constitution Committee, I would be interested in hearing the Committee's views on how a Senedd process for the statement might work. However, I would also caution that any additional requirements could result in delays to the Welsh Government's ability to finalise and publish the statement before the provisions are commenced, which is currently to be six months following royal assent. If further processes and procedures are added, this timescale may need to be extended to compensate.

7. In appearing before the Committee on 26 June, you estimated the OEGW would be fully operational between 18 to 24 months after the Act receives Royal Assent. Can you provide further details of the planned work schedule, including key milestones?

8. How will you ensure a smooth transition from the interim environmental protection measures, headed by the by the Interim Environmental Protection Assessor for Wales, to a fully operational OEGW?

The Bill provides that commencement of some provisions to establish the OEGW will be at the end of the period of two months beginning with the day on which this Act receives Royal Assent (for example recruitment to key positions). We then envisage there will be a separate commencement for the development of a strategy. Remaining provisions will be commenced by order to allow the Body to reach full operating capacity before duties and obligations are placed upon it.

The body will take time to become fully operational and it's not uncommon for this to take around 18-24 months from the date of the legislation receiving royal assent.

It is extremely important that we allow the OEGW this time to get established. There is a necessary sequence that requires the Chair, Board and CEO to be appointed before any substantive decisions or plans around the structure and strategy of the OEGW can be agreed. One of the core tenets of this body is its independence, and if Welsh Government were to become involved in preparing its strategy, establishing its internal policy and practices, and / or recruiting its executive staff, it would clearly undermine this independence before it gets started. The process of recruiting the chair, board and CEO itself can take up to 12 months.

After the board and core executive staff are recruited, the OEGW will need to develop, consult upon, and publish its strategy. This is an important document which details to the public how the OEGW will undertake its functions. It will be foundational towards the OEGW's operating practices, and it's important that room is given to develop this in consultation with stakeholders and the public.

By way of comparison, the ESS was established with a full Board which was directly appointed by Scottish Ministers in October 2021. It launched its consultation on its full strategic plan in May 2022 and it was approved in November 2022. As you can see, this process took 12 months to complete. Alongside this, the OEGW will need to recruit staff up to its full complement. Again, it is important the OEGW makes the decisions around its executive staff to ensure there is no question as to their independence from the public authorities that are being overseen, which includes Welsh Ministers.

Despite these requirements, we are already exploring opportunities to speed up this process, alongside wider benefits like sharing back-office functions across multiple public authorities, such as the disused tips authority.
In addition, we already have the Interim Environmental Protection Assessor for Wales, and / these roles will remain in place until the new body is fully operational.

As such, we recognise the importance of a smooth transition from the IEPAW to the OEGW. The details of this transition will, of course, be subject to independent decisions taken by the OEGW, however, we have provided several mechanisms to

aid with this, including a 'modular' approach for functions to be commenced by order earlier or later, depending on readiness and need.

For example, the aspects of the OEGW's functions which relate to activity currently undertaken by the IEPAW (i.e. monitoring and reporting) could be commenced earlier than other functions if the OEGW is satisfied they are now ready to take on the IEPAW's case load and they have finalised their strategy

Further, provision is made for the OEGW to make a staff transfer scheme if this would aid with enhancing continuity between the IEPAW regime and the new OEGW.

9. Can you clarify why the power for the OEGW to investigate historic cases of non-compliance is needed if the OEGW is subsequently unable to take enforcement action?

The ability to investigate based on breaches that have occurred 'at any time' is very important. As I highlighted during my appearance before the LJC committee, it is not my view the provision is retrospective in a legal sense. It will not change the law at the time of the alleged failure and by their very nature investigations will need to be backwards looking.

The intention of including "at any time" is to allow for representations to be made about alleged failures that may have been made in the past (and may only recently have come to light) and to ensure there is no gap between the IEPAW and the new Body. Without this, the OEGW would only be able to investigate breaches that occurred following its establishment – that is to say, two months after the Bill receives royal assent. Further, as the OEGW has a strategic oversight role they may wish to report/advise on the effectiveness application or implementation of environmental law in respect of the alleged failure, but this would not lead to a Compliance Notice.

To be clear however, if an investigation concluded that a failure to comply is no longer ongoing then the OEGW will not be able to issue a compliance notice but as set out above, could use its other functions in respect of that alleged failure.

The Explanatory Memorandum sets out that a failure to comply with Environmental law must be ongoing at the time the notice is issued. The "at any time" element refers only to the OEGWs ability to investigate and not its ability to enforce.

10. Can you expand on why you consider the power in section 29(4) of the Bill is needed?

11. What criteria will be used to determine whether a devolved provision is, or is not, within the definition of 'environmental law' in the exercise of the power under section 29(4)?

12. What consideration did you give to including a requirement on the Welsh Ministers to consult before making regulations under section 29(4)?

As I explained to the LJC Committee, we have included a definition for "environmental law" to provide greater clarity. Arguments around what would and would not fit into the scope of environmental law may be broad and complex, covering areas like air quality, water, waste, biodiversity, and more. The purpose of section 29(4) is to provide Welsh Ministers, subject to the Senedd approval procedure, a mechanism to update the definition of environmental law without needing to amend the primary legislation each time, where there is clear justification for doing so. In that respect, there is no set criteria for determining whether a devolved provision is, or is not, within the definition of environmental law. This would be something the OEGW determines based on their interpretation of the definition and, if challenged, on which the courts would adjudicate. However, importantly, Section 29(4) will enable the Bill/Act to be futureproofed for an evolving legislative landscape. This will be subject to Senedd approval and formal consultation in respect of secondary legislation, to which the Welsh Government is committed, and it is not something Welsh Ministers could do unilaterally.
13. Can you clarify whether the Bill enables the OEGW to monitor, report and provide advice on climate change targets set under the Environment (Wales) Act 2016?
No restrictions are placed on the OEGW in respect of their oversight of environmental law. We consider the climate change targets set under the Environment (Wales) Act 2016 to clearly fall within the scope of environmental law, and it would be the OEGW's decision to what extent they wish to monitor, report and provide advice on these targets, as with any other aspect of environmental law.
14. Given that the UK CCC is not listed in paragraph 1(1)(e) of Schedule 2, how does the Bill ensure that the "limited overlap" of functions between the OEGW and UKCCC will be managed effectively?
I am confident the limited overlap between the OEGW and UK Climate Change Committee can be managed by administrative arrangements between the two organisations but as with other functions that will be for the OEGW to determine as it sees fit. As I explained during my appearance before committee, the two bodies will be established under different legislative frameworks with fundamentally different purposes. The OEGW will be responsible for overseeing compliance with environmental law in Wales. Its remit includes monitoring, investigating, and enforcing compliance by public authorities, and advising Welsh Ministers on environmental law and governance.

In contrast, the UK CCC is a UK-wide statutory advisory body established under the Climate Change Act 2008. Its role is to provide independent advice to the UK and devolved governments on setting and meeting carbon budgets and preparing for climate change impacts.

The UK CCC does not have enforcement powers or a compliance role. It advises on climate mitigation and adaptation, whereas the OEGW enforces and will recommend improvements to environmental law more broadly.

The OEGW may wish to formalise some of these relationships, including the interactions with the UKCCC, via an MoU, for example. However, that will ultimately be a decision for the OEGW to make independently. In my view it is not something which should be imposed by statute given we are seeking to ensure the independence of the OEGW and provide it with as much discretion as possible, where appropriate.

The OEGW has powers to do anything it considers appropriate for the purposes of, or in connection with, its functions, or incidental or conducive to the exercise of those functions.

15. The Environment Act 2021 requires the Office for Environmental Protection and the UKCCC to prepare a memorandum of understanding on how they intend to cooperate. What consideration did you give to including comparable provision in the Bill?

The UK CCC are a reserved authority. We are, therefore, unable to make specific provision in the Bill to compel the UK CCC to enter into an MoU with the OEGW without UK Government consent. However, as stated above, it would be within the OEGW's general powers (see Q14) to do so, if it was their independent view that this is beneficial, and subject to the agreement of the UKCCC.

16. Do you envisage the OEGW working in collaboration/cooperation with the Office for Environmental Protection, for example, if a matter being investigated under section 15 also touches on 'reserved' environmental law?

Yes, and we have already seen instances where the OEP, ESS and the IEPAW have started to work together effectively on cross-border matters, such as specifically with regards to Special Protections Areas.

There is nothing in this Bill that would prevent the continuation of this spirit of co-operation, and we fully expect this will continue, and be enhanced, through the establishment of the OEGW.

17. The Office for Environmental Protection and Environmental Standards Scotland are required to consult counterparts in the other UK nations if they consider that a particular exercise of their functions may be relevant to the

exercise of the functions of their counterparts. Why have you chosen not to place an equivalent requirement on the OEGW?

We have not sought consent, which would be required, for a specific statutory obligation on the OEGW to consult with or otherwise compel these bodies to collaborate. We consider this is a matter for the OEGW to consider further when they are established. We are aware of the memorandum of understanding between the IEPAW and the OEP and ESS, which has no legislative basis, but is nevertheless effective. Again, the OEGW has general powers that could be used (see Q14).

18. Why do you consider it necessary to enable the OEGW to serve 'urgent' compliance notices?

'Ordinary' compliance notices can be served in routine cases and provides public authorities with at least 30 days to act after the date in the notice.

In contrast, an `urgent compliance notice' can be served where the OEGW considers there is an "imminent risk of serious damage to the environment or to human health", caused by non-compliance with environmental law. These will require public authorities to act at least 7 days from when the notice is served and before 30 days.

Furthermore, urgent compliance notices can be escalated to the high court immediately after the response and review period (if a review has been requested) This ensures that the OEGW can take necessary and proportionate action to deal with non-compliance that is posing imminent risk of serious damage to the environment, or human health in a shorter period of time than that provided for with an 'ordinary' compliance notice.

In cases where there is not an imminent risk of damage to the environment or human health, it would be disproportionate to expect public authorities to respond to compliance notices within the timescales provided by urgent compliance notices. As explained in the explanatory memorandum, the urgent compliance notice provides for a 7 day period for public authorities to respond to provide reasonably sufficient time for a public authority to consider the urgent compliance notice and, if they are so minded, request a review of the notice, whilst accounting for further engagement and clearance mechanisms within larger organisations, as well as accounting for non-business days.

Even in urgent cases, we do not consider it necessary, nor reasonable, to enable the OEGW to require action shorter than seven days, as they are not themselves a front-line regulator and are unlikely to be dealing with matters of such urgency that would result in significant harm to the environment unless immediately resolved. It is an urgent notice in the context of their strategic oversight role.

19. Under what circumstances do you envisage an 'urgent' compliance notice being issued? Can you provide an example(s)?

We have prepared the following example to illustrate the circumstances in which an Urgent Compliance notice (UCN) may be proportionate. It is purely hypothetical and does not imply or suggest that this practice is a current and relevant concern.

A regulatory authority may be legally responsible for providing advice and guidance on ammonia emissions, and as part of this issue guidance and regulations, which is considered by local planning authorities to be applied during the planning permission process for developments that may release ammonia.

The OEGW could determine the guidance produced by this regulatory authority does not adequately consider the environmental impacts of ammonia emissions, and following investigation, conclude that the guidance is in breach of environmental law. If the guidance remains in place there is an urgent risk of environmental harm by virtue of enabling planning authorities to authorise developments which, in this example, they should not.

It is the regulatory regime, including the guidance produced by the regulator, which is non-compliant. In these circumstances it would be proportionate and appropriate for the OEGW to expect the regulator to react urgently, rather than within the longer period of the ordinary compliance notice, to amend the guidance at the earliest possible opportunity and prevent any further risk of imminent and serious damage, and as such it would be appropriate for them to issue an urgent compliance notice.

20. Why do you consider it necessary to enable a public authority to request a review of a compliance notice?

The Bill provides for a public authority to request a review of a compliance notice to provide a procedural safeguard to enhance fairness and strengthen the legitimacy and accountability of the enforcement process.

It provides public authorities with an avenue to challenge decisions made without being reliant solely on escalations to judicial review or the first-tier tribunal which can be time consuming for all parties.

The review committee itself will be formed by the OEGW but will have key elements that enable it to act independently of the wider organisation. This includes co-opted members drawn from a list of experts. This list will be held by the Welsh Government to provide separation between the OEGW and the reviewers of the original compliance notice. It is important to note however that the individuals to sit on each review committee when convened will be selected from the list by the OEGW itself.

We have considered the alternative of the OEGW itself holding this list but reached the conclusion that if the OEGW were to maintain the list of experts it may call into question the fairness of the review process itself.

21. Why have you chosen not to specify in the Bill the grounds on which a request for a review can be made?

We chose to avoid creating an exhaustive list as this might, unintentionally, exclude valid grounds for review. Instead, the approach we have taken enables the review committee to consider a broad range of issues which is guided by the procedure to issue compliance and information notices set out in the Bill.
This open-ended approach ensures that the review process remains adaptable and responsive to the facts of each case and also lends itself to the independence of the Body.

The Bill also includes a safeguard to prevent trivial objections from derailing enforcement. Section 18(6) provides that the review committee must disregard any failure, defect, or error in the notice if it is not considered material—such as a typo. Moreover, judicial review remains available as a backstop. If a public authority believes the issuing or requirements of a compliance notice meets the grounds for judicial review, it would still be open for them to apply for permission to seek judicial review.

Section 19(3)(b) provides that the OEGW cannot make a referral to the high court until the usual time limit that applies to judicial review has passed to leave scope for the public Authority to judicially review the notice should they be so minded.

22. Is there a danger that a request for the review of an 'urgent' compliance notice could delay action "that needs to be taken urgently to prevent or mitigate an imminent risk of serious damage to the environment or to human health"? How does the Bill safeguard against this?

On the contrary, we have developed this approach specifically to ensure that the request for a review reflects the urgency of a particular case. We fully recognise the OEGW must be empowered to quickly and effectively manage instances where urgent action is needed by a public authority.

However, we took the view it would not be fair, even in these circumstances, to provide no avenue for challenge for public authorities issued with an urgent compliance notice. In these cases, the Bill provides the review committee must receive the request to review the compliance notice from the public authority within 7 days**.** In most cases it is our view the OEGW would wish to undertake this review and respond to the request for a review within 7 days to recognise the urgency of the matter, but this will be for their own independent determination. As set out above, this is a strategic body and is not intended to replace the powers in existence for regulatory bodies in instances of specific harm.

In contrast, whilst it is feasible the First-tier Tribunal of England and Wales, for example, could turn around appeal cases within a short-timeframe, this may not always be possible. So, there is a risk that potential delays associated with using the tribunal system could prolong instances of imminent risk of serious damage to the environment or to human health.

In contrast the urgent compliance notice process, complemented by the review committee procedure, enables the OEGW to swiftly respond to these scenarios, and a key part of that approach is having a reliable and controlled way of managing timescales associated with requests for reviews.

23. Is there a danger that this will result in less ambitious targets?

I do not believe that this provision will lead to less ambitious targets. The Bill's target setting provisions in the proposed new sections 6B and 6D of the Environment (Wales) Act 2016 reflect our intention that all targets meet the SMART criteria—meaning they are Specific, Measurable, Achievable, Relevant, and Time-bound.

Striking the right balance between achievability and ambition is essential to ensure that the targets drive meaningful change for nature. As I outlined in committee, we have also built in mechanisms for scrutiny of draft targets, to help ensure that Welsh Ministers have achieved the right balance. Before any regulations setting biodiversity, targets are laid before the Senedd, the Welsh Ministers are required to seek independent expert advice. We are fully committed to doing this through a transparent and collaborative process.

To support this, I have established the Biodiversity Targets Advisory Panel, which brings together leading experts to provide rigorous, evidence-based recommendations.

In addition to the duty to seek independent advice, we are also required to apply the principles of sustainable management of natural resources when making regulations. These principles include ensuring appropriate arrangements for public participation in decision-making.

Together, the independent expert advice, Senedd scrutiny and opportunities for public engagement will play a vital role in holding the Welsh Ministers to account. They ensure that the targets we set are not only evidence-based and achievable, but also suitably ambitious—reflecting both scientific rigour and public expectation in our response to the nature emergency.

24. In practice, how will the Welsh Ministers satisfy themselves that proposed targets can be met?

As I have stated in Committee previously, the Welsh Ministers will be relying on a strong evidence base to ensure that any targets are not only ambitious but also achievable. We're very aware that setting the right targets is crucial.

If we get them wrong, we risk doing more harm than good – ecosystems are complex and dynamic, and a poorly designed target could have unintended consequences. To avoid that, each target will be carefully modelled. This modelling will help us test whether a target is realistic and whether it will actually deliver the outcomes we need for nature recovery.

We've commissioned the Joint Nature Conservation Committee to carry out this work. The analysis that they will undertake will give us the evidence we need to

make informed decisions about what levels of ambition are appropriate for Wales. A fundamental part of that analysis involves scenario modelling.

This is a common policy tool for exploring different possible futures by testing how changes in things like the environment, society, or the economy could affect biodiversity. It's a powerful tool that helps us understand what's feasible and what's likely to be effective.

The Bill also provides a number of check points to ensure Welsh Ministers are making effective progress on target delivery. These measures include three yearly reporting on progress and an evaluation of the effectiveness of policy and actions.

The Bill also allows Welsh Ministers to review biodiversity targets to ensure that they continue to support our goal of halting and reversing biodiversity loss. Targets may be reviewed from time to time but will be required to do so if the target may not be met or that the target may no longer be appropriate. If a single target is not met by the specified date, all targets must be reviewed to ensure against systematic failure or to identify issues which impact on the effective delivery of the other targets. This process will be underpinned by robust independent evidence.

25. The Bill enables the Welsh Ministers to revoke or lower targets. Why do you consider this power is needed?

Ordinarily, a power to make regulations also includes a power to make subsequent regulations that amend or revoke the earlier regulations (section 18 of the Legislation (Wales) Act 2019). The Bill introduces restrictions on this power, limiting the circumstances in which the Welsh Ministers may use their regulation making power to amend or revoke existing targets to prevent an unwarranted lowering of ambition.

Targets may therefore only be lowered or revoked if Welsh Ministers are satisfied -

a) Because of the change in evidence to which they had regard when setting the existing target, meeting it would not contribute to halting and reversing the decline in biodiversity
b) Meeting the existing target would have no significant benefit compared with not meeting it or with meeting a lower target,
c) Because the changes in circumstances since the existing target was set, the environmental, social, economic or other costs of meeting it would be disproportionate to the benefits, or
d) Because the target is no longer achievable due to either changes in circumstance or changes in evidence used when setting the target

Before revoking or lowering a target, the Welsh Ministers must lay before Senedd Cymru, and publish, a statement explaining why the Welsh Ministers are satisfied that the above criteria are met.

26. In practice, how will the Welsh Ministers determine whether the environmental, social, economic or other costs of meeting a target would be disproportionate to the benefits?

The Welsh Ministers must lay before Senedd Cymru, and publish, a statement explaining why they are satisfied that the criteria set out in the proposed new section 6H of the Environment (Wales) Act 2016 are met before a target can be amended or revoked.

As I raised in committee, the Bill includes a target review process (proposed new section 6G) which will be informed by independent expert evidence and transparency within the public domain. We anticipate that this review process will consider the criteria in section 6H.

In practice, there are a number of components which enable Welsh Ministers to fully consider impacts and benefits of the targets contribution in the round which would include whether the environmental, social or economic costs are disproportionate to the benefits:-

The Biodiversity Target Advisory Panel is made up of a broad range of expertise including a range of environmental, economic and social scientists. Their collective input in considering changes in evidence will be a key part of assessing whether the costs are disproportionate to benefits.

In terms of evaluating a target against these criteria, the Welsh Ministers will be informed by the proposed new section 6A evaluation reports as well as their existing section 6 reports, which will also report on progress toward achieving a target. The evaluation report will be an important source of evidence as it will assess effectiveness, efficiency and impact of target delivery mechanisms against the context and baseline evidence collated as part of the target setting process. Changes in circumstances will be captured as part of this to provide the context in which target targets are being delivered.

Welsh Ministers will also need to reassess impacts against the original integrated impact assessment which brings together multiple policy assessments to ensures that decisions are aligned with the Wellbeing of Future Generations (Wales) Act 2015. The includes a robust policy assessment of equality, socio-economic, health, rural proofing and environmental impacts and a contribution to the 7 wellbeing goals.

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27. What criteria will the Welsh Ministers use to determine whether a public authority should be designated in relation to a target?

The criteria for deciding whether a public authority should be designated in relation to a specific target will depend largely on the nature of the target itself—specifically, its metrics and thematic focus.

The purpose of this duty is to make sure the Welsh Ministers only designate public authorities that are genuinely able to help deliver a target through their existing responsibilities. Before any designation is made, Ministers must consult with the authority in question. This gives us a chance to have a direct conversation with them about whether they have the right tools, expertise, and capacity to contribute meaningfully to the target.

