

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig | Climate Change, Environment and Rural Affairs Committee

Ymchwiliad i lywodraethu ac egwyddorion amgylcheddol ar ôl Brexit | Inquiry into environmental principles and governance post-Brexit

PG10

Ymateb gan : Cyfoeth Naturiol Cymru

Evidence from : Natural Resources Wales

Natural Resources Wales welcome the opportunity to provide written evidence to the National Assembly for Wales' CCERA Committee - inquiry into environmental governance and principles.

In preparing our response we have drawn on our wider work in relation to Brexit, our close liaison with other regulators and advisory bodies throughout the UK and environmental NGOs and sector representatives in Wales. This has helped us to better understand the potential issues, risks, gaps and impacts of the proposals set out in the Environmental principles and governance in Wales post European Union exit consultation. As with our response to Welsh Government's consultation, in responding to this request for written evidence we have considered the full breadth of Natural Resources Wales' role and remit.

In principle, Natural Resources Wales is supportive of the need for an Environmental Oversight Body, whether at a UK or Wales level. However, we have identified a number of areas of concern:

- There is significant benefit in building a consensus with other regulatory and advisory bodies, environmental NGOs and sector organisations by taking a collaborative approach to delivering environmental governance and principles in Wales to ensure the best outcome.
- A shared approach across the UK to environmental governance with a common framework including common objective, principles and standards would help to avoid gaps in the implementation of environmental policy across the UK and reduce the risk of regression in standards. A common framework that followed a similar approach to the current EU framework would fully recognise and respect the different legal frameworks and devolved legislation across the UK.
- There is a potential gap in governance in the current proposals in Wales and England in terms of transboundary issues, such as climate change, water quality or air pollution where a collaborative approach is essential. It is important to clarify how regulators and administrations work together effectively across the UK to manage transboundary issues and where devolved and non-devolved remits coincide.

The Committee sought a response on three specific questions.

Gaps in environmental governance structures and principles post-Brexit in Wales and whether the Welsh Government's analysis (within the consultation) correctly and comprehensively identifies the deficiencies;

In our consultation response, we identified there is a need for an overarching objective of “a high level of protection for the environment”, as currently stated in Article 191(2) of the Treaty on the Functioning of the European Union. This would underpin the four environmental principles noted in the consultation and provide an overarching framework for public authorities that supports delivery and proportionate application of the environmental principles with a clear and consistent aim. This would also support the integration of environmental policy across wider policy remits and help to maintain and enhance functional environmental standards. This more holistic and integrated approach will promote better environmental outcomes and reduce the risk of regression in standards or gaps in application.

This approach of a high-level objective supported by, and framing, a comprehensive set of integrated principles has been followed in the Environment (Wales) Act. The objective of Sustainable Management of Natural Resources underpins the SMNR principles and provides a clear and consistent aim in their application.

It is important that all four EU environmental principles are recognised as overarching principles either at a UK or a Wales level, rather than focussing on them in isolation in specific functional legislation that may not provide comprehensive coverage. There may also be value in considering wider principles currently applied in European law or in international agreements such as non-regression, environmental enhancement and proportionality.

Currently EU Directives require monitoring and evidence-based reporting against environmental standards. These reports are aggregated at an EU level and direct transposition of this duty to UK law without recognition of the wider impacts and benefits such as reporting against international standards may leave a gap.

The EU Commission and the CJEU have also provided guidance on the implementation of EU law, either in FAQs or as further directions, or in the case of the CJEU as case law or judgements. This function, when applied to Welsh legislation and Wales and England legislation is undertaken by various bodies and could result in a gap if there is variation in approach and decisions between different parts of the UK.

Further clarity is needed on the role of the proposed environmental oversight body in relation to the review and setting of standards and scrutiny of performance against those standards. This is an important function that should be supported by suitably resourced and impartial expert reference panels including policy makers, regulators and academics. If not sufficiently supported or clearly defined this could result in a significant gap in accountability and would be a regression.

