

Carl Sargeant AM
Minister for Natural Resources
Welsh Government

16 July 2015

Dear Carl

Environment (Wales) Bill

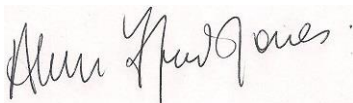
Further to your appearance before the Environment and Sustainability Committee on 24 June 2015, I would be grateful if you could consider and respond to a number of questions that we did not reach during the course of the session.

After reflecting on the evidence provided at the session, I would also be grateful if you could clarify some aspects of your evidence.

It would be of significant assistance to the Committee if you could provide a response in advance of your appearance before us on 16 September 2015. In order to allow us to consider your response, I would be grateful if you could consider providing it by Friday 4 September 2015.

The list of questions and points for clarification are provided as an annex to this letter.

Yours sincerely



Alun Ffred Jones AM

Chair of the Environment and Sustainability Committee



Annex

Questions not covered on 24 June 2015

The Committee asks you:

1. Natural Resources Policy

- a. To explain why there are no specific consultation provisions in the Bill in relation to the development of the State of Natural Resources Report, the National Natural Resources Policy and Area Statements.
- b. To clarify what strategic commitments and policies you are intending to consolidate in the National Natural Resources Policy.
- c. To explain why a requirement for Welsh Ministers to take account of a Future Trends report under the Future Generations Act in preparing a National Natural Resources Policy isn't included in the Bill.

2. Biodiversity Duty

- a. To explain what the additional requirement for Welsh Ministers to comply with the Convention on Biological Diversity means in practice.
- b. Given that public authorities will be able to report on action they have taken in a variety of different formats, to clarify how the Welsh Government intends to monitor compliance with the duty.
- c. To clarify what the inclusion of the term ecosystem in Section 6(2) means in practice for the interpretation of the duty.
- d. To explain how this duty and Sections 9 and 10 of this Bill on natural resource management relate to the Nature Recovery Plan.
- e. Whether any consideration was given to making the production of a Nature Recovery Plan a statutory requirement through this Bill.

3. Land Management and Experimental Schemes

- a. To clarify why a broader power for NRW to enter into land management agreements with landowners is needed.

- b. Given the concerns raised by the Constitution and Legislative Affairs Committee about the NRM 11 power in the Environment Bill White Paper, whether you are content this power is sufficiently limited, specific and allows for enough Assembly oversight.
- c. Given stakeholders' response to the White Paper proposals on General Binding Rules, to explain why the Welsh Government is considering allowing NRW to use this Bill to introduce such schemes.
- d. Whether any further consultation has been carried out with stakeholders by the Welsh Government or by NRW on the potential use of General Binding Rules.
- e. To explain why the power to extend an experimental scheme by a further three years is necessary.
- f. To clarify why a super affirmative procedure does not apply to regulations made in relation to experimental schemes.
- g. To clarify whether there will be a requirement for Welsh Ministers to publish any applications or information it receives from NRW for these powers to be used.
- h. To explain why the Bill does not set out the information NRW would need to provide to Welsh Ministers in an application to use these powers.
- i. To clarify the geographical scope to which a suspension of statutory provisions could apply. For example whether it could apply to the whole of Wales.

4. Climate Change

- a. To set out how the Welsh Government will calculate the proportion of EU ETS emissions that are attributable to Wales.
- b. Given the importance of EU ETS credits to Welsh emissions, why there isn't a duty on Welsh Ministers to bring forward regulations under Section 33(2) on the circumstances in which units may be credited or debited.
- c. To explain why there is not a duty on Welsh Ministers to limit the net amount of credits by which the net Welsh emissions account may be reduced by under Section 33(3).
- d. Whether any consideration was given to the inclusion of a domestic effort target on the face of the Bill.
- e. To explain what type of carbon units could be 'unrestricted' in their use towards the Welsh emissions target under Section 33(4) of the Bill.

- f. To explain how the requirement to report on policies to deliver carbon budgets under Section 39 relates to the requirement in Section 9(2) for the National Natural Resources Policy to set out what action needs to be taken in relation to climate change.
- g. In relation to Section 42, within what timeframe do you expect Welsh Ministers to lay a statement outlining how they are going to compensate for any excess in the final year of a carbon budget.
- h. To explain why no provisions in relation to adaptation have been included in the Bill.

5. Carrier Bags

- a. To clarify whether Welsh Ministers intend to use the provisions in the Bill to direct the net proceeds from the current single use carrier bag charge to charitable purposes.

6. Waste

- a. To clarify whether any new separation requirements introduced would be subject to the same tests currently included in the *Waste (England and Wales) Regulations 2011* of being necessary and technically, environmentally and economically practicable.
- b. To set out whether the Welsh Government would publish codes of practice or guidance for any new requirements introduced.
- c. To outline what consideration has been given as to how the provisions could affect the relative competitiveness of Welsh businesses.

7. Shellfisheries

- a. To confirm whether you believe the phrase harm 'likely to occur' is sufficient to enshrine the precautionary principle included in the Birds and Habitats Directive.
- b. To set out what burden of proof Welsh Ministers may need to demonstrate that harm is 'likely to occur'.
- c. To clarify whether the definition of harm in section 76 would enable Welsh Ministers to act if a shellfisheries order in combination with other factors was causing a cumulative negative impact to a European marine site.

Clarifications from the oral evidence

- You committed to provide a note on how the reporting duties in this Bill relate to each other. We would be grateful for receipt of this note.
- Can you please clarify the timetable for the publication of the first Future Trends report.
- Mr Asby, in his oral evidence, stated that the provisions within the Bill on the timeline for setting the carbon budgets are '*the exact same provisions*' as those in the UK Climate Change Act 2008 [see RoP para 221]. However, they appear to be different. The first UK budget had to be set within 18 months of commencement, not within two years. Additionally, the UK Act required the setting of the first three budgets by June 2009 and not the first two as is the case with the Environment (Wales) Bill.
- Mr Asby stated that there was an explicit reference in the Bill to a provision to allow local authorities to report on the biodiversity duty as part of their reports on well-being [para 172 RoP]. We have been unable to find this in the Bill and would be grateful for clarification.
- You stated that the Wales Marine Plan has to be based on Welsh Ministers' other policies and that this would provide the link between the marine plan and the area statements and NNRP. Can you please clarify where this is required in law? More specifically, is there provision in the Marine and Coastal Access Act 2009 that requires this? [See RoP para 115].
- You stated that you believed that there was a limit on the amounts of carbon budget that could be carried forward. Can you please clarify this statement [RoP para 223].
- You stated that the provision on separation of waste only refers to commercial waste. Section 66 refers to 'controlled waste' collected by a waste collection authority. Can you please clarify whether the definition of controlled waste includes municipal and household waste collected by local authorities [RoP para 316].