

Amendments to the Current Draft Environment Bill [As Amended at Stage 2] in respect of the general purpose of NRW

The current function of NRW is laid down in the Natural Resources Body for Wales (Establishment) Order 2012 No. 1903 (henceforth referred to as ‘the Establishment Order’) as amended by the Natural Resources Body for Wales (Functions) Order 2013 No. 755 and subject to the Natural Resources Body for Wales (Consequential Provisions) Order 2012 No. 1903. The Well-being of Future Generations Act 2015 is referred to as “WFGA”. The Environment Bill is referred to as the “Bill”.

Summary.

My recommendations is that the text of the current draft bill is altered to reflect the following suggested amendments (my changes shown in red for clarity):

Section 3(2)(b), page 2, line 5, substitute -

“(b) discharge the well-being duty in section three of the Well-being of Future Generations (Wales) Act 2015 (anaw 2).”

Section 5(2), page 2, line 30, substitute -

“(2) For article 4 substitute-

“4 General purpose

(1) The body must-

(a) pursue sustainable management of natural resources and the environment in relation to Wales, and

(b) apply the principles of sustainable management of natural resources,

in the exercise of its functions, so far as consistent with thier proper exercise.

(2) In this article -

“principles of sustainable management of natural resources” (“*egwyddorion rheoli cynaliadwy ar adnoddau naturiol*”) has the meaning given by section 4 of the Environment (Wales) Act 2016:

“sustainable management of natural resources” (*rheoli cynaliadwy ar adnoddau naturiol*) has the meaning given by section 3 of the Environment (Wales) Act 2016.”

“environment” (“*amgylchedd*”) includes, without limitation, living organisms and ecosystems.”

Section 5(4), page 3, line 15, substitute -

“(4) For article 5B substitute -

“In carrying out sustainable resource management, the Body must have regard to actual or possible ecological changes”

Explanation

My approach was to ask what is lost from the Establishment Order which should arguably be retained.

(1) Clause 3 of the Bill - sustainable management of natural resources

The current text of article 4 of the Establishment Order requires that natural resources management and the environment are:

sustainably maintained

sustainably enhanced

sustainably used

...

with a view to benefitting, and

in a manner designed to benefit, the people, environment and economy of Wales in the present and in the future.

Since the bill requires NRW to pursue sustainable management of natural resources and to apply the principle of sustainable management of natural resources (cl. 4(1) & (2)) then maintenance, enhancement and use is retained by the Bill in cl. 3 (1) & (2). In terms of benefitting the people, environment and economy of Wales now and in the future, this is now contained in cl.3(2)(a) of the Bill, albeit in terms of ‘meeting their needs’ rather than benefitting them. However, I think this is probably a sensible adjustment given that sustainable development is supposed now to be the central organising principle of governance in Wales.

What is far less sensible is the reference in cl.3(2)(b) to contributing to the achievement of the well-being goals in section 4 of the WFGA. The WFGA actually requires that NRW maximises its contribution to the achievement of the goals but even this is not the primary sting of the well-being duty; it is rather a subsection of the overall duty to carry out sustainable development. Hence in my view it would be far better if cl.3(2)(b) took the form suggested above where reference is made to the primary duty rather than the object of the duty. This would be both more coherent and a more accurate means of intergrating the requirements of two bills.

(2) Clause 5 of the Bill - General Purpose of NRW

Currently the Establishment Order at article 4(1) requires that *both* the environment (defined in article 4(2)(b) as “includ[ing] without limitation, living organisms and ecosystems”) *and* natural resources (which are not defined at all in the Establishment Order).

The latest version of the Bill removes all reference to the term “environment” and instead “natural resources” is used exclusively. These are defined in cl.2 of the bill as including (but ... not limited to):

- Animals, plants and other organisms
- air, water and soil
- minerals
- geological features and processes
- physiological features
- climatic features and processes

Arguably, and notwithstanding the 'not limited to' caveat, this is a narrower remit than both natural resources *and* the environment (not least because of the "without limitation" element of the definition of environment).

Hence I have suggested the amendment laid out above in respect of clause 5(2).
(3) Clause 5(4) of the Bill - removal of articles 5B and 5E.

The removal of 5E is unobjectionable and simply removes a provision which is now redundant in the light of the WFGA.

Presumably the reason for the excision of article 5B is that the sustainable management of natural resources is thought to encompass 'hav[ing] regard to actual or possible ecological changes' (where nature conservation is concerned at least). However, the language of article 5B, especially the reference to 'possible' ecological changes seems much more precautionary than the text of cl. 3 & 4 of the Bill.

Hence my drafting suggestion above.

HD 12.1.16.