For example, where targets require a land or ecosystem management approach, we would expect to consult primarily with those who own or manage land. This could include local and national park authorities, water and sewage undertakers, Natural Resources Wales (NRW), Sport Wales, Cadw, and Transport for Wales. Similarly, we would not expect the Welsh Ministers to designate a land locked public authority such as Powys County Council to contribute to a marine target.

28. Is it the intention to simultaneously lay regulations setting targets under new section 6B and designating relevant public authorities under new section 6F?

If the target development process has identified a public authority, or public authorities, that we consider can meaningfully contribute to achieving that target, then we anticipate the Welsh Ministers would exercise their powers in both the proposed new sections 6B and 6F of the Environment (Wales) Act 2016 to lay one set of regulations before the Senedd that both set the target and also designates those public authorities.

It would be open to the Welsh Ministers to make further regulations under section 6F that designate additional, or remove already designated, public authorities, and such regulations would be subject to the consultation requirement in that section.

29. What opportunity will there be for stakeholders to influence the development of the new section 6 plan? How does the Bill provide for this?

The Bill does not amend the existing process in section 6(6) of the Environment (Wales) Act 2016 for public authorities (including the Welsh Ministers) developing and publishing plans that set out how they will comply with their duty to maintain and enhance biodiversity. However, we anticipate carrying out a public consultation in line with the Welsh Government's consultation policy to allow stakeholders to influence the Welsh Ministers' section 6 plan.

It is also worth noting that, as proposed in section 35 of the Bill, the Welsh Ministers' section 6 plan must also set out how we will achieve any targets. As part of the development of those targets, the Welsh Ministers must seek independent advice and apply the principles of the sustainable management of natural resources, which includes making appropriate provision for public participation in decision making. This will allow further opportunity for stakeholders to influence what is in the Welsh Ministers' section 6 plan.

30. Can you clarify whether the intention is for the section 6 plan to replace the Nature Recovery Action Plan (NRAP)?

Yes the intention is for the section 6 plan to replace the Nature Recovery Action Plan (NRAP). The NRAP guides biodiversity action in Wales and we therefore see this as an opportunity to consolidate this and the Welsh Ministers' section 6 plan. As I said in committee, our focus is on delivery, not on repeatedly producing multiple new documents and strategies. As the provisions in this Bill amend the Environment (Wales) Act 2016, we consider using the existing section 6 plan a clearer and more straightforward approach.

Under the revised section 6 plan, the Welsh Ministers must set out what they propose to do to (1) comply with their existing section 6 duty (to maintain and enhance biodiversity and promote the resilience of ecosystems) and (2) to achieve the biodiversity targets. By structuring the plan around the section 6 duty and the targets, we are setting out a single narrative providing a clear strategic pathway for public bodies, stakeholders, and wider society to drive action to reverse biodiversity decline.

Through creating a single focused plan, this will also bring additional benefits of being able to use the section 6 report as well as the proposed new section 6A evaluation report which will evaluate the impacts and effectiveness of Welsh Government biodiversity policies contained in our section 6 plan.

This approach will consolidate our policy delivery, provide greater clarity and coherence of the policy landscape as well as enable more effective monitoring and evaluation, helping us track progress and adapt our response as needed.

Environment (Principles, Governance and Biodiversity Targets) Bill
Supplementary written evidence from Green Alliance

Green Alliance is grateful for the opportunity to give evidence in person to the Committee on 17 July, alongside our colleagues from RSPB Cymru and WWF Cymru. This submission provides supplementary evidence on three matters which arose during that oral evidence session.

1. Review processes operated by other enforcement bodies

While we support the principle that public authorities should be able to ask the Office of Environmental Governance Wales (OEGW) to review a compliance notice, as we explained in our written and oral evidence, we are concerned about the impact of the provisions in Paragraph 10 of Schedule 1 of the bill on the 'vested authority' and independence of the OEGW.

Paragraph 10(3) would undermine the governance and the independence of the OEGW. This is because it would effectively outsource important decisions on compliance with environmental law on which the OEGW will have legal authority vested in it. Furthermore, the panel would comprise individuals appointed from a list maintained by the Welsh Government, which could have a real and perceived impact on the independence of the OEGW, especially in relation to compliance notices relating to the Welsh Government. Our preference would be for reviews of compliance notices to be conducted solely by persons employed by the OEGW, subject to certain safeguards.

We note that the other environmental governance bodies in the UK are not subject to a similar review provision. While section 36 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 provides for an appeal process for public authorities on compliance notices issued by Environmental Standards Scotland, this is constituted differently because of the different nature of the respective systems. Appeals are determined by a sheriff and not individuals appointed by Scottish Ministers.

In the UK Environment Act 2021, the Office for Environmental Protection (OEP) has an escalating enforcement process culminating in environmental review. There is no provision for a review or appeal process of information or decision notices (the broad equivalent to compliance notices), although section 36(4) of the Act allows a public authority to set out its response to the failure to comply with environmental law described in the decision notice.

We have surveyed the review and appeal processes of other bodies which issue compliance notices or make regulatory decisions. In these examples, a review is conducted within the relevant body and not 'delegated' to persons who are not employed by that body in an executive or non-executive capacity. This is an important principle which we think should apply to the OEGW.

We agree that the OEGW review process should be fair and impartial. This could be achieved through a requirement that the persons appointed by the OEGW to undertake a review should not have been involved in the decision-making process on the compliance notice, which is a standard requirement of other review processes. Paragraph 10(2) of Schedule 1 could be amended to specify this.

Body	**Process**
Civil Aviation Authority (CAA)	The CAA operates an internal review process for decisions. Reviews are handled by someone independent of the original decision who has had no previous involvement in the decision-making process relating to the case.

	Following an internal review, you can access the review process established by Regulation 6 of the Civil Aviation Authority Regulations 1991. A regulation 6 review panel comprises CAA Non-Executive Board Members who have had no previous involvement in the case and makes the regulatory decision on behalf of the CAA.
Gambling Commission	If you disagree with the decision of the Executive Team, you can ask for a review within 28 days of the date the decision was communicated to you. Appeals of decisions at stage one will be resubmitted to a member of the Executive Team for review. Appeals at stage two of the process will be conducted by a panel of two Commissioners who have had no previous involvement with the application.
Scottish Public Services Ombudsman	The Ombudsman operates a review process, which is conducted within the body and not outsourced to third parties.
Welsh Public Services Ombudsman	The Ombudsman operates a review process, in which you can ask for a decision on a complaint to be reviewed. This process is managed by a Lead Review Officer who is not involved in the day-to-day handling of cases to provide impartiality and a fresh pair of eyes.
Welsh Language commissioner	The Commissioner operates a process to appeal compliance notices if these are considered to be unreasonable or disproportionate. The Commissioner can nullify, replace or vary the compliance notice. There is a right to appeal to the Welsh Language Tribunal.

2. The meaning of "special regard"

We welcome the duties in the bill which will require Welsh Ministers and Natural Resources Wales to have "special regard" to environmental principles in their policy making.

"Special regard" duties have been included in legislation concerning heritage matters, for example in Section 96 of the Historic Environment (Wales) Act 2023, Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Section 102 of the Levelling up and Regeneration Act 2023.

The Court of Appeal clarified that "have special regard to" means that decision makers must apply "considerable importance and weight" to the relevant matter (reference – the Barnwell Manor wind farm case).

"Special regard" is, however, a less familiar construct in environmental law. The Welsh Government should clarify the intended meaning of "special regard" in the Environmental Principles and Integration Statement and in an accompanying written ministerial statement.

3. Public authority accountability gap

Section 30 of the bill defines a "public authority" as a devolved Welsh authority (within the meaning given by section 157A of the Government of Wales Act 2006) or listed in paragraph 9(2) or (6) of Schedule 7B to that Act.

Public authorities are within the scope of the OEGW if their functions are exercisable only in relation to Wales and are wholly or mainly functions that do not relate to reserved matters.

A definitive list of public authorities that will be subject to oversight by the OEGW should be published to aid transparency and public understanding.

We have provided examples below of public authorities likely to exercise functions on reserved matters in Wales, which could have significant implications for Welsh environmental law.

Our understanding is that these authorities will be outside the jurisdiction of the OEGW but would fall within the remit of the OEP, although clarity on this would be welcome given the number of authorities and the public interest in the functions they will be undertaking.

The OEGW should set out in its strategy how it intends to work with the OEP on matters of non-compliance with environmental law by a reserved public authority discharging reserved functions.

Reserved public authorities that undertake devolved public functions in Wales – for example, The Crown Estate – would appear to fall outside the jurisdiction of both the OEGW and the OEP.

The Welsh Government should clarify which public authorities would be outside the remit of both the OEGW and OEP and set out how it expects this accountability gap to be addressed.

Examples of public authorities likely to exercise functions on reserved matters in Wales

Transport-sector

- **UK Civil Aviation Authority:** regulates aviation safety, airspace and the environmental impact of aviation on local communities.
- **Maritime & Coastguard Agency**: enforces standards for ship safety, security, pollution prevention and seafarer health, safety and welfare. It promotes maritime standards, encourages economic growth and minimises the maritime sector's environmental impact.
- **Network Rail**: owns, operates, maintains and develops the railway infrastructure in Wales.

Energy-sector

- **Department for Energy Security & Net Zero:** retains UK-wide control over energy consents, including Contracts for Difference allocations, and other market regulations.
- **Ofgem**: regulates the electricity and gas markets across Great Britain, including enabling infrastructure for net zero.
- **National Electricity System Operator:** ensures the day-to-day operation of the electricity grid in Great Britain, including strategic planning of transmission infrastructure.
- **North Sea Transition Authority:** regulates licensing, exploration and production of oil and gas, offshore hydrogen and carbon storage industries for the UK Continental Shelf.
- **Office for Nuclear Regulation:** oversees GB nuclear facilities (eg decommissioning of Wylfa – alongside the Nuclear Decommissioning Authority), regulating nuclear safety and security.

Green Alliance, 30 July 2025

Supplementary Written Evidence: Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill

The JNCC's supplementary evidence to the evidence session for public bodies held on the 17th July 2025

Additional JNCC written evidence

Planned statutory biodiversity targets in Wales need to be informed by an understanding of how feasible setting targets at particular levels would be. Scenarios and models can contribute to this by showing how the environment could change under a range of assumptions about which policies are implemented and how. Taking a systems-based approach to this work is important to ensure we incorporate the key potential environmental effects of a wide range of Welsh Government policy actions on the targets and to ensure that targets set do not drive unintended consequences that could be negative for biodiversity.

The biodiversity statutory targets are not yet finalised but will include the following areas, and apply to terrestrial, freshwater, and marine environments:

- Reducing the risk of extinction of native species
- Effective management of ecosystems
- Reducing pollution
- The quality of evidence relating to biodiversity, access to that evidence, and its use and application.

Each target must contribute to halting and reversing the decline in biodiversity, in particular through increasing species abundance and/or increasing genetic diversity and/or enhancing ecosystem resilience.

There are two related projects that JNCC are working on:

- **Wales Biodiversity Indicators:** A project to advise on potential biodiversity indicators for Wales, that will support monitoring and reporting against the statutory targets. The initial work under this project is due to be completed in October 2025, with the possibility of continuing to provide advice on indicator development, dependent on Welsh Governments needs and resource availability depending upon project outcomes and indicator viability
- **Scenarios modelling for environmental targets:** A project aiming to use scenarios and modelling to provide evidence that can contribute to decisions

about potential values for statutory biodiversity targets in Wales. The timeline for undertaking this work is influenced by (i) when the metrics that will be used to measure each target are confirmed which will be informed by work within the indicator project above, (ii) the number of metrics selected, and (iii) the complexity of metrics that are selected (metrics chosen will dictate the complexity of the modelling needed to investigate how these could change in future). In the initial Public Bodies evidence session, it was incorrectly suggested that this work would be completed by autumn 2025. JNCC would like the committee to note that this information is incorrect, and the initial discussions around this work suggest it could be concluded by June 2026**.** However, as mentioned above, the rate at which this work can be undertaken is largely dependent on other decisions around statutory targets definitions and metrics being made, and thus the timeline is somewhat flexible.

Working alongside Welsh Government, JNCC is proposing to produce three to five scenarios of possible changes in the future use of land and sea. These potential scenarios are being constructed following discussions with a wide range of policy and delivery teams in Wales, and they will aim to include several potential options. As an illustrative example, there are different ways in which tree planting targets for Wales could be achieved (e.g. different mixes of broadleaved and coniferous woodland), and these will affect biodiversity differently. An element of the scenarios could therefore incorporate some of the options for the possible composition of new woodland planting. Such information will inform target delivery plans and interactions with other policy areas and government commitments.

The work is being overseen by a Steering Group consisting of Welsh Government Officials, Natural Resources Wales colleagues and external advisers. The Steering Group will review the scenarios prior to their use in modelling impacts on biodiversity. The scenarios will require sign off as appropriate for use by the Senior Responsible Officer within Welsh Government, in line with Aqua Book requirements.

In a later phase of the work, these agreed scenarios will be used to model the future trajectories in selected indicators. The range of values for these indicators, alongside the sensitivity of these values to some of the options for change, will be provided to Welsh Government as advice that can assist in the selection of appropriate target levels.

To note, this work will inform the biodiversity targets which will be set in regulation as required by the Bill. The process of setting the targets in regulation has a specific timeline over and above the target development timeline and has not been included in this note as this is a Welsh Government timeline.

From: Morgan Stevens
Sent: 28 July 2025 12:23
To: Climate Change, Environment, and Infrastructure Committee | Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith <seneddclimate@senedd.wales>
Cc: David Jenkins
Subject: Committee Report - Bus Services (Wales) Bill Stage 1

Dear Committee Members,

I am writing on behalf of Newport Transport in relation to the recently published report by the Climate Change, Environment, and Infrastructure Committee. We would like to raise a concern regarding a potential misinterpretation of part of our written evidence, which is referenced as **BSWB 32** within the report.

In our submission, specifically in response to Question 2, Part 1, we stated:

"The Bill in this area is light on detail on how Welsh Government would seek to protect SMEs and the current municipal operators. Whilst it has been a stated aim for WG, the lack of information within the Bill is a cause of concern."

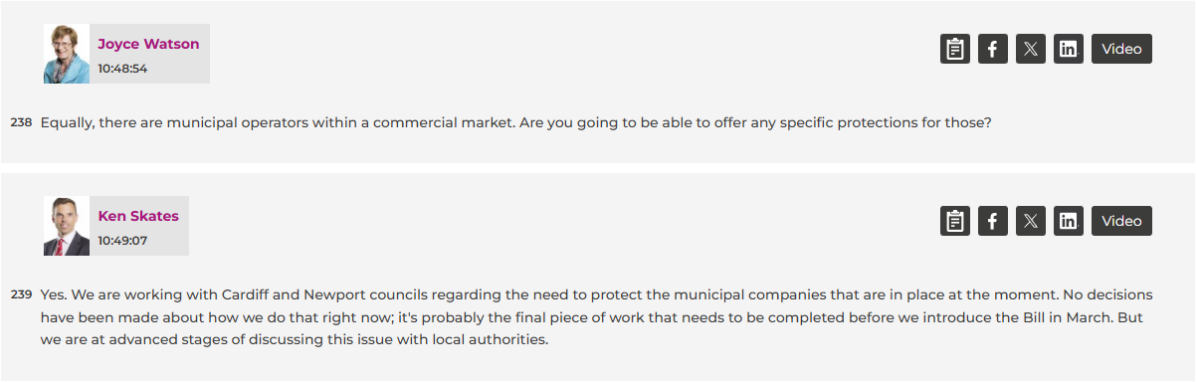
However, on pages 90 and 91 of the report, under the section titled *"Our View"* regarding municipal operators, the following statement appears:

"However, in evidence to the Committee, municipal operators appeared to believe they had been given assurances about their continued status and protections within the new regime."

We are concerned that the phrase *"appeared to believe"* may unintentionally cast doubt on Newport Transport's understanding of the Welsh Government's position, and could imply either a misinterpretation or a lack of clarity on our part. We respectfully submit that this does not accurately reflect the nature of our evidence or the basis on which it was provided.

For reference, during the Committee session held on **27 November 2024**, Ken Skates MS was directly asked whether protections for current municipal operators would be in place. His response was an unequivocal "yes". A record of this exchange can be found at the following link, a screenshot of the specific points is also below:

Climate Change, Environment, and Infrastructure Committee 27/11/2024 - Welsh Parliament



In light of this, we would be grateful if the Committee could acknowledge this clarification and consider amending the report to more accurately reflect the evidence provided by Newport Transport. Specifically, we request that the wording be reviewed to avoid any unintended implication that our organisation assumed or speculated about the Welsh Government's intentions.

Thank you for your attention to this matter. We remain committed to supporting the Committee's work and welcome continued dialogue on this important issue.

Yours sincerely,

Morgan

Morgan Stevens

Operations Director

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Ken Skates AS/MS
Ysgrifennydd y Cabinet dros Drafnidiaeth a Gogledd Cymru
Cabinet Secretary for Transport and North Wales

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref:KS/PO/399/2025

Llyr Gruffydd MS
Chair
Climate Change, Environment, and Infrastructure Committee
Senedd Cymru
Cardiff
CF99 1NA

13 August 2025

Dear Llyr

I wanted to write and thank you for your Stage 1 report on the Bus Services (Wales) Bill. I greatly welcome the Committee's work on this; the process has been a valuable exercise to test the Bill and wider aspects of our bus reform strategy.

I will be in touch in the coming weeks with my response to the Committee's recommendations, but if you have any further questions in the meantime, please let me know.

Yours sincerely

Ken Skates AS/MS
Ysgrifennydd y Cabinet dros Drafnidiaeth a Gogledd Cymru
Cabinet Secretary for Transport and North Wales

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Ken Skates AS/MS
Ysgrifennydd y Cabinet dros Drafnidiaeth a Gogledd Cymru
Cabinet Secretary for Transport and North Wales

Llywodraeth Cymru
Welsh Government

Our ref - MA-KSNWT-2000-25

Llyr Gruffydd MS Chair
Climate Change, Environment, and Infrastructure Committee
Senedd Cymru
Cardiff
CF99 1NA

8 September 2025

Dear Llyr

Thank you for your Report on the Bus Services (Wales) Bill. Please see below my responses to the recommendations set out in your report.

Recommendation 1: The Senedd should support the general principles of the Bill.

Response: Accept

I am pleased the Committee supports the general principles of the Bill and I look forward to continuing to work with Committee and Members as we proceed through the Senedd scrutiny process.

Recommendation 2: The Cabinet Secretary should direct TfW to implement a clear and ongoing communications strategy, which should include management of public expectations around the scope, timeline, and outcomes of the bus reform programme.

Response: Accept

I agree that it is important that public expectations are managed in such a way as to be both realistic and transparent.

TfW, along with Welsh Government, has developed a communication strategy and plans for on-going engagement with key stakeholders, including local government, passenger groups and industry throughout the transition into the franchise model. These are in place and are revised on a regular basis. They are essential to managing of expectations of what is

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possible at the beginning of our journey into franchising and will be adapted appropriately collaboratively as the new model matures.

The section “Communicating Changes” in the Our roadmap to bus reform (p.25), published earlier this year, provides a summary of this.

Public engagement is key to informing the development of the base network and how the public, private and third sectors will work together to deliver local bus services.

Currently public engagement in South West Wales, where the roll out of bus reform is commencing first, is ongoing and will conclude towards the end of September.

Through the engagement events Transport for Wales and Welsh Government are also working to manage public and stakeholder expectations. We have consistently sought to be honest and as transparent as possible about how the network is to be developed and about working within the current level of resource.

Looking ahead to implementation, it is important that network changes are clearly communicated, and Transport for Wales will be addressing this in a variety of ways on-line and in person.

Recommendation 3: The Cabinet Secretary should require TfW to demonstrate that it is actively developing the necessary organisational capacity, both in terms of staffing numbers and expertise, to deliver franchising.

Response: Accept

My officials are working closely with TfW to develop and apply the policy for implementation. TfW has an experienced team of professionals from the bus sector, including colleagues with experience in delivery in local authorities, operational and other parts of the industry, which they have been actively recruiting to strengthen the capacity and expertise within the teams.

TfW are developing a plan to further strengthen their multi-modal capacity and skillsets, which the organisation is supporting. As part of the annual budgeting process (and looking 5 years ahead) TfW will continue to develop the organisation to support franchising, in both the early implementation phase and also into the ongoing operational phase.

Recommendation 4: The Cabinet Secretary should publish a policy statement explaining how learner travel relates to, and will be considered in, delivery of the Bill.

Response: Accept

As I set out in my appearances before the Committee, the Bill does provide an opportunity to help improve the provision of bus travel for children and young people to schools and other places of training and education. Equally, I have been clear that, whilst it provides some support, it does not seek to, and cannot, address all of the challenges there are with learner travel.

Learner travel is largely provided by SME bus operators, who are often also providing local bus services in their communities, so I appreciate how important it is to ensure we support providers in our implementation of the franchise model.

I am happy to provide a policy statement explaining how learner travel will be supported through the delivery of the Bill, including through the development of the Wales Network Plan and the contracting of services.

Recommendation 5: The Cabinet Secretary and TfW should work with local authorities to address structural barriers such as congestion and inadequate infrastructure. The Welsh Government, TfW, and local authorities should establish a formal agreement to ensure consistency in bus stop infrastructure and the provision of passenger information.

Response: Accept

I agree that collaboration on these matters is important for the effective delivery of local bus services. TfW are already working with the regions to undertake empirical analysis to support the identification of areas that would benefit from bus priority interventions. Key performance measures to support this will include average speed/journey time, reliability and passenger demand.

The Welsh Government, TfW and local authorities are working together to co-develop a set of National Bus Stop Standards that will cover all aspects of bus stop infrastructure and customer information provision to deliver a consistent approach across the network.

To support this, the Grants Modernisation process, which is looking at how grants will be awarded based on recommendations on regional transport plans, will help us to collectively understand what may be considered while co-creating a strategy with key stakeholders. This may help to ensure things like bus priority measures and bus stop infrastructure are given a level of precedence in decision making in order to deliver the aims of bus reform.

As the Committee recommends, we will continue to work collaboratively with TfW, Corporate Joint Committees (CJCs) and local authorities towards developing a formal arrangement on the matters raised above to reduce congestion and deliver improvements in bus infrastructure, including consistency in the provision of passenger information (digital and physical).

Recommendation 6: The Cabinet Secretary should bring forward amendments to require the development and publication of a Passenger Charter, setting out clear standards of service, passenger rights, and accountability mechanisms. The Charter should be subject to consultation, including with under-represented groups.

Response: Accept in principle

I agree with the Committee’s view that a customer charter would aid passengers to understand their rights and help ensure accountability in service delivery. However, I do not think it requires a statutory requirement in the Bill.

I have asked officials to work with Transport for Wales to develop an overarching document setting out our multimodal passenger commitment, which will sit above modal specific customer charters. TfW currently has a rail specific charter (Passenger's Charter | TfW) which will be used to inform development the bus specific charter. TfW will develop this in conjunction with key stakeholders, including those representing users with protected characteristics.

It is our intention that the commitment and the bus specific charter will be subject to public consultation as part of its development. Engagement on the documents will be ongoing and they will be reviewed and revised as appropriate to ensure they are fit for purpose.

Recommendation 7: The Cabinet Secretary should ensure that the Passenger Charter (see Recommendation 6) includes specific provisions to embed accessibility within it. We are content for the Cabinet Secretary to define accessibility, as recommended in Recommendation 11.

Response: Accept

I have made it clear to TfW that accessibility needs to be a key element underpinning the commitment and Passenger Charter for Bus.

TfW are in the process of examining passenger charters from other transport authorities in the UK and abroad. Some make commitments around access for disabled people, as well as levels of comfort and safety standards passengers should expect. As noted in the answer to recommendation 6, the charter will be developed in partnership with key stakeholders, including representatives of protected characteristics to ensure that accessibility is captured appropriately. Clarification around the parameters of accessibility will need to be addressed in the Charter, as accessibility can be interpreted in many different ways, including accessibility of service provision and infrastructure, but also safety, removal of physical and other barriers that disable some users.

TfW's Access and Inclusion Panel has been established as a representative voice in the delivery of rail. I have asked that the Panel and its remit be extended so that it can represent the voice of passengers across all modes of public transport.

Recommendation 8: The Cabinet Secretary should ensure that TfW strengthens its customer service and complaints-handling functions in preparation for increased public engagement and feedback under the new franchising regime.

Response: Accept

Transport for Wales are progressing their plans to increase capacity at their customer call centres, which currently deal with feedback relating primarily to their rail operations, but also to Traveline Cymru, Fflecsi, Traws, MyTravelpass and other concessionary enquiries.

The existing contact centres, one in North Wales and another in South Wales, deal with 17,200 customer contacts a month. In order to deliver in relation to multimodal services, TfW are ensuring that the teams and systems are ready to deal with higher volumes and multi modal enquiries, and that they are set up to handle different contact methods across telephone, digital and social media channels.

TfW are currently analysing their current level of bus contacts through the Traws services. This is giving them the data to be able to predict and set up for delivery under the new local bus service arrangements. This analysis is also allowing them to set up the correct handling procedures for feedback, complaints, and lost property and how to ensure that the passenger receives a seamless and timely response to their query.

Effective management of enquiries or complaints is crucial for ensuring accountability, fostering public trust, and maintaining high service standards within the franchised bus network. As TfW will be overseeing the central customer contact, it is vital that operators

provide timely responses with clear and accurate information. To facilitate this, a well-defined framework for enquiry / complaint handling will be established, supported by service contracts and penalties that hold operators accountable for delivering precise information.

In addition to this, we intend for Bus Users Cymru, which is well established as a quasi-ombudsman for bus, to continue to deliver that role.

Work will continue in consultation with key stakeholders to develop plans in relation to customer service delivery and to enhance understanding of customer contact volumes and profiles as we roll out the new system for delivering local bus services.

Recommendation 9: The Cabinet Secretary should ensure that the practical implications of the 15-mile threshold in the definition of a "local bus service" are kept under regular review, with particular attention to potential impacts on rural communities.

Response: Accept

I am happy to accept the Committee's recommendation. We intend to keep this and all aspects of the legislation and its implementation under review.

We note the evidence provided by CaBAC that this can be an issue for rural operators but, as they stated, changing this now would not be desirable as it would cause confusion.

To clarify, the threshold ensures that passengers are able to disembark less than 15-miles from their embarkation point (measured in a straight line), which could mean that stops must be sited in rural spaces where use may be unlikely. However, I am confident that centralised co-ordination of the network, alongside our intention to utilise flexible services and the use of hail and ride, will lead to service delivery that will maximise benefits for rural communities.

Recommendation 10: The Cabinet Secretary should clarify how the Welsh Ministers will interpret their duty to have regard to the objectives in section 4, including how in practice they will "have regard" to the objectives.

Response: Accept

I am happy to clarify how the Welsh Ministers will interpret their duty to have regard to the objectives in section 4, including how they will do this in practice.

The provision imposes a duty on the Welsh Ministers to consider the objectives in section 4 when exercising their functions. It does not require them to achieve those objectives outright. This distinction is crucial: it allows Welsh Ministers to act with flexibility, balancing competing priorities and practical constraints, rather than being bound to deliver specific outcomes regardless of feasibility. The "have regard" duty will be applied in the same way that is set out in other Acts of Senedd Cymru.

In practice, the Welsh Ministers will consider all these objectives in their decision-making, however they will need to weigh each one as necessary in order to deliver appropriately against their policies and budgets. For example, during the early stages of implementation, TfW in consultation with local authorities, may want to prioritise frequency of services, therefore more buses will be required. In this case they may need to decide whether to purchase a number of diesel buses over lower emission electric buses in order to deliver on that policy. In that case objectives 3 and 4 would be prioritised over objective 6 in the short

term. In the long-term objective 6 would be fulfilled as more people using buses means that fewer people using cars.

I have instructed officials to work with TfW to consider the development of a national Bus Board and regional bus boards structure for holding TfW to account, including against the objectives, on a day-to-day basis. This work is in its infancy and will be done in collaboration with CJCs and local authority representatives. In addition, the Senedd will have an opportunity to hold the Welsh Ministers to account for how their actions have contributed to achieving these objectives through the reporting mechanism under Section 20 of the bill.

Recommendation 11: The Cabinet Secretary should bring forward amendments to include a clear and measurable definition of "accessibility" in section 4. If the Cabinet Secretary is not minded to bring forward such amendments, he should clarify in response to this Report how "accessibility" will be interpreted by Welsh Ministers for the purposes of fulfilling their duty under section 4.

Response: Accept in principle

I am happy to provide some clarity over how we are broadly interpreting accessibility as part of the objective. However, I do not intend to bring forward amendments to define the term in the Bill for the reasons outlined below and because to do so may limit what should be considered when having regard to the second objective and risk making the provision of services less inclusive.

There is no standard legal definition of accessibility largely because it means different things in different contexts and to different people. For instance:

Information - accessibility in this context could refer to information being made available that ensures people are able to catch a bus; this could relate to where the information is provided and / or the format in which it is made available.

Vehicles – whether a vehicle has any or enough space for wheelchairs, pushchairs, priority seating. Does the vehicle have effective audio and visual information on-board and is the bus equipped to ensure wheelchair and vulnerable users can easily get onto and off.

Scheduling – does the bus schedule provide enough clarity and opportunity to ensure vulnerable users can confidently rely on having access to a return journey.

Safety – do people feel safe catching and traveling on their local bus services. Much of this is down to experience but also perception. If a service or the related bus stops appear to be unsafe, women and transgender people are much less likely to feel the service is accessible to them.

In terms of Section 4(3), for the purposes of the Bill, the reference to accessibility here means that Welsh Ministers will have a duty to consider how they can improve local bus services for all users by removing physical and other barriers that prevent or limit their use.

Recommendation 12: The Cabinet Secretary should bring forward an amendment to include learner travel within the scope of the objectives in section 4.

Response: Reject

I agree with the Committee that learner travel is a vital component of the bus network and the wider bus industry. As I have stated previously, I am confident that through enabling a

better and more collaborative approach to the co-ordination of local bus services, the Bill will help support the provision of school transport and help to build young people's confidence in using local bus services beyond their time in education.

As learner travel is outside the scope of the Bill, I will not seek to include it within the scope of the objectives. I am confident that the initiatives we have announced in this area will ensure that provision for school children and young people will be strengthened within the broader package of bus reform.

Learner travel will remain the responsibility of local authorities, which is one of the key reasons why we are, and will continue, to work collaboratively with local authorities in the development of the Wales Bus Network.

Recommendation 13: The Cabinet Secretary should clarify the meaning of "economic" in paragraph 5(1)(a) of the Bill.

Response: Accept

I note from the Committee's report that some stakeholders were of the view that the term "economic" is ambiguous and could relate to affordability or economic development. To clarify, it can relate to both for the purposes of section 5(1)(a) of the Bill, i.e. the affordability of running bus services, including consideration of the cost and maintenance of vehicles and the cost of delivering a franchised network, as well as consideration of the impact on economic development at local, regional and national level of the delivery of local bus services.

The terminology has been used similarly in section 108(1)(a) of the Transport Act 2000 relating to local transport plans.

Recommendation 14: The Cabinet Secretary should bring forward an amendment to paragraph 5(1)(a) of the Bill, to include securing accessible transport as a core duty for Welsh Ministers.

Response: Reject

I understand the Committee's desire to ensure accessibility is treated as a fundamental principle in determining required services. It underpins how we intend to deliver inclusive transport for people and communities.

The purpose of Section 5(1)(a), however, is to determine the type of services that are required rather than the standard of service. This should be established in the delivery, including as part of the contracts and permits where accessibility requirements can be targeted through obligations and conditions, including around vehicle standards and driver training.

Due to the potentially very broad meaning of the term "accessibility", as demonstrated in my response to recommendation 11, including it as a core and undefined requirement would effectively be placing a significant unspecified burden on the Welsh Ministers which could result in significantly fewer bus services and as a result significantly reduced inclusivity.

Therefore, while I am sympathetic towards the ambition of this recommendation, I cannot accept it.

Recommendation 15: The Cabinet Secretary should bring forward an amendment to section 6 of the Bill to require consultation with under-represented groups, including people with disabilities, children, and older people, in the preparation of the Welsh Bus Network Plan.

Response: Accept in principle

I agree with the Committee's view that under-represented groups should be included in the development of the Network Plan. An amendment to section 6 of the Bill is not necessary because section 6(4)(f) already requires consultation with those representing the interests of persons using or likely to use local bus services - under-represented groups are captured by this provision.

Seeking the views of under-represented groups is key to the development of the bus network. In South West Wales, TfW are currently undertaking a public and stakeholder engagement which will conclude at the end of September. This includes workshops across the region to seek the views from people representing those with protected characteristics.

Recommendation 16: The Cabinet Secretary should bring forward an amendment to section 6 of the Bill to require Welsh Ministers to have regard to learner travel provision when preparing the Welsh Bus Network Plan.

Response: Reject

As I stated in my response to recommendation 12, learner travel is outside of the scope of this Bill. However, I want to be clear that learner travel can and will be considered as the Welsh Bus Network Plan is developed, working closely with local authorities who retain statutory responsibility for learner travel. This is already taking place in South West Wales. I will provide a policy statement (as per my response to recommendation 4), showing how learner travel can be supported.

Recommendation 17: The Cabinet Secretary should bring forward amendments to the Bill to formalise the role of CJCs and local authorities in bus network planning under the Bill. If the Cabinet Secretary is not minded to do this, he should progress the development of a memorandum of understanding to explain how the Welsh Government, TfW and local government will work in partnership to deliver the ambitions of the Bill.

Response: Accept in principle

I am happy to confirm that the Welsh Government will enter a Memorandum of Understanding (MoU) with TfW and local authorities on ways of working to deliver the ambitions of the Bus Services (Wales) Bill. As I mentioned in relation to recommendation 10, I have instructed officials to work with TfW in considering the establishment of a national Bus Board and an additional regional structure to ensure a leading role for CJCs in the development of the Network Plan, whilst also allowing them to hold TfW to account in its delivery of local bus services.

Transport for Wales have been working with the CJCs and local authorities on Bus Network Planning in preparation for the implementation of the Bill, this is most mature in the South West where implementation plans are further forward. This collaboration has been supported by a 'Zonal Methodology' which was co-created with local authorities and

supported through engagement with the WLGA and Transport Cabinet Members across the SW region and will continue to be developed as we roll-out subsequent regions. It sets out the joint working that will be undertaken in preparation for bus reform.

I am of the view that this will provide the formalisation of the roles of the CJCs and local authorities without amending the Bill and introducing potential stumbling blocks to the delivery of a dynamic bus network.

Recommendation 18: The Cabinet Secretary should bring forward amendments to require guidance to be prepared, consulted on, and published on the revision of the Plan (sections 7 and 8), particularly as the provisions will affect others, such as local authorities and operators. This guidance should explain the meaning of "minor" and "reasonably practicable" in section 8.

Response: Accept in principle

I am happy to develop an advice note to help local authorities and operators understand the meaning of "minor" and "reasonably practicable" within the context of revisions to the network plan. The advice note will also contain information to help local authorities and operators better understand the circumstances around revisions to the network plan. It will be developed in collaboration with local authorities and in consultation with wider stakeholders.

This is a more appropriate approach than bringing forward an amendment to require guidance to be issued on revision of the Plan, as this would essentially require the Welsh Ministers to issue guidance for themselves.

Recommendation 19: If the Cabinet Secretary is not minded to bring forward amendments to require guidance on the face of the Bill in relation to revising the plan (sections 7 and 8), he should give a commitment that he will use the Welsh Ministers' general powers to issue guidance on this matter. The guidance should be subject to consultation with stakeholders. The guidance should explain the meaning of "minor" and "reasonably practicable" in section 8.

Response: Accept in principle

As mentioned in my response to recommendation 18, I am happy to produce an advice note to help local authorities and operators understand the meaning of "minor" and "reasonably practicable" within the context of revisions to the network plan. This would be developed in collaboration with local authorities and in consultation with wider stakeholders.

Recommendation 20: The Welsh Government should publish a response to the Wales Centre for Public Policy report within three months of its publication.

Response: Accept in principle

As the Welsh Government has co-authored the report, it would not be appropriate for me to issue a formal response. The purpose of the report is for my officials and I, along with Transport for Wales, to learn from it, and we will be using the report to inform our thinking. I am happy to share the final report with the committee.

Recommendation 21: The Cabinet Secretary should keep under review approaches to contract design and procurement to ensure that the SME sector can participate in the

new regime, including through smaller contract lots and simplified bidding processes. The Welsh Government should ensure there is adequate support for SMEs who wish to participate in the franchising process.

Response: Accept

The SME sector is incredibly important to the Welsh local bus market. Franchise packages will vary in size and complexity, with opportunities that are attractive to all types of operators. Large, SME and publicly owned bus operators all have a part to play in a successful franchising programme.

As part of the development of a Template Franchise Agreement, TfW have been mindful to use clear straightforward language. In comparison to some contracts used elsewhere, their template is shorter in page count and relatively free of jargon.

TfW will:

- Offer walk-through sessions to interested prospective operators to explain the procurement process and the contract, especially those parts which (of necessity) may include complex legal provisions.
- Engage in meaningful dialogue with prospective operators as to where a particular contract could adopt a simplified approach. This is more likely to apply to smaller contracts but will reflect the risk profile on a case-by-case basis.
- Signpost organisations that offer support to SMEs in relevant areas.
- Take a pragmatic approach to incentive and/or penalty regimes, which will be tailored to the routes served.
- Make franchise payments to operators on ‘day one’ of a payment period to cover the next four weeks, rather than retrospectively at the end of a period. This should help with cashflows for all operators, but perhaps with particular importance to smaller organisations.

Recommendation 22: The Cabinet Secretary should clarify how cross-subsidy will operate under franchising, including whether it will function at a national or franchise-area level. This should include clarification of how cross-subsidy will align with commitments to local reinvestment of local authority contributions. It should also make clear that those local authority contributions are additional to funding committed by the Welsh Ministers.

Response: Accept

As is currently the case, under the new model Welsh Government will continue to provide the majority of the funding to support the provision of bus services in Wales. Under the existing system the contribution made by local authorities to support bus services varies considerably – we want to continue to see them contribute to the provision of local bus services, which is why the Bill includes section 34 which empowers local authorities to give financial assistance in connection with the provision of local bus services.

I have committed to ensuring that all additional funding provided by a local authority will be spent within that authority. I will work with local authorities, the WLGA and CJCs to ensure funding continues to invest in local bus provision. Any local authority contributions will amount to additional investment on top of Welsh Government funding, in some cases allowing additional services to be provided.

Adopting the new model through the Bill does allow Welsh Government to consider cross-subsidisation of more profitable routes and services to support investment in less profitable

(but socially necessary) services. This is one of the advantages of a franchised system – ensuring that all funding generated by services can be reinvested in other parts of the bus network.

Recommendation 23: The Cabinet Secretary should ensure that TfW progresses the development of the local bus service permit system, in consultation with stakeholders, ensuring this is in place from day one of the new system.

Response: Accept

The Welsh Government will ensure that TfW progresses the development of the local bus service permit system, in consultation with stakeholders, and that it is in place on day one of the new system being introduced in the South West Wales region.

Recommendation 24: The Cabinet Secretary should bring forward regulations setting out how the permitting aspect of the Bill will work, including permit types and eligibility criteria. These Regulations should be developed in consultation with operators, local authorities, community transport, and others. In addition, the Cabinet Secretary should issue guidance to explain to operators how they can apply for permits to run services outside of the Plan.

Response: Accept in principle

The Welsh Government will bring forward regulations under sections 13 and 14 setting out details relating to the application process and any further conditions that must be attached to local bus services permits. These will be subject to public consultation.

In light of the discussions held with stakeholders and the evidence presented to the Committee, I intend to publish a guide setting out the process and fees associated with applying for local bus services permits and associated matters. This advice note will be created in consultation with those persons listed in the statutory consultees list in section 6.

Recommendation 25: The Cabinet Secretary should ensure that TfW has robust arrangements in place for the direct provision of services under section 17, and that they are ready to be implemented, if necessary, before the first phase of franchising commences.

Response: Accept

I agree with the Committee’s recommendation and have asked TfW to ensure that robust arrangements are in place before franchising commences. They are currently preparing a business plan for this purpose, which includes proposals for establishing a subsidiary company early next year. I will consider this plan in due course.

Work is also ongoing to establish the appropriate fleet and depot requirements. This is informed in large part by the collaboration arrangements with local authorities and industry in South West Wales in the development of the base network in the region. A similar process has been done in mid-Wales and will soon begin in the North and South East regions of Wales.

Recommendation 26: The Cabinet Secretary should clarify whether the Teckal exemption will apply in relation to the provisions in section 17.

Response: Accept

The provision of local bus services by TfW will be governed by section 17 of the Bill, and not by a franchising contract under section 9. TfW will provide services directly on behalf of the Welsh Ministers and the Teckal exemption to normal procurement rules will therefore not be relevant in those instances.

Recommendation 27: The Cabinet Secretary should bring forward amendments to section 19, or sections 6 and 8 if preferred, to include a specific requirement for Welsh Ministers to consult with English local authorities when planning or permitting cross-border services.

Response: Reject

We will of course consult English local authorities affected any section of the Plan, or any relevant revision to it, and any permitted cross-border services. Sections 6 and 8 of the Bill do not explicitly mention English local authorities on the face of the Bill, as to do so would place a requirement on Welsh Ministers to consult all English local authorities on all aspects of the Network Plan across Wales.

We are confident that sections 6(4)(g) and 8(4)(g) - a duty to consult other persons that the Welsh Ministers consider appropriate - adequately covers a duty to consult relevant English local authorities.

Recommendation 28: The Cabinet Secretary should bring forward amendments to section 20 to require consultation with passengers and stakeholders as part of the reporting process.

Response: Accept in principle

I note the suggestion by Transport Focus in their evidence that we include similar consultation requirements to those included in Part 2 of the Transport Act 2000. Consultation with passengers and stakeholders is fundamentally important, and the approach we are already adopting in South West Wales in relation to the development of the Network Plan.

I agree with the Committee that consulting with the public and other key stakeholders will help to inform the development of the reporting process. However, I am of the view that this can be achieved without amending the legislation.

Recommendation 29: The Cabinet Secretary should bring forward amendments to require statutory guidance to explain how community transport will be integrated into the wider network, and the position of community transport operators providing services outside the contract and permitting regimes, particularly in terms of how these services will be funded and supported more generally.

Response: Accept in principle

My officials are working closely with community transport operators to address some of the concerns they have raised. Transport for Wales have held a workshop with community transport operators in the South West to unpack how community transport will be integrated into the wider network. This will be repeated in each region as franchising is rolled out.

Similar to recommendation 18 above, I do not think statutory guidance is appropriate in this context because the purpose of guidance is to explain how someone should exercise their functions under the legislation.

I will ensure that strong engagement with community transport operators continues in order to help provide clarity on how community transport will be integrated into the wider network and to provide some assurances in relation to the use of community services under section 18 of the Bill.

Recommendation 30: The Cabinet Secretary should ensure that TfW develops a standardised data-sharing framework that avoids duplication of data provision, particularly where data is already shared for purposes such as school transport planning. The framework should be subject to consultation with stakeholders, including SME and community transport operators. The framework must be in place before the first phase of franchising commences.

Response: Accept

I will ensure that officials work closely with TfW on the development of a data-sharing framework in good time. The Regulations on data under the Bill will clarify the information that will be required from operators to enable TfW, on behalf of the Welsh Ministers, to understand what is required of the network. The regulations will be subject to consultation with all stakeholders before the first phase of franchising commences.

As part of the franchising programme, we will collate operational data from transport operators via the powers granted through the Bill. This data will be consolidated into a centralised dataset, which will serve as the single source of truth for all relevant stakeholders. The dataset will support customer-facing services, contract management, and the compilation of key performance indicators, ensuring consistency, transparency, and efficiency across the network.

TfW will produce the network information (routes and timetables), sharing these with local authorities and operators. This will ensure any duplication is avoided.

Recommendation 31: The Cabinet Secretary should require, by issuing guidance for TfW and local authorities, that all public transport information be made available in accessible formats, including non-digital channels.

Response: Accept in principle

I agree with the Committee on the importance of ensuring that all public transport information is available in accessible formats, including non-digital channels. It is my intention to work towards providing integrated accessible public transport information.

With regard to local bus service information, section 27 requires the Welsh Minsters to make regulations setting out how and when information is published. These regulations will enable the Welsh Ministers to ensure that information is published in an accessible format.

Local authorities will no longer be responsible for providing information about local bus services. Transport for Wales, on behalf of Welsh Ministers, will be responsible for making arrangements for the publication of information. In addition to this, I will ensure that providing accessible information at bus stops will form part of the Memorandum of Understanding between TfW and local authorities currently being developed.

As mentioned in my response to recommendation 6, TfW's rail charter (Passenger's Charter | TfW) will be used to inform the bus specific charter. The rail charter currently states that customers can request timetable information in accessible formats (including large print) from Transport for Wales's Customer Relations Team. A similar approach is likely to be taken in the bus charter.

Recommendation 32: The Cabinet Secretary should bring forward amendments to Part 4 of the Bill to require the regular publication of data on the performance of the bus network in digital and non-digital accessible formats.

Response: Accept in principle

Transport for Wales are engaging with key stakeholders including the bus industry and local authorities to understand how best to monitor and evaluate the performance of the bus network. It is intended that a suite of KPI's will be developed, and work is on-going to determine how frequently reports on performance would need to be published in digital and non-digital accessible formats. Transport for Wales are considering the approaches on reporting on performance taken by Transport for London and Transport for Greater Manchester to help shape their understanding. Therefore, the regular publication of data and performance of the bus network in digital and non-digital accessible formats can be achieved without amending the Bill.

Recommendation 33: The Cabinet Secretary should establish clear and transparent lines of accountability for bus service performance, with defined responsibilities for TfW and the Welsh Government, to ensure the public can understand issues around accountability and how poor performance will be addressed.

Response: Accept

I accept the importance of clear accountability. It is important that the public can understand the role of TfW, Welsh Government, local authorities, and bus operators in the delivery of their bus services. TfW are still in the process of establishing the framework for the award of contracts, which will set out the expectations on operators, as well as incentives and penalties to address good / poor performance.

It is vital these expectations are clearly understood by the public, so I am happy to commit to sharing this information when it is finalised. In addition, I recognise the importance of sharing data with the public about the performance of the bus network and, where appropriate, the performance of operators delivering the network. The reporting duty ensures that Welsh Ministers are held accountable and are transparent in relation to meeting their objectives under the Bill. As part of this, Welsh Ministers will be required to report on the reliability of the bus network whereby bus service performance may be captured.

Recommendation 34: The Cabinet Secretary should clarify the role of existing municipal bus operators under the franchise system, including whether they will be required to compete for contracts on the same terms as private operators or whether they will receive specific protections.

Response: Accept in principle

The White Paper “One network, one timetable, one ticket” published in 2022 was clear that we intend to sustain a market that includes a range of SMEs and municipal operators, as well as large commercial operators.

The Bill does not change the status of the existing municipal bus operators, Cardiff and Newport Bus companies. However, due to the lifting of restrictions under section 66 of the Transport Act 1985 (section 32 of the Bill), Cardiff City Council and Newport City Council will have the option to re-establish their companies without the financial and other limitations placed on them under the 1985 Act. This means they will be on an equal footing to any other public, private or third sector operator bidding for contracts or applying for permits under the Bill.

However, the Committee is aware that the Welsh Government supports the principle of municipal bus companies remaining in the public sector. With this in mind, officials and TfW are working with Cardiff City Council and Newport City council to examine their role under the franchised system. Any options under consideration must deliver value for money and must support the quality and delivery of the Wales Bus Network Plan.

Until we have had the opportunity to fully consider all of the options, including the legislative and value for money implications, I will not be able to set out the exact arrangements which will be put in place. However, I have asked officials that this is concluded as soon as possible, in partnership with Cardiff City Council and Newport City Council.

Recommendation 35: The Cabinet Secretary should bring forward amendments to the Bill to introduce a statutory duty on local authorities, Welsh Ministers, and TfW to work in partnership to ensure the continuity of the bus network, following the phasing out of the section 63 duty.

Response: Accept in principle

Close partnership working between Welsh Ministers, TfW and local authorities is already taking place and it is intended to continue throughout transition into the new system and beyond. To date, where transition is most advanced in the South West and mid-Wales (bridge to franchising) regions, collaboration has been very successful and of equal benefit to the relevant local authorities and TfW in the development of the network and in engagement with industry stakeholders and the public.

I am not of the view this would be enhanced by amending the Bill to introduce a statutory duty. It would not relieve concerns over local authority funding raised by the Committee. As TfW stated in their evidence to the Committee “*it will be for locally elected members to determine whether they choose to invest or not, and, in so doing, the impact that that has on their network”.* In the worst-case scenario, a statutory requirement to work in partnership to ensure the continuity of the bus network could result in potential paralysis of the network if there were any political or other disagreements between authorities and/or TfW.

I believe a more effective way to maintain close collaborative working relationships and to ensure agreed ways of working following the phasing out of the section 63 duty, is through the planned Memorandum of Understanding between Welsh Government, TfW, local authorities and CJCs.

Recommendation 36: The Cabinet Secretary should ensure that the phasing out of the section 63 duty is implemented with sufficient notice and guidance to enable effective planning by local authorities during the transition to franchising.

Response: Accept in principle

The Welsh Government will ensure that local authorities are sufficiently supported during the transition to franchising, however the issuing of formal guidance on the phasing out of the section 63 duty is unnecessary. As outlined above in the response to recommendation 35, close partnership working between Welsh Government, TfW and local authorities is already taking place and will continue to take place throughout the implementation period. This has already been demonstrated by the collaboration taking place in South West Wales, the region where we will first be rolling out our new system, and Mid Wales, where we introduced the 'Bridge to Franchising' through joint working. A Memorandum of Understanding will be produced by Welsh Government, TfW and local authorities, to ensure local authorities are fully aware of the phasing out of the section 63 duty and that ways of working area agreed to facilitate collaborative working during transition and into the future.

Recommendation 37: The Cabinet Secretary should publish a clear policy statement outlining how the principles of cross-subsidy and local funding will be balanced.

Response: Accept

I am happy to publish a statement to this effect, building on the response I have provided to recommendation 22 of the Committee's report.

Recommendation 38: The Cabinet Secretary should ensure that a draft policy framework on staff transfers, and employment protections is published for consultation ahead of the next Senedd election, to allow sufficient time for stakeholder input and scrutiny.

Response: Accept

I will ensure that a draft policy framework on staff transfers and employment protections is published for consultation ahead of the next Senedd election. Discussions are already on-going with industry and union representatives to inform this work.

Recommendation 39: The Cabinet Secretary should clarify what contingency measures will be in place in the event that TUPE transfers encounter legal or operational difficulties.

Response: Accept in principle

We are seeking advice from other franchise authorities including TfGM and TfL to understand the contingency measures that they have in place. We will work in partnership with unions and operators to develop these contingency measures should TUPE transfers encounter legal or operational difficulties.

I want to thank the Committee for their time and if you have any further questions, please let me know.

Yours sincerely

Ken Skates AS/MS
Ysgrifennydd y Cabinet dros Drafnidiaeth a Gogledd Cymru
Cabinet Secretary for Transport and North Wales

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith
—
Climate Change, Environment, and Infrastructure Committee

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Huw Irranca-Davies MS,
Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

25 July 2025

Dear Huw,

Deposit Return Scheme

As you know, the Committee has taken a keen interest in the on-going development of a Deposit Return Scheme (DRS). Following your written statement on 10 July 2025, we would welcome a response to the questions set out below.

1. You have said that the decision to change the scope and timescale of the Welsh DRS was taken in response to industry concerns around the added complexity and cost of misaligning the Welsh DRS scope and introduction timescale with other UK nations. Did you consult with industry before making the original decision to misalign last November? If so, were these concerns raised with you at the time?

2. You say that you will "accelerate our implementation timetable to align with the rest of the UK, which would provide for interoperability between common materials". Do you therefore expect a Welsh DRS to commence by October 2027?

3. Do you intend to introduce DRS Regulations, as has been the case in Scotland, England, and Northern Ireland? If so, when do you expect to do this?

4. In terms of materials and processes (i.e. recycling or reuse), what will be the initial scope of the Welsh DRS?

5. Do you intend for the Welsh DRS be overseen by the UK Deposit Management Organisation Limited, which has been approved to run the DRSs in England, Northern Ireland, and Scotland?

6. You have said "Glass remains in scope of our scheme". Can you clarify whether glass will form part of the Welsh DRS when it is introduced? If not, when do you expect to expand the Welsh DRS to include glass?

7. In its response to the Review of the UK Internal Market Act 2020 and public consultation, the UK Government has said environmental protection impacts/benefits (and public health impacts/benefits) will in future be considered alongside economic factors for a proposed exclusion from the Act. Does this affect the Welsh Government's position not to seek an exclusion for the Welsh DRS, including glass?

8. Your written statement says, "industry have highlighted the need for a phased approach within which there would be no requirement to have different labelling and no fraud risk". What are the practical impacts of this on your ambitions for a DRS that goes beyond the scope of that outlined by the other UK nations? Is it therefore impossible for Wales to misalign by going beyond the ambition of the rest of the UK?

Regards,

Llyr Gruffydd MS,
Chair, Climate Change, Environment and Infrastructure Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg | We welcome correspondence in Welsh or English.

Huw Irranca-Davies AS/MS
Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd a Materion Gwledig
Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

Llywodraeth Cymru
Welsh Government

Your ref - 250725 Chair to DFM DRS
Our ref - MA/HIDCC/1911/25

Llŷr Gruffydd MS,
Chair
Climate Change, Environment and Infrastructure Committee

18 August 2025

Dear Llŷr,

I am writing in response to your letter of 25 July in order to address the further questions that you posed. I have addressed each in turn below.

1. You have said that the decision to change the scope and timescale of the Welsh DRS was taken in response to industry concerns around the added complexity and cost of misaligning the Welsh DRS scope and introduction timescale with other UK nations. Did you consult with industry before making the original decision to misalign last November? If so, were these concerns raised with you at the time?

There is no change to the scope of the Welsh DRS which remains in line with that previously consulted upon. In relation to the timescales, as I set out in my written statement of November 2024:

"In partnership with the UK and Devolved Governments, we have been working to initiate a joint process to appoint the Deposit Management Organisation (DMO) for our respective schemes. However, in the time available, it was not possible to resolve the issues arising from the operation of devolution under the United Kingdom Internal Market Act 2020. This unfortunately meant that we were unable to proceed with the joint process or notify the WTO in relation to the scheme at that point."

Throughout the development of the Welsh DRS, there has been ongoing and regular engagement with industry stakeholders, including in the lead-up to the November 2024 statement.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Furthermore, as I outlined in my committee response in June:
The Welsh Government withdrew from being part of the appointment process to select a Deposit Management Organisation for each scheme, but our Deposit Return Schemes were and still are legally separate. A common UK-wide approach to DRS existed only up until the point the previous UK Government diverged from the collectively agreed scope.

The competence to bring forward a Deposit Return Scheme is fully devolved and in line with the principles of devolution, it should be for the Government of Wales to bring forward proposals to the Senedd on a DRS which delivers for Wales, noting that this was not an issue under the EU's framework prior to Brexit. In the case of DRS, whilst we have a shared long term objective, it is clear that the different nations of the UK are at different stages of their journey towards it. As Wales is second in the world for recycling it means that for a DRS to be effective in a Welsh context it must deliver benefit over and above our current performance, which necessitates a broad 'all-in' scheme, which was the overwhelmingly endorsed outcome of the consultation, alongside a clear pathway to reuse. The UK Government exercised their devolved right to tailor the scheme to the context in England - where a narrower, more limited recycling only scheme can still deliver improvement – but that should not be a justification to enforce a direction upon Wales which does not deliver in a Welsh context.

2. You say that you will "accelerate our implementation timetable to align with the rest of the UK, which would provide for interoperability between common materials". Do you therefore expect a Welsh DRS to commence by October 2027?

Yes, the Welsh Government is now working to align the implementation timetable with the rest of the UK, which is targeting a go-live date of October 2027. The alignment in timescale will support interoperability, reduce complexity for producers and retailers, and support a more efficient and effective rollout.

3. Do you intend to introduce DRS Regulations, as has been the case in Scotland, England, and Northern Ireland? If so, when do you expect to do this?

Yes, regulations will be needed to underpin the operation of the Welsh DRS. As is the case with the other UK nations, the regulations will establish the legal basis for the scheme, including obligations on producers, retailers, and the Deposit Management Organisation. To achieve this, the regulations will need to be laid in sufficient time to allow for their consideration within the available Senedd timetable before the end of the current term.

4. In terms of materials and processes (i.e. recycling or reuse), what will be the initial scope of the Welsh DRS?

The scope remains unchanged in covering PET plastic, steel, aluminium, and glass and the scheme is being designed to support both recycling and reuse. As reusable containers are not yet widely used in the UK, a phased approach will be taken to the introduction of reuse.

5. Do you intend for the Welsh DRS be overseen by the UK Deposit Management Organisation Limited, which has been approved to run the DRSs in England, Northern Ireland, and Scotland?

The Welsh Government intends to run a fair and open application process for the appointment of a Deposit Management Organisation (DMO) to operate the scheme in Wales. While the UK DMO Limited has been appointed to run the DRS in Northern Ireland, Scotland, and England, its role in Wales will depend on the outcome of an open competitive process.

6. You have said “Glass remains in scope of our scheme”. Can you clarify whether glass will form part of the Welsh DRS when it is introduced? If not, when do you expect to expand the Welsh DRS to include glass?

Yes, glass will be included in the Welsh Deposit Return Scheme (DRS) from day one. An all in scheme, in line with the recommendations of the Senedd cross party group on litter, will maximise the ability for the DRS to deliver recycling improvement against our already high baseline levels whilst ensuring that the scheme can support the roll-out of reuse. In doing so it will improve resource efficiency, deliver emissions savings, , tackle litter, create green growth opportunities and align with the overwhelming outcome of the previous consultations and therefore deliver on the public expectations.

7. In its response to the Review of the UK Internal Market Act 2020 and public consultation, the UK Government has said environmental protection impacts/benefits (and public health impacts/benefits) will in future be considered alongside economic factors for a proposed exclusion from the Act. Does this affect the Welsh Government’s position not to seek an exclusion for the Welsh DRS, including glass?

The Welsh Government welcomes the UK Government’s indication that environmental and public health considerations will be taken into account in future exclusion decisions. We will work together with the UK Government and other devolved governments to support further clarification and implementation of their proposed changes and what these might mean for affected policy areas.

8. Your written statement says, “industry have highlighted the need for a phased approach within which there would be no requirement to have different labelling and no fraud risk”. What are the practical impacts of this on your ambitions for a DRS that goes beyond the scope of that outlined by the other UK nations? Is it therefore impossible for Wales to misalign by going beyond the ambition of the rest of the UK?

The position that there are different DRS scopes within the UK is not a situation of the Welsh Government’s making, as it is a consequence of the previous UK Government’s decision to diverge away from a collectively agreed approach that worked for the whole of the UK. The Welsh Government has however taken seriously the risks raised by industry in relation to the potential unintended consequences that could arise. We have therefore engaged intensively with industry to look at those risks which are particularly acute in a scenario where there is a gap between the introduction of the respective schemes. By aligning the timescales, it immediately addresses the position for the materials common to all schemes and by taking a phased approach during which there is no need for different labelling and measures to prevent fraud, it ensures interoperability for those materials in scope in Wales but currently outside the schemes in the rest of the UK. In doing so this ensures that glass remains in scope, which in turn supports the roll-out of reuse for all materials and does not limit Wales’ ability to pursue a more ambitious Scheme. This approach strikes an important balance in avoiding unintended impacts for producers and retailers, while enabling Wales to continue its leadership and take forward a scheme which can deliver in Wales to the benefit of the whole of the UK.

Yours sincerely,

Huw Irranca-Davies AS/MS
Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd a Materion Gwledig
Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

Agenda Item 4.4

From: Daniel
Sent: 22 August 2025 15:08
To: Climate Change, Environment, and Infrastructure Committee | Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith <SeneddClimate@senedd.wales>
Subject: Westminster's coal licence ban - legal advice

Dear CCEI Committee,

With the Disused coal tips bill now past Stage 4, there is another opportunity to address coal tip mining within the Westminster coal ban under draft in DESNZ. We know that the Welsh Government was, and maybe still is, in contact with the UK Government about this legislative proposal. Currently mining coal tips isn't to be banned in this Bill. So after the Bill passes, mining coal tips would become the *only* remaining option for coal to be produced anywhere in the UK.

With over 40% of the UK's coal tips concentrated in South Wales, we see this as a Welsh issue. We don't want an inadvertent effect of the Bill be to refocus mining proposals in those South Wales communities that have already suffered the effects of mining in their midst. Obviously we're aware of the current safeguards in the form of relevant sections of PPW and the Coal Policy Statement. But looking further into the uncertain future, we believe **including coal tips within Westminster's coal licence ban Bill would provide an additional and valuable safeguard, as well as create greater clarity within Wales and consistency across the UK.**

We have **commissioned legal advice from two prominent barristers** (Estelle Dehon KC and Rowan Clapp of Cornerstone Barristers) on how coal tips could be factored into Westminster's emerging Bill to ban new coal mining across the UK. The advice (attached) is essentially to make mining coal tips for coal a clearly licensable activity which would then be caught by the ban. We have a created an easy-read version on our website. The ban for coal tip mining would have the same provision for incidental coal extraction (such as a new development or stability and maintenance works) that already applies to extraction from virgin seams, where no licence is required.

As the CCEI Committee consulted so closely on the disused coal tips bill, I thought it may be interested in engaging with the Welsh Government over its position with DESNZ in the drafting of this Bill. It is also an **opportunity for the Cabinet Secretary for Climate Change and Rural Affairs to deliver on his reassurances to the CCEI Committee that concerns around coal tip mining would be addressed via other avenues**. To that end, we have also attached our explainer resource, outlining the context and what we know about the Bill.

Finally, we'd like to add that we, and the CCEI Committee, has focused on the Bedwas tips proposal as a live example of a coal tip mining project, but this is actually an established and widespread industry practice dating back to at least 1984 and spanning all nations of the UK.

Regards,

Daniel Therkelsen
Coal Action Network
www.coalaction.org.uk
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IN THE MATTER OF THE PROPOSED COAL LICENCE BAN

Re: Proposed amendments to the Coal Industry Act 1994 and how to ensure they are effective

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ADVICE

INTRODUCTION AND SUMMARY

1. We are asked by Coal Action Network to advise as to the language which may be adopted in forthcoming amendments to the Coal Industry Act 1994 (**"1994 Act"**) to ensure that the Government's intention to ban new coal mining licences may be given full effect. In particular, we are asked how the statutory language may be amended to ensure that coal extraction from 'coal tips' is a.) confirmed to be an activity for which a licence is required, and b.) an activity for which the provision of a licence is prohibited, meaning that c.) the use of coal from tips will not be obtained for use in subsequent combustive processes.

2. For the reasons given in detail below, our advice is that:

   2.1 Despite the view of the Mining Remediation Authority (**"MRA"**), we consider that it is arguable that a licence under the Coal Industry Act 1994 (**"the 1994 Act"**) is currently required for the extraction of coal from coal tips on the basis that the same is a *"coal-mining operation"* per s.65(1), although we recognise that the relevant provisions in the 1994 Act would benefit from greater clarity.

   2.2 The suggestion the coal tip extraction is not a *"coal-mining operation"* jars with the classification of such projects in the planning system under the relevant provisions of the Town and Country Planning Act 1990 (**"the 1990 Act"**).

   2.3 There is thus clear justification for statutory amendments to clarify the position in respect of coal tip extraction.

2.4 The perpetuation of coal tip extraction would allow for the continued supply in the UK of coal for combustion, which is the practice the proposed ban on coal licences seeks to prevent.

2.5 The 1994 Act should be amended, either to clarify that coal tip extraction has always been a licensable activity, or to include coal tip extraction as a licensable activity that is consequently banned.

2.6 This may be achieved by relatively minor amendments to s.65(1) and s.25(2) of the 1994 Act.

REASONS

FACTUAL BACKGROUND

Commitment to ban coal licensing in UK

3. Giving effect to a manifesto commitment,[1] on 14 November 2024 in a written ministerial statement titled 'Prohibition on new coal extraction licences' (**"the WMS"**), Ed Miliband, Secretary of State for Energy Security and Net Zero confirmed it was *"the right time to take further steps to move away from coal by restricting its future supply,"* continuing:

> *"It is our intention to change coal extraction policy through primary legislation to restrict future licensing of all new coal mines. We anticipate this will involve measures to amend the Coal Industry Act 1994 to prevent the prospective granting of licences. We will examine what limited exceptions may be required, for example, for safety or restoration purposes, and there are a small number of licensed operational coal mines that will be unaffected by the measures and can continue coal mining in accordance with their current licences and consents.*

[1] Change: Labour Party Manifesto 2024, *"We will not issue new licences to explore new fields because they will not take a penny off bills, cannot make us energy secure and will only accelerate the worsening climate crisis. In addition, we will not grant new coal licences and will ban fracking for good"* (https://labour.org.uk/wp-content/uploads/2024/06/Change-Labour-Party-Manifesto-2024-large-print.pdf (p.52))

> *The measures we will bring forward, when timing allows, mean we will be one of the first countries in the world to ban new coal mines, allowing us to focus our efforts on revitalising our industrial heartlands, supporting the transition to new jobs in clean energy across the United Kingdom and creating industries of the future. It marks a clear signal to industry, markets and the world that coal mining in the United Kingdom does not have a long-term future"* (emp. add.).[2]

4. On the same day the Government issued a press release[3] (**"the Press Release"**) stating *"New coal mining licences will be banned"* and that it would introduce *"new legislation as soon as possible to restrict the future licensing of new coal mines."* The Press Release also confirmed *"Coal power remains the largest source of energy related CO2 emissions globally"* and that *"phasing it out is a crucial step to tackling climate change and limiting global temperature rises to 1.5C, while providing important health benefits through improved air quality."* The phase-out of coal is also a dimension of the UK's climate strategy which *"receives worldwide interest"* as recognised by the Climate Change Committee in their most recent progress report of 25 June 2025.[4]

5. The justification for the above measures is obvious: the UK has been in a declared state of climate and ecological emergency since 1 May 2019.[5] It has also embedded climate impact targets and goals into domestic legislation[6] and policy[7] in a context where the Intergovernmental Panel on Climate Change warns *"further delay in concerted global action will miss a brief and rapidly closing window to secure a liveable future*".[8]

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2 Written Ministerial Statement of 14 November 2024: Prohibition on new coal extraction licences (https://questions-statements.parliament.uk/written-statements/detail/2024-11-14/hcws215)

3 Press Release: New Coal Mining Licences Will Be Banned (https://www.gov.uk/government/news/new-coal-mining-licences-will-be-banned#:~:text=Licensing%20of%20new%20coal%20mines,licensing%20of%20new%20coal%20mines).

4 Progress in reducing emissions – 2025 report to Parliament (https://www.theccc.org.uk/publication/progress-in-reducing-emissions-2025-report-to-parliament/), §1.5.4

5 Hansard, Vol. 659, ! May 2019 (https://hansard.parliament.uk/commons/2019-05-01/debates/3C133E25-D670-4F2B-B245-33968D0228D2/EnvironmentAndClimateChange?).

6 s.1 of the Climate Change Act 2008.

7 See broadly Chapter 14 of the National Planning Policy Framework.

8 Press Release Accompanying the IPCC's Sixth Assessment report. (https://www.ipcc.ch/report/ar6/wg2/resources/press/press-release/).

Coal tips, and the regulation of coal tip extraction

6. A coal tip (also known as a spoil tip or slag heap) is a collection of waste material removed as part of the mining process and accumulated on or above ground. Such tips may include mined coal abandoned on the basis that it is (or was at the time it was deposited) of lower quality than conventional saleable coal. There are more than 5,000 coal tips in Great Britain,[9] of which more than 2,500 are in Wales.[10] It is understood there are formative proposals (e.g the Bedwas Tips Reclamation project) for the extraction of significant amounts of material, including coal, from coal tips as part of the remediation of former coal projects, with a view to selling the extracted coal on for use in industry, including in energy production.[11] There is plainly an industry for the extraction of coal from coal tips, with applications for the same being made across England[12], Wales[13] and Scotland.[14]

7. At present, the prevailing view as expressed by the MRA in its letter of 5 December 2024 (annexed to this advice) is that extracting coal from a coal tip is not an activity for which a licence is required under the 1994 Act because, essentially, that extraction does not meet the definition of a 'coal mining operation' under s.65(1) of the 1994 Act (set out below), and therefore cannot comprise a kind of 'coal mining operation' for which a licence is required (per ss.25(1)-(2) of the 1994 Act).

8. The use and extraction of coal tips is therefore governed by the planning regime, with a coal tip apparently meeting the definition of a 'mineral working deposit'

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[9] Maps of Colliery tips owned and inspected by the Mining Remediation Authority (see 'details' section) (https://www.gov.uk/government/publications/disused-colliery-tips-owned-and-inspected-by-the-coal-authority).

[10] Welsh Minister for Climate Change, Written Statement: Coal Tip Safety: Category A, B and R disused coal tips (https://www.gov.wales/written-statement-coal-tip-safety-category-b-and-r-disused-coal-tips).

[11] See e.g. Information Paper for the proposed Bedwas Tips Reclamation Project at §1.23: *'ERI's proposal is to sell on these stockpiles of coal to heavy industry, the cement manufacturing industry and potentially energy production industry to help contribute to carbon reduction in the medium term'* (emp. add.) (https://erireclamation.co.uk/wp-content/uploads/2024/02/ERI_IP1_Project-Principles-and-Access-Roads_v1_with-Appendices.pdf).

[12] See, for example, the applications bearing the references 14/02187/WCCC, 11/02305/MINA, and 97/08/48/P in Doncaster.

[13] See, for example, the applications bearing the references 2/06304 and P/98/05156 in Caerphilly.

[14] See, for example, application reference 88/00507/DC in Glasgow.

under s.336 of the 1990 Act,[15] and removal of material from the coal tip being a 'mining operation' (in line with s.55(4)(a)(i) of the 1990 Act) and therefore comprising 'development' (per s.55(1) the 1990 Act) for which permission is needed (per s.57 of the 1990 Act).

9. An Incidental Coal Agreement (**"ICA"**) is a form of authorisation from the MRA authorising the extraction of coal *"where the removal of the coal is necessary but its removal is incidental to the main purpose of that activity."*[16] Such agreements may be considered necessary by the MRA in circumstances in which the requirement for a licence under s.25 of the 1994 Act does not apply (see s.25(2)(c)).

10. There is a concern that those looking to extract coal from coal tips may seek ICAs in addition to planning permission to authorise such schemes. The primary purpose of the enterprise would be claimed to be the remediation of a coal tip, with coal extraction being an incidental and subordinate activity to that primary purpose.

11. Those instructing have received advice as to whether such operations should fall within the scope of the ICA regime. We do not intend to rehearse that advice here, although for completeness, we agree that:

    a. In many cases, the scale of coal being removed as part of an 'incidental' operation undermines the claim that extraction or removal is really a subordinate activity. The guidance on application fees for ICAs includes bands of 0-100, 100-1,000, and over 1,000 tonnes, for example, whilst most extractive projects will seek extraction of over 100 times that highest band.[17] In short, large scale coal extraction is development of a different order to that which the ICA regime covers.

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[15] *"any deposit of material remaining after minerals have been extracted from land or otherwise deriving from the carrying out of operations for the winning and working of minerals in, on or under land"*.

[16] See the Guidance notes for applicants for incidental coal agreements, §1 (https://www.gov.uk/government/publications/incidental-coal-agreement/guidance-notes-for-applicants-for-incidental-coal-agreements).

[17] See the Guidance notes for applicants for incidental coal agreements, §3 (https://www.gov.uk/government/publications/incidental-coal-agreement/guidance-notes-for-applicants-for-incidental-coal-agreements).

b. Proposed remediation schemes which involve the extraction of substantial amounts of coal are more aptly (at best) dual purpose schemes, and it is difficult to see how coal extraction could be genuinely considered to be a subordinate or incidental activity, particularly where the remediation would likely not be pursued absent the opportunity to extract and sell that coal.

12. We add, however, that the MRA has stated that it does not consider coal tip extraction to be a 'coal mining operation' at all because coal tip extraction does not, in its view, meet the definition within s.65(1) of the 1994 Act. It is therefore unclear whether the MRA would consider that an ICA would be necessary to authorise such activity.

13. Accordingly, the extraction of coal from coal tips is, at least in the understanding of the MRA, not an activity for which a licence under s.25 of the 1994 Act is required. It appears that the MRA's position is that such extraction is not an activity which should or can be regulated via the ICA regime. This is despite the fact that the extraction of coal from coal tips is plainly a process by which very substantial volumes of coal may be supplied to market for use in combustive processes, contrary to the stated aims of the WMS and Press Release.

LEGAL FRAMEWORK

14. Section 65 of the 1994 Act provides the following definitions:

"'the Authority' means the Coal Authority;

[…]

'coal' means bituminous coal, cannel coal and anthracite;

'coal mine' <u>includes</u>—

(a) any space excavated underground for the purpose of coal-mining operations and any shaft or adit made for those purposes;
(b) any space occupied by unworked coal and;
(c) a coal quarry and opencast workings of coal;

'coal-mining operations' <u>includes</u>—

(a) searching for coal and boring for it,
(b) winning, working and getting it (whether underground or in the course of opencast operations),

(c) bringing underground coal to the surface, treating coal and rendering it saleable,
(d) treating coal in the strata for the purpose of winning any product of coal and winning, working or getting any product of coal resulting from such treatment, and
(e) depositing spoil from any activities carried on in the course of any coal-mining operations and draining coal mines,

and an operation carried on in relation to minerals other than coal is a coal-mining operation in so far as it is carried on in relation to those minerals as part of, or is ancillary to, operations carried on in relation to coal" (emp. add.)

15. Pursuant to section 25(1) of the 1994 Act, *"coal-mining operations"* to which that section applies are not to be carried out without a licence:

"(1) Subject to subsection (3) below, coal-mining operations to which this section applies shall not, at any time on or after the restructuring date, be carried on by any person except under and in accordance with a licence under this Part." (emp. add.)

16. Section 25(2) of the 1994 Act then provides for the kinds of 'coal mining operations' that will require a licence under s.25:

"(2) This section applies to any coal-mining operations in so far as they—

(a) consist in the winning, working or getting (with or without other minerals) of any coal, in the treatment of coal in the strata for the purpose of winning any product of coal or in the winning, working or getting of any product of coal resulting from such treatment;

(b) are carried on in relation to coal in any part of Great Britain, in relation to coal under the territorial sea adjacent to Great Britain or in relation to coal in any designated area; and

(c) are neither carried on exclusively for the purpose of exploring for coal nor confined to the digging or carrying away of coal that it is necessary to dig or carry away in the course of activities carried on for purposes which do not include the getting of coal or any product of coal." (emp. add.)

ANALYSIS

17. In understanding how appropriate legislative amendments may be enacted, it is useful to understand the extent to which the extraction of coal from coal tips is

presently regulated, by both the coal licensing and the planning systems. As such, we therefore address those regimes first below and then move onto proposed amendments to the 1994 Act in the following section, having identified some key issues within the existing statutory framework.

Is the extraction of coal tips a licensable activity under the 1994 Act?

18. As set out above, the present view of the MRA (articulated in its letter of 5 December 2024) is that coal tip extraction does not comprise a coal mining operation under s.65(1) of the 1994 Act, essentially because none of the criteria within (a)-(e) of that definition is satisfied. It follows, in the MRA's view, that such activities cannot fall to be licensed under s.25 of the 1994 Act.

19. We do not consider that it is clear cut that coal tip extraction falls outside of the definition of "*coal mining operations*" in s.65(1). The following factors provide support for a contrary view to that espoused by the MRA.

20. **First**, the MRA fails to address the fact that the definitions of both *"coal mine"* and *"coal mining activities"* in s.65(1) of the 1994 Act are inclusive rather than exclusive definitions. That is a deliberate legislative choice: where a word is defined exclusively to mean a closed list (for example, the definition of *"coal"*), that is achieved through specifying the word "*means*" the particular thing. A number of terms are not defined in this exclusive way. They are instead defined to "*include*" particular things (another example is that "'*'business' includes any trade or profession*"). In light of the definition being inclusive, "*coal-mining operations*" could additionally include operations encompassing coal tip extraction, given the matters that are expressly included.

21. **Second**, "*coal mining operations*" are not specifically limited to operations that are undertaken in a "*coal mine*", although that could plainly have been done. That may be because secondary operations, such as "*depositing spoil from any activities carried on in the course of coal-mining operations*", described in (e), are included in the definition. This shows that the definition of "*coal-mining operations*" is not just limited to extractive operations from a coal mine. As a matter of principle,

therefore, there is no difficulty with operations such as the reprocessing of spoil (and thus coal tip extraction) being included.

22. **Third**, focusing on the elements within the definition of "*coal mining operations*", coal tip extraction plainly amounts to the "*getting*" of coal. Criterion (b) of the definition of "*coal mining operations*" in s.65(1) encompasses the "*winning, working and getting*" of coal. We set out below why, in our view, case law supports that coal tip extraction falls within all of the elements of (b), but concentrating first on "*getting*", it is unclear why the MRA considers coal tip extraction would fall outside of "*getting*" coal. In our view, coal tip extraction plainly amount to "*getting*" coal.

23. The MRA perhaps understands the criteria within the definition of "*coal mining operations*" to be conjunctive, such that a process needs to include *"winning"* and *"working"* and *"getting"* coal in order for it to fall within (b). There are two answers to this: (1) as set out below, it appears coal tip extraction does amount to all the processes in (b), but, even if that is wrong, (2) it is not clear cut that all three elements must be fulfilled for the extraction to fall within (b).

24. Each of (a)-(e) of the definition of "*coal mining operations*" are linked by the conjunctive "*and*", but plainly (and rightly) are not treated as all needing to be fulfilled together in order for the definition to apply. The use of "*and*" is possibly one of the results of the definition being inclusive rather than exclusive. It is arguable that although (b) uses the conjunctive "*and*", that should be read as a disjunctive "*or*". It is not uncommon for Courts to hold that a conjunctive *"and"* should be interpreted in this disjunctive way. As a recent example, see *New Forest National Park Authority v Secretary of State for Housing, Communities and Local Government* [2025] EWHC 726 at [78]-[86] (holding that a duty to *"conserve and enhance"* National Parks is disjunctive and means *"or"* and citing another case holding the same in relation to other similar legislation[18]).

[18] See *R(Great Trippetts Estate Limited) v SSCLG* [2010] EWHC 1677 (Admin) at §10 in which the conjunctive *"and"* was interpreted as the disjunctive *"or"* in the context of the duty under s.85(1) of the Countryside and Rights of Way Act 200 to *"conserve and enhance"* the natural beauty of an area of outstanding natural beauty (referenced in *New Forest* at §78).

25. Furthermore, the disjunctive interpretation fits best with other aspects of the 1994 Act. We note that under s.25(2)(a), a *"coal-mining operation"* which requires a licence may be one which consists in the *"winning, working or getting* […] *of any coal."* If (b) is read conjunctively, that results in an inconsistency in the statutory language. On that reading, the 1994 Act purports to allow for the possibility of a coal-mining operation for 'getting' coal, for which a licence is required, in circumstances where – at least on the MRA's potential reading of s.65 – merely getting (and not also winning and working) coal is not a coal-mining operation at all.

26. It may be that the MRA considers that coal tip extraction falls outside of the bracketed text in (b) – "*whether underground or in the course of opencast operations*" – and reads this to limit the working, winning and getting of coal to just those two circumstances. That is not the necessary implication of the bracketed words. The phrase could equally be read as providing examples of where the winning, working and getting might take place, but not as exclusive.

27. Accordingly, in our view, it is sufficient for coal tip extraction to fall within (b) of the definition of "*coal mining operations*" for it to amount to the "*getting*" of coal.

28. **Fourth**, even if (b) of the definition is conjunctive, coal tip extraction is arguably the "*winning, working and getting*" of coal, in light of case law interpreting the terms *"winning"* and *"working"* in cases concerning mineral extraction. In *English Clays Lovering Pochin Ltd v Plymouth Corporation* [1974] 27 P&CR 447 at 450-451, Russel LJ held that to *"'win' a mineral is to make it available or accessible to be removed from the land, and to 'work' a mineral is (at least initially) to remove it from its position in the land."* That analysis built on the earlier interpretation of the term "*winning*" in *Lewis v Forthergill* [1869] 5 Ch D103, in which Lord Hatherley, LC confirmed that such an activity arose where *"you have got the coal in such a state that you can go on working on it"*, which was itself approved in *Lord Rokeby v Elliott* [1879] 13 Ch D 277 at 279. The analysis in *English Clays*, drawing on that in *Lord Rokeby*, was approved by the Court of Appeal in *Beakflow Industries Ltd v SSCLG* [2009] EWCA (Civ) 206 at §29. It is not clear whether the MRA is aware of this case law.

29. Whilst these cases were not specifically concerned with interpreting the words *"winning"* and *"working"* in the 1994 Act, they are nevertheless relevant. In each instance the Court sought to clarify the plain meaning of those terms in the context of the extractive processes with which they were concerned. It is thus likely a Court interpreting the 1994 Act would consider those authorities to provide helpful guidance as to how the relevant terms should be interpreted in the context of the 1994 Act.

30. Applying such guidance, it is obvious that coal tip extraction comprises both winning and working: that process involves the coal within a coal tip being separated from other waste product therein to be made available (winning), and also later removal of coal from its position on the land (working). It also plainly amounts to "*getting*" coal. Accordingly, the 'test' for whether coal tip extraction is a "*coal mining operation*" under s.65(1) of the 1994 Act is met, as it falls within (b) of the definition.

31. **Fifth**, there is no technical difficulty with coal tip extraction falling within the meaning of *"winning, working and getting*" of coal, given that the Welsh Government's *Minerals technical advice note (MTAN) Wales 2: coal* (January 2009)[19] defines the term "*coal working*" as "*development consisting of the winning and working of minerals, and includes surface coal working, recovery of coal from tips and underground coal working*" (emp. add.).[20] This is in line with the settled case law discussed above.

32. In all the circumstances, it is thus arguable that interpreting s.65(1) in context it would be appropriate to consider an operation such as recovery of coal from tips, which at the very least results in "*getting*" coal, is a *"coal-mining operation"* and that a licence is accordingly required for such recovery/extraction under s.25(2). Such an approach has intuitive appeal and would give effect to the language of s.25(2)(a) of the 1994 Act. The purported classification of coal tip extraction as

[19] https://www.gov.wales/sites/default/files/publications/2018-11/minerals-technical-advice-note-mtan-wales-2-coal.pdf.

[20] It is unfortunate that the definition of "*coal-mining operations*" is circular, in that it includes that very phrase within the definition.

not being a *"coal-mining operation"* is itself unintuitive given the essential nature of such an enterprise (e.g. the proposed Bedwas Tips Reclamation Project, which proposes to remove 468,000 tonnes of coal from the coal tip there[21]).

33. **Sixth**, that unintuitive impression is amplified when the regulation of coal tip extraction by the planning system is considered.

34. Coal tip extraction falls within the definition of a 'mining operation' within the 1990 Act (per s.55(4)(a)(i) of the 1990 Act) Act because it involves the *"removal of material [...] from a mineral-working deposit."* Obviously, the material being removed here includes coal, so under the 1990 Act, planning permission would be required because coal is extracted as part of a 'mining operation'. As mentioned at §31 above, this is also reflected in the Welsh Technical Advice Note. As understood by the MRA, however, this would not be considered a *"coal-mining operation"* under the 1994, meaning the planning and licensing regimes appear to reach different conclusions as to whether coal tip extraction is a coal-mining operation.

35. These competing interpretations have not, as far as we are aware, been tested in the courts in the context of the 1994 Act. Given this advice is aimed at the question of what statutory amendments should be proposed to give effect to the WMS and the Press Release, further discussion of the ambiguities and oddities in the 1994 Act is unhelpful. It provides important context, however, that on one view coal tip extraction is already a licensable activity. It also shows that there is a need to improve the clarity of the legislation.

Should the licensing regime extend to the extraction of coal tips, with the effect that such licences may be 'banned' thereby preventing coal tip extraction?

36. It is arguable that a coal licence is already required for coal tip extraction. In any event, it is obvious that the extraction of coal tips may result in the supply of substantial amounts of coal. This is precisely the issue that the Government has repeatedly committed to tackling.

[21] See the Information Paper at §3.5 (p.10) (https://erireclamation.co.uk/wp-content/uploads/2024/02/ERI_IP1_Project-Principles-and-Access-Roads_v1_with-Appendices.pdf).

37. As such, the forthcoming amendment to the 1994 Act presents either an opportunity for the Government to clarify the position that coal tip extraction was always intended to be an activity for which a coal licence is required, or a chance to avoid a 'loophole' whereby substantial amounts of coal could be supplied in the UK if coal tip extraction is not included in the forthcoming ban on coal licences.

38. Were coal tip extraction to be permitted to take place as an unlicensed activity, an extractive coal industry in the UK could continue, thereby frustrating the Government's net zero ambitions and the desire to focus on the transition to jobs in clean energy (per the WMS). That is contrary to the Government's intention.

39. There is a relatively simple mechanism by which this issue can be addressed: the Government can amend the licensing regime to clarify that coal tip extraction requires a licence, and then (as with proposed with 'ordinary' coal extraction) ban the provision of such licences.

How the Coal Industry Act 1994 could be amended

40. The following relatively minor changes in the 1994 Act would result in coal tip extraction being expressly confirmed as an activity for which a licence is required. Insertions are underlined and text to be removed is struck through:

a. The definition of *"coal mining operations"* within s.65 of the 1994 Act should expressly include coal tip extraction in the following way:

> *""coal-mining operations" includes—*
>
> *[…]*
>
> *(b) winning, working ~~and~~ or otherwise getting ~~it~~ coal (whether underground, ~~or~~ in the course of opencast operations, or in the course of obtaining coal deposited as or as part of waste material from coal mining operations)*
>
> *[…]"*

b. The scope of a 'coal operation to be licensed' should explicitly include coal tip extraction within s.25 of the 1994 Act as follows:

> *"(2) This section applies to any coal-mining operations in so far as they—*
>
> *(a) consist in the winning, working or getting (with or without other minerals) of any coal (including coal deposited as or as part of waste material from coal mining operations), in the treatment of any such coal in the strata for the purpose of winning any product of coal or in the winning, working or getting of any product of any such coal resulting from such treatment*
>
> […]"

41. If the above changes were adopted then coal tip extraction would expressly and unarguably comprise a coal mining operation to which s.25 applies, meaning that it is an activity that *"shall not, at any time on or after the restructuring date, be carried on by any person except under and in accordance with a licence under this Part"* (s.25(1) of the 1994 Act).

42. A ban on the issue of licences under the 1994 Act would therefore prevent the extraction of coal tips from continuing. This may be effected by amendment to s.26 (e.g. *"the Authority[22] shall not grant a licence under this Part"*) or by other means.

43. Many of the coal tips are found in Wales, it is therefore important to ensure that any amendment to the licensing regime covers licences in that area. To that end, it is worth highlighting that s. 26A of the 1994 Act provides for a two-stage licence approval process in Wales, where any licence issued by the Authority concerning territory in Wales will only have effect once approved by the Welsh Ministers:

> *"(1) If or to the extent that a licence under this Part authorises coal-mining operations in relation to coal in Wales, it shall have effect only if the Welsh Ministers notify the Authority that they approve the authorisation"* (emp. add.)

[22] The relevant *"Authority"* is now the MRA and not the Coal Authority. The definition within s.65 of the 1994 Act should be updated accordingly.

44. In essence, as proposed above, the second stage of the approval process in Wales would never be reached on the basis that the first stage (approval of a licence by the Authority) would be prohibited. In our assessment this does not impinge on the authority conferred to the Welsh Ministers by s.26A of the 1994 because the power to exercise the 'final say' on an application is expressly provided to be contingent on a licence being granted by the Authority in the first instance.

45. In practice, this is a position which is likely to be received favourably by the Welsh Ministers, given it is in line with their existing policy. Paragraph 5.10.14 of Planning Policy Wales (ed. 12) provides that *"proposals for opencast, deep-mine development or colliery spoil disposal should not be permitted*," (emp. add.) admitting of the possibility of such permissions only in *"wholly exceptional circumstances."*[23]

46. Further, the Senedd is currently considering the Disused Mine and Quarry Tips (Wales) Bill, which includes provisions concerning the remediation and stability of coal tips. A criticism of the Bill has been that it may inadvertently stimulate re-mining of coal.[24] The Welsh Ministers' response confirms that the Bill *"does not include any proposals that would allow for or enable generic remediation or the recovery of coal for commercial purposes,"*[25] and that extraction for commercial combustion purposes should be avoided.[26]

47. Similarly, the Deputy First Minister has confirmed that a recommendation that *"the Welsh Government's coal policy will prevent any coal extracted during remediation work from being sold for the purposes of burning"* should be accepted in principle, noting that Welsh policy *"presumes against combustion, and I cannot*

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[23] Planning Policy Wales, Edition 12 (Feb. 2024) (https://www.gov.wales/sites/default/files/publications/2024-07/planning-policy-wales-edition-12.pdf)
[24] Question of Janet Finch-Saunders at [53] (https://record.senedd.wales/Committee/15219#C661457).
[25] Answer of Huw Irranca-Davies at [54] (https://record.senedd.wales/Committee/15219#C661457).
[26] Answer of Huw Irranca-Davies at [61] (https://record.senedd.wales/Committee/15219#C661457).

envisage a scenario in which the extraction and burning of coal will arise as a result of the Bill."[27]

48. Allowing for the proposed amendments to the licensing regime as set out above would provide further comfort that coal extraction from coal tips will not take place (as per accepted Recommendation 4 of the Climate Change, Environment and Infrastructure Committee in Wales) and meet the concerns raised about the forthcoming Bill.

Alternative approach but fundamental issue

49. There are, of course, other legislative measures that could be adopted via amendment to the 1994 Act (including more broad repeal and replacement) or otherwise to achieve the Government's stated goal of banning coal licences (as expressed in the WMS and press release above). This advice has focussed on potential amendments to the 1994 Act on the basis that that is how the Government indicated it would enact the proposed ban. The most important thing to emphasise, as we have above, however, is that for such a ban to be truly effective in restricting the availability of coal and thereby promoting the Government's environmental objectives, coal tip extraction should expressly be included as a banned practice.

CONCLUSION

50. A summary of our advice is given in §2 above. Please do not hesitate to contact us if anything requires clarification, or if we can be of further assistance.

31 July 2025

ESTELLE DEHON KC and ROWAN CLAPP

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[redacted]

[27] See the response of the Deputy First Minister to the Stage 1 Report on the Disused Mine and Quarry Tips (Wales) Bill, Recommendation 4 (p.2).

Mining Remediation Authority

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[redacted]

Response sent via email [redacted]

5 December 2024

Dear [redacted]

Thank you for your email of 7 November following our reply to your query regarding Bedwas Tips. I am sorry that you didn't find our last response adequately answered your questions, specifically your query around the legalisation we operate within when a coal mining licence is required.

Before answering your points, I would like to advise you that on 28 November, we changed our name to the Mining Remediation Authority to better recognise our work.

The licensing of coal mining operations is detailed under Part II of the Coal Industry Act 1994 and I have referred to sections 25 and 26 in my response as these being particularly relevant to your query.

The Coal Industry Act 1994 does not directly state that a coal mining licence is needed to recover coal from tipped mining waste. However, sections 25 and 26 are significant because they deal with licensing for coal-mining operations, as well as the underpinning definitions in section 65 which is important when interpreting the legislation.

Within section 65 it does state the definition of coal-mining operations, which is referred to in both sections 25 and 26, but also the licensing duties within section 2, which are:

"coal-mining operations" includes—
(a) searching for coal and boring for it,
(b) winning, working and getting it (whether underground or in the course of opencast operations),
(c) bringing underground coal to the surface, treating coal and rendering it saleable,
(d) treating coal in the strata for the purpose of winning any product of coal and winning, working or getting any product of coal resulting from such treatment, and

The Mining Remediation Authority is the trading name of the Coal Authority ('TCA') established pursuant to Section 1 of the Coal Industry Act 1994, of 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire, NG18 4RG. The Coal Authority remains the legal name of the Authority.

(e) depositing spoil from any activities carried on in the course of any coal-mining operations and draining coal mines.

The recovery of coal from tipped mining waste does not fulfil any of the definitions of a coal-mining operation, referred to above, and therefore the application of section 25 or 26 does not apply. This is also supported by the definition of a coal mine which is:

"coal mine" includes—
(a) any space excavated underground for the purposes of coal-mining operations and any shaft or adit made for those purposes,
(b) any space occupied by unworked coal, and
(c) a coal quarry and opencast workings of coal.

As the recovery of coal from tipped mining waste does not satisfy the definitions of a coal-mining operation and it is not supported by the definition of a coal mine, insofar as tip washing does not constitute a space excavated underground, a space occupied by unworked coal or a coal quarry or opencast working of coal, we do not have any power to grant a coal mining licence for such an activity.

As the tip is mining waste it is covered under the Mines and Quarries (Tips) Act 1969. A tip was classed as a "disused tip" if it was no longer active and the colliery with which it was associated had been abandoned. Disused tips are now termed abandoned tips under The Mines Regulations 2014.

Local Authorities have powers under the Mines and Quarries (Tips) Act 1969 (as amended by The Mines Regulations 2014) to undertake inspections of any tip within their area, and to carry out (or serve notice on tip owners to carry out) remedial works where any instability, constitutes or is likely to constitute a danger to members of the public.

The local authority can serve notice to the owner (section 14 (b)) to any other person who has an estate or interest, in the land on which the tip is situated, or had such an estate or interest at any time within the period of 12 years immediately preceding the date of the service of the notice on the owner of the tip.

British Coal sold off various parcels of land prior to 1994. This included Bedwas Tip. This was more than 12 years ago and the Mining Remediation Authority has no legal or property responsibility for the tip.

Local authorities are the primary authority for tip washing schemes through planning permission and enforcement, other environmental permits will be required from Natural Resource Wales. The Mining Remediation Authority will, if requested by the local authority or Welsh Government, provide advice on the proposed scheme but we have no statutory role from a licencing or planning position.

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We appreciate that this is an important issue and that a planning application is due to be submitted by the developers. I would suggest that if you have concerns or objections about the developer's plans that you raise them with the Local Planning Authority who are the decision maker in this process.

I hope this clarifies our position on the points you have raised and thank you for contacting us again, please do get in touch if you have any further questions.

Yours sincerely

[redacted]

[redacted]

Operations and Sustainability Director

The Mining Remediation Authority is the trading name of the Coal Authority ('TCA') established pursuant to Section 1 of the Coal Industry Act 1994, of 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire, NG18 4RG. The Coal Authority remains the legal name of the Authority.

Explainer

Proposed amendment for the UK coal licencing ban

Summary

The UK Government's proposed coal licencing ban could effectively prevent any type of new coal extraction in the UK. But in its draft intention, the legislation would not achieve its aim of prohibiting new coal mining projects. This is because a ban of coal mining licences would only prevent the extraction of coal from virgin seams. The danger here is that millions of tonnes of coal are located outside of virgin seams, in the 5,000 coal tips throughout the UK's former mining areas.

With companies vying to extract coal from disused coal tips, it is important that this type of coal extraction is also prevented in the coal licencing ban.

Proposed change to the coal licence ban

The extraction of coal from coal tips, for commercial purposes, should be added to the face of the proposed legislation, by amending the Coal Industry Act 1994. The definition of "coal mining operations" within s.65 of the 1994 Act should expressly include coal tip extraction in the following way:

"coal-mining operations" includes— [...]

(b) winning, working and or otherwise getting it coal (whether underground, or in the course of opencast operations, or in the course of obtaining coal deposited as or as part of waste material from coal mining operations) [...]"

The scope of a 'coal operation to be licensed' should explicitly include coal tip extraction within s.25 of the 1994 Act as follows:

"(2) This section applies to any coal-mining operations in so far as they—

(a) consist in the winning, working or getting (with or without other minerals) of any coal (including coal deposited as or as part of waste material from coal mining operations), in the treatment of any such coal in the strata for the purpose of winning any product of coal or in the winning, working or getting of any product of any such coal resulting from such treatment [...]"

This amendment is necessary to prevent a potential expansion in the industry of coal mining from coal tips across the UK, but predominantly in Wales. Some of Wales' 2,573 disused coal tips present risks to the communities around them. This amendment would not prevent the removal of these tips as this could be approved with planning permission and an incidental coal agreement from the Mining Remediation Authority (MRA). The amendment would only prevent the commercial extraction of coal from coal tips.

Bolstering piecemeal policies across the nations

At present there are multiple policies across the UK which affect coal extraction in different areas.

UK-wide

The MRA owns all the coal in virgin seams across the UK. Companies must obtain a licence from the MRA if it wishes to extract this coal. The licencing ban will remove the licencing function from the MRA, resulting in no further licences being awarded.

Coal within coal tips is owned by the landowner, who only needs permission from local authorities to extract that coal. Each planning authority will be guided by each devolved nation's planning regime which differ between jurisdictions and can be interpreted differently by local authorities.

The inclusion of the suggested amendment as part of this legislation would strengthen each jurisdiction's commitments to prevent coal extraction. It would remove the ability for mining companies to exploit exceptions in devolved policies for commercial gain.

Northern Bedwas coal tip, Caerphilly, Wales - An estimated 1.1 billion tonnes of coal could be contained in the UK's 5,000 coal tips. If all this coal were to be extracted and burned, it would produce over 3 billion tonnes of CO2.

THE NATIONS

SCOTLAND

The Scottish Government adopted a formal position of no support for future coal extraction in 2022 and enforces that in planning policy (SPF4). The difference between Scotland and Wales is the sheer amount of coal tips in Wales and the ongoing burden of maintenance costs for tip owners. These are factors that are not equivalent in scale, in Scotland.

While the current Scottish Government is opposed to coal extraction, future Governments could reverse that policy.

WALES

Wales – Planning Policy Wales and the Welsh Government's Coal Policy "presume against" coal extraction, with exemptions for "wholly exceptional circumstances". One such exemption allows extraction for the "safe winding-down of mining operations or site remediation" – which could be taken advantage of by mining companies who would seek to apply that exception in order to extract coal for commercial gain.

The Coal Policy is subject to the interpretation of the Minister of the day. The upcoming Senedd elections could result in weaker application of the policy, or a shift in policy towards coal under a different Welsh Government.

ENGLAND

The National Planning Policy Framework (NPPF) advises against planning permission being granted for coal extraction unless proposals are "environmentally acceptable" or they provide "national, local or community benefits which clearly outweigh its likely impacts". These caveats could also be taken advantage of by mining companies who could gain support for employment opportunities at the expense of national climate commitments. The failed attempt to open the West Cumbria coal mine is one such example where the project gained planning permission from the local authority, partially on the grounds of environmental acceptability.

CASE STUDY 1

Bedwas, Caerphilly

Caerphilly County Borough Council spent £1.8 million on safety maintenance works across two coal tips over just two years (2021-23). The local planning authority is set to consider a private sector proposal to mine two of the tips close to the town of Bedwas in Caerphilly.

This project aims to clear the coal tips for free, in return for the commercial rights to sell the coal contained within those tips. The company, ERI Ltd, is proposing to extract a total of 468,000 tonnes of coal from the tips. This would drive further climate change with a potential 1.3 million tonnes of CO2 emissions if all the coal were to be burned. The project would also devastate the coal tips' natural regeneration over the past 30 years since it was abandoned, and endangers the Sirhowy Valley Country Park bordering one of the tips.

ERI Ltd is seeking to extract coal from the two tips with the highest coal content, leaving a coal tip which presents the biggest safety risk to the community untouched. If permitted, this could set a dangerous precedent for companies seeking to mine the most profitable coal tips across Wales rather than those which pose the biggest risk to the communities surrounding them.

The Welsh Government's Coal Policy has not dissuaded the company, ERI Ltd, from continuing with its plans to extract coal from the tips. As community opposition to the project grows, the company clearly considers the project to be exempt from the Coal Policy on at least one of the grounds.

Sirhowy Valley Country Park, early Spring

CASE STUDY 2

Hesley Woods, South Yorkshire

In 2013, Sheffield City Council approved a plan for a company, RecyCoal, to extract coal from a coal tip for commercial purposes. The project aimed to extract a total of 395,000 tonnes of coal from the tip which, if burned, would have emitted over one million tonnes of carbon dioxide.

The coal tip is situated between the M1 and the community of Chapeltown and had a significant impact reducing noise levels and pollution from reaching the closest houses to the motorway. Despite local opposition, planning permission was granted for the project and the company swiftly felled all of the trees and vegetation on the site – including 40 year old oaks and areas of significant biodiversity.

Almost immediately after this destruction, the price of coal fell; making the project economically unviable. With the price of coal being driven partly by international markets, there is every chance that this proposal and extraction from other coal tips, could again be economically viable.

Local planning authorities have previously given planning permission for this project and other similar projects near Barnsley, Doncaster, Mansfield and Rotherham. If another proposal attracts sufficient demand from customers, many more companies could be given planning permission to extract coal from coal tips across England's former coal fields.

While there is no active planning applications for mining coal from coal tips, anywhere in the UK, now is the time to ban this type of coal extraction.

CONTACT

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Coal Action Network Ltd,
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London, E1 5QJ

Remaining Hesley Woods

Cyfoeth Naturiol Cymru
Natural Resources Wales

Our Ref: CX25-077

Llyr Gruffydd MS
Chair, Climate Change, Environment
and Infrastructure Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

By email: Seneddclimate@senedd.wales

13 August 2025

Dear Llyr,

Ffos-y-Fran

Thank you for your letter of 3 July regarding the allegations of toxic waste disposal at Ffos-y-Fran.

We appreciate the serious nature of the allegations, and I have set out our answer to each question in turn below. If we can help with any further information, please don't hesitate to let me know.

What is the status of NRW's investigation into the alleged illegal waste disposal activities at the Ffos-y-Fran site?

NRW has received allegations regarding alleged waste disposal activities at Ffos-y-Fran. As yet there have been no formal submission of allegations or incidents reported to NRW. We initiated an initial enquiry relating to the Nation Cymru allegations as a consequence of the media reports.

What is the scope and timeline for this work?

The scope and timeline of our investigation will depend on whether sufficient and actionable evidence is available to us. At this time, we do not wish to prejudice any potential long-term enforcement outcome.

When was NRW first made aware of these allegations?

Between early 2022 and mid 2023 NRW received a small number of information reports regarding potential illegal activity at Ffos y Fran. These were reviewed at the time by

officers from NRW but were not substantiated. They will be revisited in light of the allegations made in the Nation Cymru article dated 14 May 2025.

Has NRW previously raised any concerns with Merthyr (South Wales) Ltd in relation to environmental compliance or waste management practices?

The operator's permit compliance performance can be found on our public register. This relates to Water Management compliance. We have had no significant compliance concerns relating to their environmental performance in relation to their permit. We are still involved with the site and working with our partners as part of the technical working group relating to the ongoing long-term remediation of the site.

What steps have been taken to verify the allegations raised by the whistleblower concerning the disposal of hazardous materials, including battery acid?

We cannot outline specific steps and progress as we do not wish to prejudice any potential long-term enforcement outcome, but we have initiated preliminary enquiries. As with all reports of non-compliance or potential illegal activities, we triage the information and will act accordingly. If anyone has further information on the matter, we would request reports are made direct to NRW via the incident helpline in the first instance (for further details please see our website).

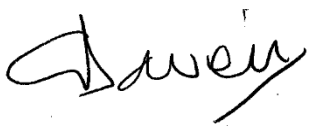
As the Committee is probably aware, whistleblower reports are not typically disclosed and by their nature are not a matter for public discourse to protect the anonymity of the whistleblower.

Will NRW commit to publishing the findings of its investigation and keeping the public and relevant stakeholders informed of progress?

We will commit to publishing our investigation findings. The timing of this will depend on the progress of the investigation. As with all investigations, we make information public (where relevant) after the case has been concluded or the investigation has been closed. As with all similar situations, we don't wish to prejudice any current or future investigations.

It is worth noting our Enforcement & Sanctions Policy (Natural Resources Wales / Enforcement and sanctions policy) and that for investigations to proceed, we must have sufficient and applicable evidence. If anyone has further information on this matter, we would request reports are made direct to NRW via the incident helpline.

Yours sincerely,



Ceri Davies
Prif Weithredwr Dros Do
Interim Chief Executive Officer

Croesewir gohebiaeth yn Gymraeg a byddwn yn ymateb yn Gymraeg, heb i hynny arwain at oedi.
Correspondence in Welsh is welcomed, and we will respond in Welsh without it leading to a delay.

Rebecca Evans AS/MS
Cabinet Secretary for Economy, Energy and Planning
Ysgrifennydd y Cabinet dros yr Economi, Ynni a Chynllunio

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-RE-1879-25

Llyr Gruffydd MS
Chair of the Climate Change, Environment and Infrastructure Committee
Senedd Cymru
SeneddClimate@senedd.wales

Cc: Mike Hedges MS
Chair of the Legislation, Justice and Constitution Committee
Senedd Cymru
SeneddLJC@senedd.wales

11 August 2025

Dear Llyr,

Thank you for the Climate Change, Environment and Infrastructure Committee's report on the Legislative Consent Memorandums[1] for the Planning and Infrastructure Bill. I have set out below my position with regards to the matters raised in the report.

NSIP pre-application

I understand the concerns raised by the Committee and the stakeholders who have written to you in relation to the proposed amendments to the pre-application process for NSIPs.

Pre-application engagement with all stakeholders is a vital part of consenting, ensuring that our developments are shaped in a way that takes account of the needs of communities and our environment. The legislation I laid to implement the Infrastructure (Wales) Act 2024, shows my commitment to having a robust system which ensures local communities and other stakeholders are fully engaged on developments at all stages of the process.

The relevant provisions within the Planning and Infrastructure Bill relate to the process for NSIPs under the Planning Act 2008 and are not within the legislative competence of the Senedd. However, where a development is in Wales, we want to ensure the process is equally front loaded. Given the potential for negative effects, I wrote to the UK Government on these amendments seeking reassurance on pre-application engagement. Matthew Pennycook MP, Minister for Housing and Planning, responded on 2 June 2025. This letter provides the rationale for the change and confirms front-loaded engagement and consultation remains central to their approach, which is also reflected in their written statement: https://questions-statements.parliament.uk/written-statements/detail/2025-04-23/hcws594.

[1] Legislative Consent Memorandum and supplementary Legislative Consent Memorandum (No.2).

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Although we have taken a different mechanism in Wales to ensure pre-application engagement results in quality applications, I am reassured that all stakeholders will continue to influence applications at an early stage. On this basis, I am content to support the provision.

NRF cross border issues

I am aware of the concerns raised by stakeholders about the potential cross border implications of the NRF. My officials are working with UK Government officials to consider amendments to the Bill to mitigate this.

HRA territorial extent

My officials have raised the issue of the territorial application of Schedule 4 with UK Government who have advised this was an omission. They have confirmed that they will amend the next iteration of the Explanatory Notes for Schedule 4 to make clear that, as with the other provisions in Part 3, the territorial extent of the Schedule is England and Wales, but it applies to England only.

I have also copied this letter to Mike Hedges MS, Chair of the Legislation, Justice and Constitution Committee, as these matters may also be of interest to that Committee.

Yours sincerely,

Rebecca Evans AS/MS
Cabinet Secretary for Economy, Energy and Planning
Ysgrifennydd y Cabinet dros yr Economi, Ynni a Chynllunio

Rebecca Evans AS/MS
Cabinet Secretary for Economy, Energy and Planning
Ysgrifennydd y Cabinet dros yr Economi, Ynni a Chynllunio

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-RE-1879-25

Llyr Gruffydd MS
Chair of the Climate Change, Environment and Infrastructure Committee

Cc: Mike Hedges MS
Chair of the Legislation, Justice and Constitution Committee

5 September 2025

Dear Llyr,

I wrote to you on 11 August following the Climate Change, Environment and Infrastructure Committee's report on the Legislative Consent Memorandums for the Planning and Infrastructure Bill.

In that report you raised concern over the proposed amendments to the pre-application process for Nationally Significant Infrastructure Projects (NSIPs) and felt it difficult to reach a judgement as you have not seen the UK Government's guidance. The UK Government is currently undertaking a consultation on streamlining infrastructure planning. This includes proposed guidance on consultation and engagement following the removal of statutory pre-application consultation requirements for NSIPs. I encourage all stakeholders to participate in the consultation process.

Consultation on streamlining infrastructure planning - GOV.UK

I have also copied this letter to Mike Hedges MS, Chair of the Legislation, Justice and Constitution Committee as these matters may also be of interest to that Committee.

Yours sincerely,

Rebecca Evans.

Rebecca Evans AS/MS
Cabinet Secretary for Economy, Energy and Planning
Ysgrifennydd y Cabinet dros yr Economi, Ynni a Chynllunio

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Agenda Item 4.7

From: M Davies
Sent: 19 August 2025 22:06
To: Climate Change, Environment, and Infrastructure Committee | Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith <SeneddClimate@senedd.wales>
Subject: Urgent Look At Renewable Energy Figures Required

Dear Llyr Gruffydd, Janet Finch-Saunders, Delyth Jewell, Julie Morgan, Carolyn Thomas, Joyce Watson

I am writing to you, as members of the Climate Change, Environment, and Infrastructure Committee, with reference to all the renewable energy developments throughout Wales.
The Homes supplied estimation figures have been quoted by officials and the media, as a way, to try and justify, to the public, the level of countryside and indeed peat destruction for which these developments are responsible. However, none of these developments can meet anywhere near the homes supplied estimations they are claiming.

Homes supplied estimations
The estimations are based on the average homes energy consumption for electric. But the energy **supply to the homes is produced from a number of different sources such as gas Fire power stations**. So the amount of energy produced by (onshore) wind, in the average homes supplied, only makes up a small part of that supply figure. This means that the **developers** estimations are not accurate as they are **implying to supply homes solely**. If they supply homes solely from their own energy, this results in a far lower end figure.

Calculations
Onshore Capacity (MW) :- The total installed capacity of all onshore wind farms.
Load Factor
The load factor is the **actual output** of a turbine **benchmarked against its theoretical minimum output** in a year.
The load factor is calculated by RenewableUK as a rolling average of the past five years using data (on an Unchanged Configuration Basis) from the Digest of UK Energy Statistics published by the Department for Energy Security and Net Zero, using stats 2019-2023 (released in July 2024):

- onshore wind: 26.34%
- offshore wind: 40.58%
- DESNZ "all wind" (onshore + offshore): Average = 30.82%

Homes Powered Equivalent
Calculated using the most recent statistics from DESNZ showing that annual GB average domestic household consumption is **3,239kWh** (as of January 2024, updated annually).RenewableUK calculates homes powered as: number of megawatts installed, multiplied by DESNZ's "all wind" (onshore + offshore) **load factor expressed as a fraction of 1**, multiplied by number of hours in a year, divided by average annual domestic electricity consumption expressed in Mwh.
To Demonstrate, I have used 3 examples of Figures for proposals near me. I finish on 5 examples of the many developments approved that have inflated, inaccurate figures :-
WIND
DNS/3276725 for (RES) Wind farm
So The 55Mw wind farm claims to supply estimated 55,000 homes...

Onshore load Factor Calculation using 26.34%%
55mw x (0.2634 onshore load factor) x (8760 Hours per year) = 126906.12
divided by 3.239Mwh (average annual consumption) = 39180.648 homes
Some searches reveal (onshore alone) contributed to only 12.3% energy in 2024.
39180 Homes x 12.3% (onshore wind produced energy) = **4,819 Homes Supplied estimation** (not 55,000 Homes estimation claimed to supply)

CAS-02114-J9X4S6 for (Pennant Walters) Trecelyn Wind Farm
The 4 turbine 16.8Mw (Actual Rating) Wind Farm developer claims to supply a estimated 13,135 Homes.
Using the above calculation, 16.8 Mw and (Onshore load factor)
16.8Mw x (0.2634 onshore load factor) x (8760 Hours per year) = 38764.05
divided by 3.239Mwh (average annual consumption) = 11,967.90 homes
11967 x 12.3% (onshore wind produced energy) = **1,471 homes supplied estimation**

Also transmission losses (up to 17%) would reduce those numbers.

SOLAR
Solar is much the same in this country and due to the nature of the British weather, its debatable if they ever repay their carbon foot print in the UK.

CAS-02446-R8X8W2 for (Cenin) Solar Farm
Here is the Solar Farm Calculation which claim an estimated 12,500 Homes from 35Mw

Using:- UK Solar capacity Factor and Calculation for solar Annual Energy Output including capacity factor of 10%

The **capacity utilization factor** refers to the ratio of the **actual output** of a solar plant compared to its rated or installed capacity over a period of time
PV panels have a **capacity factor** of around **10%** in the **UK** climate. Note:- Nothing produced at night in dark & minimal production on winter days or downtime and Maintenance.

Calculation:-
1. Calculate Annual Energy Output:
Convert the solar farm's capacity to kilowatts: 35 MW = 35,000 kW
Calculate the total energy produced in a year at full capacity: 35,000 kWh x 8760 hours/year = 306,600,000 kWh
Apply the capacity factor (10%): 306,600,000 kWh x 10% = 30,660,000 kWh
2. Divide by Average Household Consumption:
Divide the total energy output by the average household consumption: 30,660,000 kWh divided by 3239kwh annual consumption per home = 9465 homes

According to the DESNZ average household electric consumption data for 2024, solar energy contributed 5.2% , so 9465 x 5.2% = **492 homes supplied Estimation**

((But if you **can only use 80% of the batteries storage without damaging them**)) (80% of 35MW) =28000kW x 8760=245,280,000 kWh

245,280,000 x 10% (capacity Factor) = 24,528,000 kWh24,528,000kWh divided by 3239 kWh annual consumption per home = 7572 Homes 7572 x 5.2% = **393 homes Supplied Estimation** Also up to **as much as 17% power losses can arise from transmission losses** through cables**.** Which could result in (393 Homes – 17%) **Only 326 Homes supplied Estimation**

This has resulted in Developments being passed on an inaccurate basis, For example :-
(See attached screenshot of developer estimation figures)

DNS/3244499 - Garn Fach **Wind Farm** EDF Energy:-
In this example I will use their average household consumption figure of 3772 Kwh the developer has used.
So The 85Mw wind farm claims to supply estimated 69,000 homes...
Onshore load Factor Calculation using 26.34%%
85mw x (0.2634 onshore load factor) x (8760 Hours per year) = 196127.64
divided by 3.772Mwh (average annual consumption) = 51995.66 homes
Some searches reveal (onshore alone) contributed to only 12.3% energy in 2024.
51995 Homes x 12.3% (onshore wind produced energy) = **6,395 Homes Supplied estimation** (not 69,000 Homes estimation claimed to supply) Minus transmission losses.
Here's some others passed (I have used 3239Kwh for the average annual consumption figure-
DNS/3279676 - Craig -y- Perchych (Cyp) **Solar Farm** (10MW Developer estimates 5300 Homes) **Actual 112 Homes supplied Estimation** (@ 80% battery) or **92 Homes** if 17% transmission losses were to be Factored in.
DNS/3270299 - Mynydd Carn - y - Cefn **Wind Farm** (34MW Developer estimates 21,084 Homes) **Actual 2979 Homes supplied Estimation** or **2472 Homes** if 17% transmission losses were to be Factored in.
DNS/3251545- Bretton Hall **Solar Farm** (30MW Developer estimates 8400 Homes) **Actual 337 Homes supplied Estimation** (@ 80% battery) or **279 Homes** if 17% transmission losses were to be Factored in.
DNS/3260565 Brynrhyd **Solar Farm** (30MW Developer estimates 10,000 Homes) **Actual 337 Homes supplied Estimation** (@ 80% battery) or **279 Homes** if 17% transmission losses were to be Factored in.

Wind Turbine Electric Consumption
All turbines consume electric from the grid when in service mode (to keep the viable). **None of the wind farms developers are providing their turbine annual electric consumption?** This would reduce their homes supplied estimations even lower.
Peat
There is also a bid to keep a lid on the true depths of peat at some of the selected sites with both PEDW and NRW assessing inaccurate desk study data rather than actual depths.
The End Result
The developers are deceiving for their own financial gains with their homes supply estimation claims. Both wind and Solar developers are making false claims about their products capabilities and misleading the public.
This has resulted in the renewable developments being passed by PEDW and the Welsh Government on an inaccurate basis and without the full development information and incorrect details.

Most people are unaware of the bogus figures. I ask if you could investigate these issues with urgency. Currently not only is the destruction being carried out throughout the country unjustified but it has resulted in excessive energy bills all at the extra cost to the public through Curtailment Money (money developers are paid to switch off) and Subsidies added to the energy bills, which they have no choice but to pay.
These developments are about the Curtailment money not electric. American and a number of European Countries have already faced up to the facts. The intermittent renewables are not working and don't warrant the needless countryside destruction.
I will look forward to your response. Thank you for your help!
sincerely, Matthew Davies, 19th August 2025

Urgent Look Into Renewable Energy Required

FAO Llyr Gruffydd, Janet Finch-Saunders, Delyth Jewell, Julie Morgan, Carolyn Thomas, Joyce Watson.

With reference to my recent email dated 19th August 2025, I received a number of replies from members of Senedd and Government which raised a number of points on the renewables.
Having researched their points I would like to respond with the following for you to note during your public meeting in the Autumn term, as referenced by Lukas Santos - Deputy Clerk.

Homes Supplied
(All) the energy figures are based on Ofgem figures for (**Median)** energy consumption. This is regardless if they are from BEIS or DESNZ.

The **median** home energy is split to 80% gas and 20% electric.
Therefore when any wind or solar farm claims the number of homes it supplies the claims are, by their very nature, deceiving the public.

So when, for example, a developer claims they supply 10,000 homes what they really should state to be transparent is:-
We can supply on average 2,000 homes with all their energy or 10,000 homes with 20% of their energy. At times we can supply no energy and then the only viable backup is gas power.
In addition, when our supply exceeds demand, such as solar did earlier this year, the public have to pay the constraint payments for the facility to switch off. Each increase in solar or wind capacity will now substantially increase these constraint payments as peak production passes demand amounts much more frequently. In addition to that, the intermittent nature of wind/solar add about £12 per MWh to the cost of gas supply and there are huge extra costs in establishing the new grid and distribution system alongside the existing grid.

Load Factors
The developers are also using inflated Load factor figures, Close to offshore to boost output. The issue with load Factor is after the first year there is a **capacity Decrease**, as shown by professor Gordon Hughes Edinburgh university, so it is not realistic to think that the load factor presented by the developers will continue year after year as, after around 12 years, the turbines output will be considerably less.
The idea the turbines will have a 35-year lifespan is ridiculous as most of the parts will have had to of been replaced through maintenance because of inefficiencies. These are facts established by examination of actual wind projects accounts.
Ref https://energyeducation.se/wind-power-economics-rhetoric-and-reality/

Wind Power Economics – Rhetoric and Reality - Energy Education
The following is the text accompanying the talk given by Professor Gordon Hughes, School of Economics, University of Edinburgh on 4 November 2020 to launch his two new reports for REF on: Wind Power Costs in the United Kingdom and The Performance of Wind Power in Denmark For a recording of the event, please click here. The reality of what will happen to the costs of key renewable energy and ...

energyeducation.se

To claim a 35 year life in the face of the facts is nothing short of deception.

Output
The output is related to what they can produce (**on-site**) but this is because typically the energy production such as nuclear was sited and feed straight into the grid with minimal loss. However Solar and Wind are still required to give their on-site output ratings even though they are sited in such remote areas? There will be a

substantial Transmission losses, (up to) as high as 17%, which should be taken into account.

Curtailment

Throughout this summer, around midday, large numbers of Solar farms have been told to switch off to balance out the grid. Then when demand is higher, towards the end of the day, the light is lost. Making them pointless as this is when they are needed most.

Please can you answer this question:-

If they are being put into curtailment now, in the middle of the day, why would we need to build more of them? They're already overproducing and being told to turn off?

The curtailment is being passed onto the bill payer and we now have the highest price for electricity in the world.

There is no viable way of storing the energy as battery storage, for 9 days of electricity, would cost 3 trillion investment every 10 years.

Turbine grid consumption (no wind days)

Not the amount of power (parasitic load) they draw during operation, But the electric they draw from the grid on (**no wind days)** to keep them serviced and viable.

Vestas Wind turbine type Average self-consumption Table:-

V112 – 3.3/3.45 MW approx. 48,000 kWh / a

V117 – 3.3/3.45 MW approx. 48,000 kWh / a

V126 – 3.3/3.45/3.6 MW approx. 48,000 kWh / a

V136 – 3.45/3.6/4.0/4.2 MW approx. 48,000 kWh / a

V150 – 4.0/4.2 MW approx. 48,000 kWh / a

V150 – 5.6 MW approx. 55,000 kWh / a

V162 – 5.6 MW approx. 55,000 kWh / a

So one 13 Wind turbine development with the Vestas V150 4.2MW turbines would use around 624,000 kWh a year (which needs to be shown to the public and taken into account) With no wind days across the country, as we have seen this summer, means substantial amounts of electric is drawn from the grid.

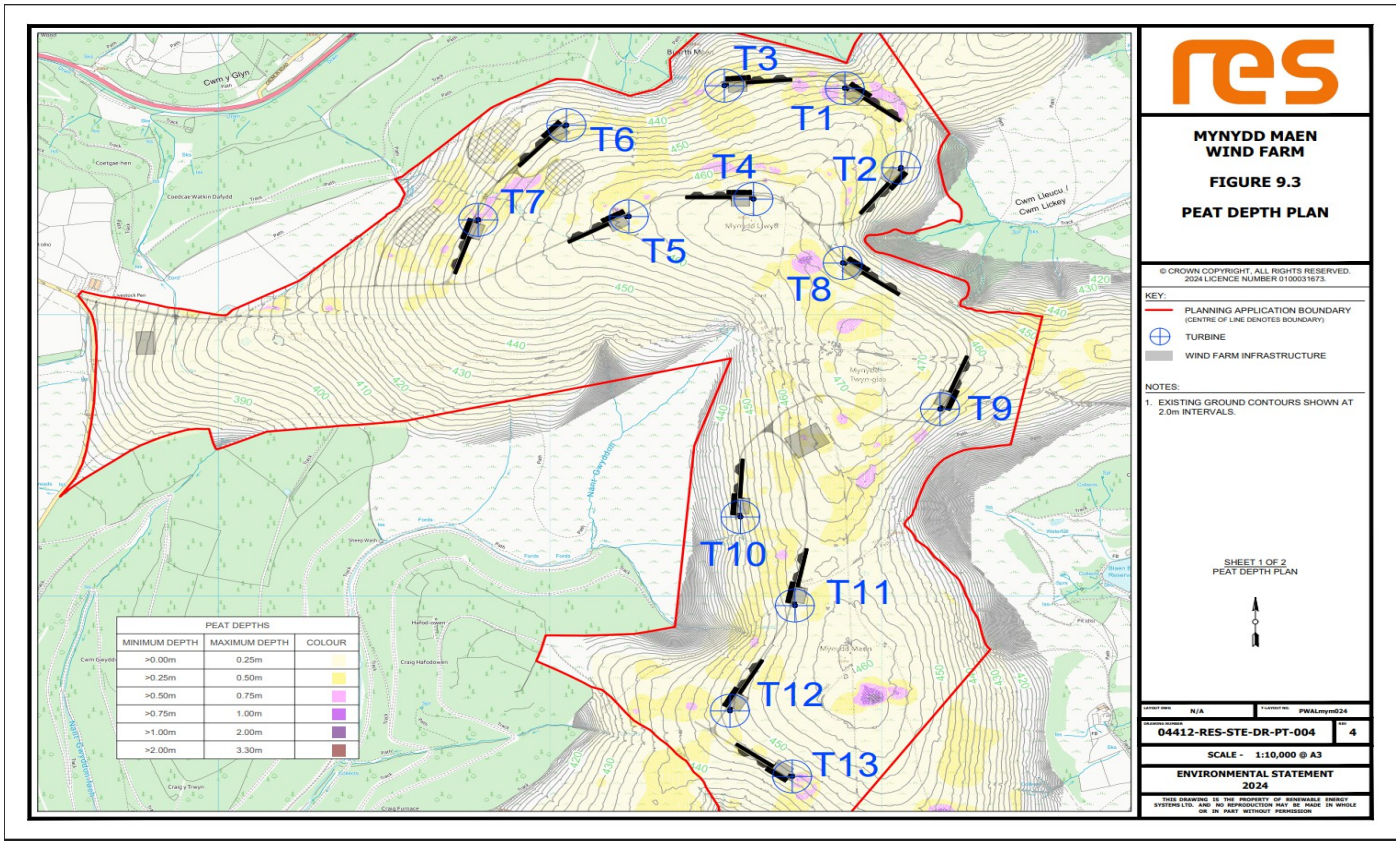
These developments are pointless and deceptive. The public and businesses are suffering as a result. This needs to stop now.

A proper debate needs to take place and accept the reality of what's happing rather than avoiding it.

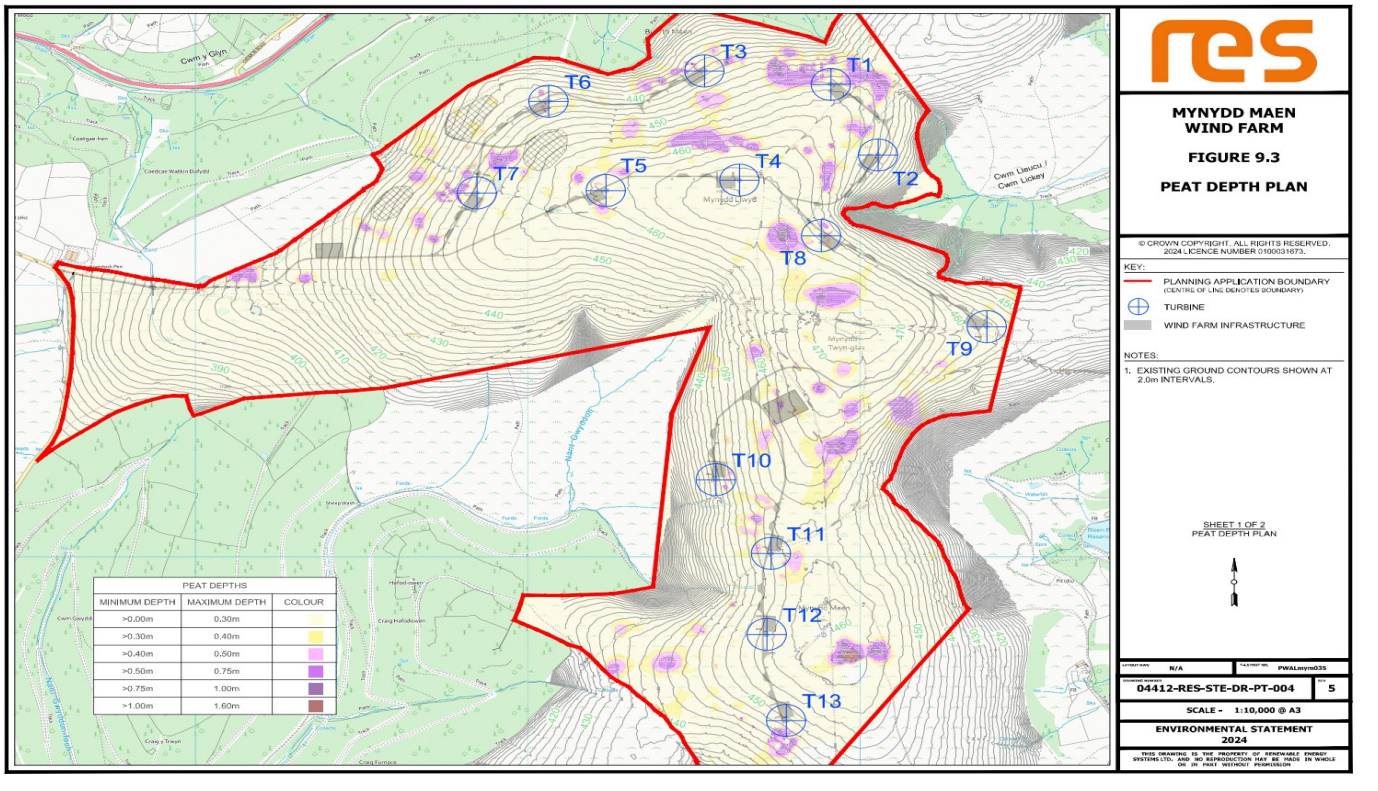
Peat Depths inaccurate

I have added this next section to reference the inaccurate peat reports and reliance on desktop studies. I have used the developments near me as example but all developments need to be looked at for inaccuracies:-

Picture 1 Below Peat depth by RES **(Before)** I made a South Wales Argus article in August 2024 mentioning concern for the large volumes of deep peat across Mynydd Maen. (note purple areas = deeper peat)



Picture 2 Below Peat Depth by RES **(After)** I made a South Wales Argus article in August 2024 and submitted in the PEDW. The developer has decided to show more Peat but this is still not accurate. In reality most of the map should be purple. As the mountain area has on Average around 0.5m of peat. (or around 500 years worth)



Cenin Solar Farm

Solar Farm has fake peat depths in their documents (Note an extract from the Cenin Cil Lonydd Solar Farm Phase 1 peat probing report below)

Picture 3 Below Fake peat depth report the developer lies and says it was manually carried out

3 PEAT PROBING

3.1 Methodology

3.1.1 The peat depth survey was undertaken on the 4th March 2025 at a density of 100 m x 100 m across all areas of the Assessment Site totalling 72 locations.

3.1.2 Probed depths were obtained by manual insertion of a metal probe to refusal depth, at a recorded maximum depth of 0.50 m below ground level (bgl). Records of the visible ground conditions, probe depth, probe resistance, and observations of soil reside on the probe when removed have been made.

3.1.3 A Peat Depth Survey Location plan is included within Appendix A as Figure 1.

3.2 Results

3.2.1 Tabulated results including peat depth (if present), peat base composition and general location remarks are presented in the Table below. Photograph references are included within Appendix B.

3.2.2 Peat Contour Results are presented within Appendix C as Figure 2.

(Note an extract from the Cenin Cil Lonydd Solar Farm Phase 1 peat probing report) mentions The NRW say 'no peat as such' after only relying on the Peatlands of Wales Mapping. (Meaning no one has been to the site and properly checked)

2.4 Superficial Geology

2.4.1 Based on BGS mapping (1:50,000-scale) no superficial deposits or Made Ground soils are indicated to be present across the Assessment Site.

2.5 Soils

2.5.1 According to the National Soilscapes Map[3], the area of the Assessment Site proposed for solar array use, is generally indicated to comprise freely draining acid loamy soils over rock. The cable route is indicated to comprise freely draining acid loamy soils over rock in the centre, leading to very acidic loamy upland soils with a wet peaty surface across the east and far west of the route.

2.5.2 The Welsh Government Predictive Agricultural Land Classification (ALC) Map[4] (V2) shows the Assessment Site as mainly Grade 4 (not best) surrounded by Non-Agricultural to the south and north.

2.5.3 A review of National Resources Wales (NRW) Peatlands of Wales[5] mapping indicates no peat as such mapped on the Assessment Site.

Then in a letter released by PEDW 21st May 2025, after some objections from the public referencing the peat, there appears to be some back tracking... (See screenshot below from letter)

As no reference to peat was made in any of the initial submissions from the applicant (and there is no BMV agricultural land on site), Welsh Government Land Quality Advice Service (LQAS) was not consulted, and Natural Resources Wales (NRW) did not consider peat. However, in response to the request for further information set out in the letter dated 17 February 2025 the applicant submitted a Phase 1 Peat Probing Report (dated 13 March 2025). It identifies the presence of pockets of peat across the site, at various depths, up to a maximum depth of 0.5 meters.

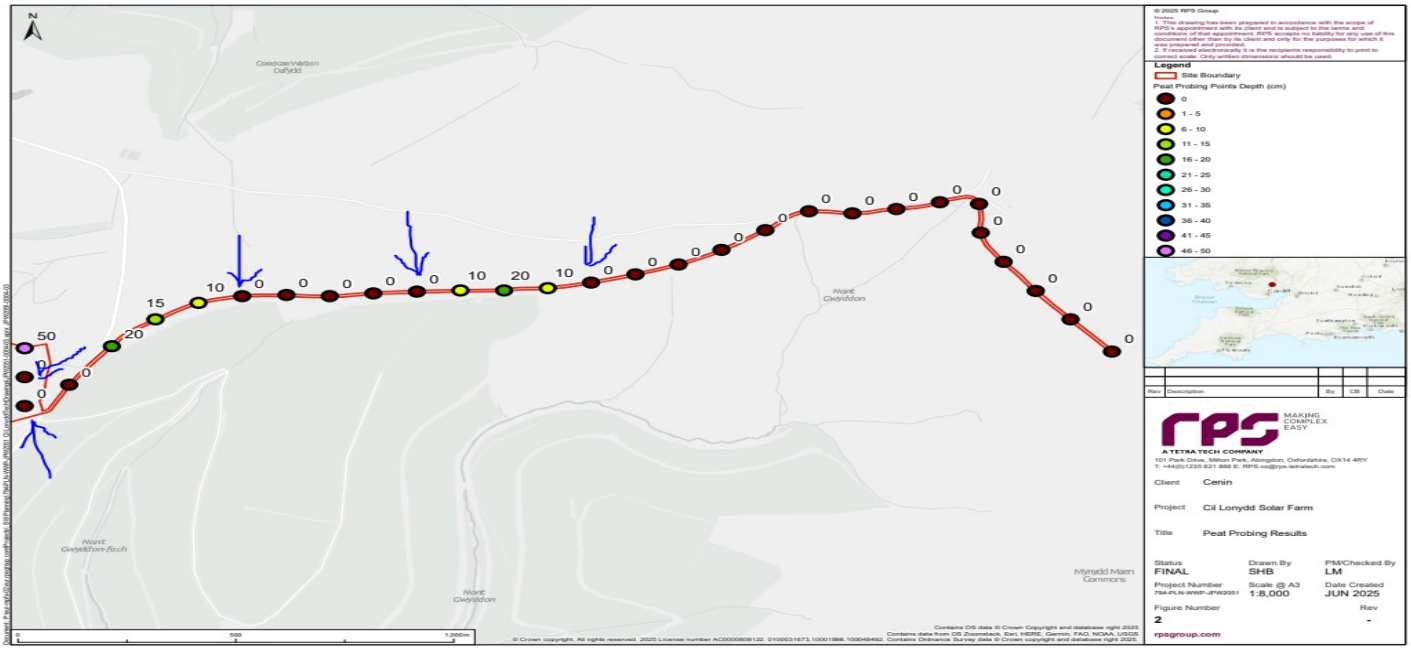
More recently in newly uploaded document to the PEDW website, the Cenin developer has added some new peat depth maps which show different depths to the first set and references using desktop studies (which have shown inaccuracies).

Reference to desktop studies:- **2025-06-25 - Annex B Request for Further Information**

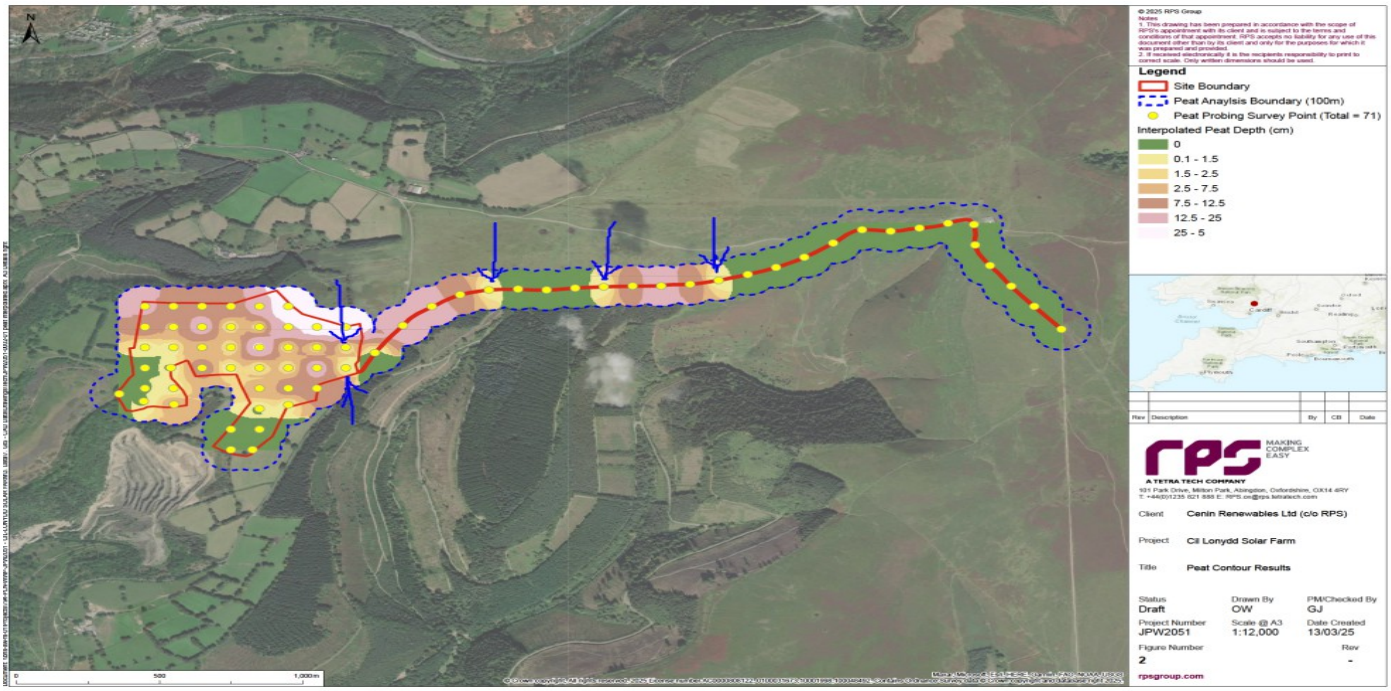
Annex B – Request for Further Information

Information Request	The condition, extent and significance of the peat resource within the site.
Applicant Response	A report has been provided as part of this request for further information **'2025-06-25 - *Response on Peat Resources and their Management*'**. Section 3 of the report provides the baseline desktop and survey data to identify the condition and extent of peat resources and any habitats it supports. Section 4 considers the application of the step-wise approach and the significance of the peat resources within the Site.

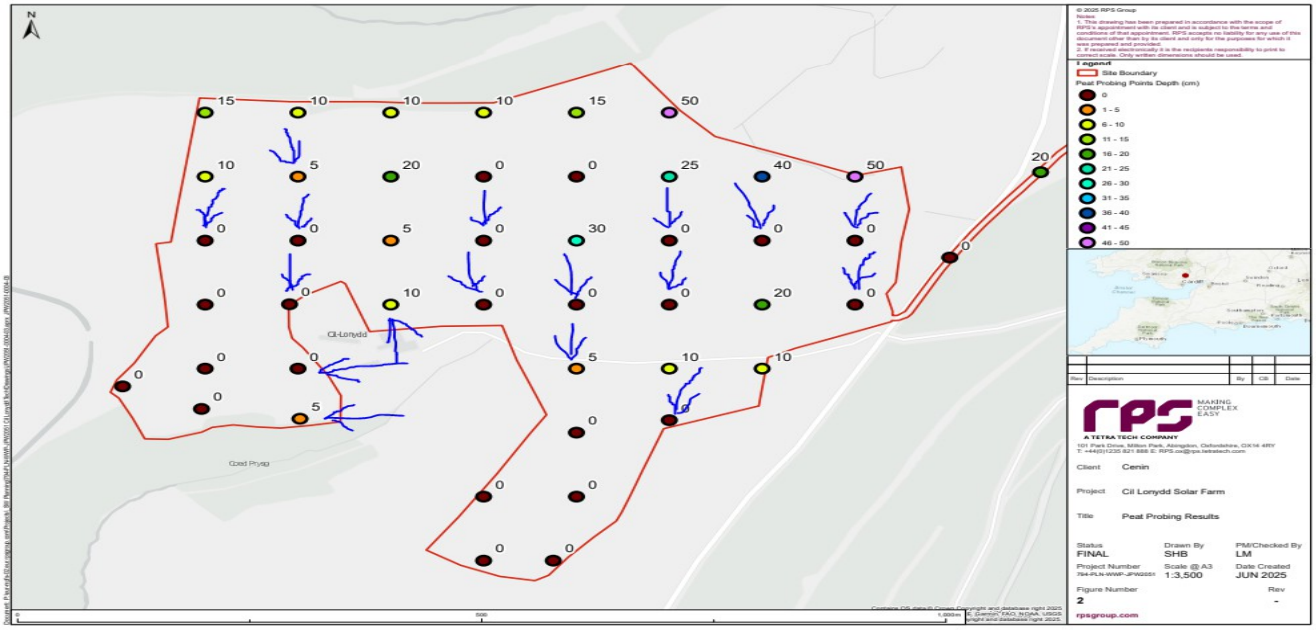
The June 2025 Peat probing Map shows different results to their original map with (no peat) at points marked with blue arrows (see below)



Peat Depth Map March 2025 Shows Peat in areas marked with blue arrows shows deeper (see below)



Site Peat Depth June 2025 Areas Marked in Blue Arrows Have depths Changed (see Below)



Site Plan March 2025 Areas Marked with blue arrows That Have been altered, This original map showed peat deeper (see Below)

I have visited some of the areas on the maps and found Peat in areas claimed not to have any. The map above, which shows green along much of the intended cable route (developers indication of no peat), but actually contains deep peat. Starting at the right on the map which is near the proposed RES Substation I have made a video, here's the link:- https://www.youtube.com/watch?v=k-gx5gb7mqA if you can't click links you can search **Proposed Solar Farm Peat Depth Report Inaccurate - on YouTube**

Readings obtained:- Starting at a Peat Bog **1**-0.4m, **2**- 0.5m, **3**- 0.425m, **4**- 0.5m, **5**- 0.4m, **6**- 0.475m **7**- peat already exposed picture, **8**- peat already exposed picture, (on the Solar site **9**- 0.5m, **10**- 0.5m **11**- 0.6m **12**- 0.4m **13**- 0.5m) the developer is only admitting to peat at Fringes of the site (and refers to it as a marshy area) I have been to a number of points including the middle of that marshy area and found Peat.

Here is a Video Link for the RES development substation area (Grey box near T10 on the RES maps above)

Pylons 3 and 4 along from Gas station. Video Link:- https://www.youtube.com/watch?v=FD5JWYiyGHo
If you can't click links you can search **Deep Peat At Proposed Substation Site On Mynydd Maen May 2025 - on YouTube**
Readings obtained:- Starting at a peat bog,Then 1- 0.5m 2- 0.55m 3- 0.45m 4- 0.575m 5- 0.475m 6- 0.45m

The above maps show discrepancies. So now we have 2 sets of fake peat depth maps. They cannot be trusted. There are no coordinates to reference the areas shown.
This is corrupting the process. With the reliance of desktop studies and incorrect information, the true depths of peat throughout Wales is currently ignored.

The full information is concealed from the public. With no indication of curtailment and subsidies on energy bills? There is no reference to the Ofgem energy Median figures by the developers yet the homes supplied is their major public selling point (it needs to be part of the PEDW planning process to reveal the true figures) with all wind developers using the onshore load factor without inflation and all Renewables revealing true full calculations including predicted transmission losses and turbine consumption.

I ask if you can look into the points raised, The Renewables have shown to be too costly to the public and our country and causing unnecessary destruction to the countryside

Thank you

sincerely Matt Davies

Agenda Item 6

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Agenda Item 7

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By virtue of paragraph(s) vi of Standing Order 17.42

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