The Welsh Government's consultation proposals and questions regarding the environmental principles, and the function/constitution/scope of the proposed governance body;

It is essential that there is no overlap in functions between the new body and existing agencies such as Natural Resources Wales. In particular there is a need for further clarity on provision of advice and how this fits with the role and remit of the new body, Natural Resources Wales' leadership role on SMNR and our statutory regulatory powers, functions and duties. There is also the potential for wider impacts on other aspects of our role including reporting and monitoring, policy and guidance. Currently EU Directives require monitoring and evidence-based reporting against environmental standards. These reports are aggregated at an EU level and direct transposition of this duty to UK law without recognition of the wider impacts and benefits such as reporting against international standards may leave a gap.

The oversight body should act as a high-level strategic body, rather than risk duplication and confusion with the remits of other public bodies. To avoid duplication and the cost and competition for specialist technical expertise, the oversight body's advisory remit should focus on the matters relating to environmental law, application of the new framework including environmental principles and their application by public bodies.

It is important that the oversight body is able to give sufficiently impartial and correct advice, therefore it may be advantageous or indeed necessary to draw upon expertise from across the UK. The proposals laid out in the consultation include the oversight body being able to draw upon the expertise and technical knowledge of other bodies. It is important to recognise that the expertise and knowledge pool may be relatively small in Wales for some technical areas. A common framework and UK wide agreement on the overarching principles would aid this approach.

Any new environmental oversight body, or function, should have environmental protection (as enacted in law) as a core remit. This would help to ensure a full application of the environmental principles and would reduce the risk of a dilution or reduction in standards or focus during any transitional period in governance and legislation. During any transitional period, following EU exit, stability and continuity of standards and environmental oversight are essential.

It is essential that the oversight body is independent of Government and therefore able to pursue its remit fully but subject to appropriate scrutiny, as proposed in the consultation. It is also important that however the body is constituted it is able to work closely with the equivalent oversight bodies elsewhere in the UK to reduce the risk of regulatory divergence and provide a common baseline to landowners and industry, regardless of location. This would also reduce the risk of a 'race to the bottom' and encourage a more collaborative approach to cross-border issues such as transboundary environmental damage where, for example, the point of origin and the location where impacts are observed could be in different administrations. In these cases, collaboration with other UK regulators and oversight bodies would be essential to ensure good outcomes for the environment.

The value and practicality of a UK joined approach given the UK Government's Department of Environment Food and Rural Affairs's (DEFRA) proposal that new governance structures in England could exercise functions more widely across the UK.

Currently the proposals for a Welsh body, that is separate to the Defra proposal for an English body, may result in different processes, interpretations and functions either side of the border. This risks a lack of 'level playing field' for businesses and organisations. It is important that we have clarity on the regulatory floor and any regional variances to allow Natural Resources Wales to be transparent in our regulatory functions and to support existing and future cross-border working and interpretation and delivery of policy and regulatory decisions. This is important, for example, in the management of cross border rivers, where there is a need for a consistent approach across environmental catchments that cross the border.

A Common environmental framework, objective and principles at a UK level would reduce the risk of regulatory divergence and provide a common baseline to landowners and industry, regardless of location. This would also reduce the risk of a 'race to the bottom' or other cross-border issues such as transboundary environmental damage being subject to different regulatory standards. It would also recognise that although environmental policy is a devolved matter, environmental challenges such as air pollution, water quality and climate change where these are transboundary and can only be addressed collaboratively. A common framework that followed a similar approach to the current EU framework would fully recognise and respect the different legal frameworks and devolved legislation across the UK.

Environmental principles help to drive environmental standards and inform the development of policy and legislation. The EU environmental principles currently apply to all administrations in the UK equally and are the legal framework for the development of policy and legislation by UK government and the Welsh Government. Without a shared approach to a common overarching objective and environmental principles, the consultation's stated aim of a commitment to non-regression and enhancing environmental standards is likely to be more difficult to achieve.

I hope this response helps to set the context within which our consultation response has been made and addresses the areas raised by the Committee.

Ceri Davies
Executive Director of Evidence, Policy and Permitting

Our Roles and Responsibilities

- **Adviser:** principal adviser to Welsh Government, and adviser to industry and the wider public and voluntary sector, and communicator about issues relating to the environment and its natural resources
- **Regulator:** protecting people and the environment including marine, forest and waste industries, and prosecuting those who breach the regulations that we are responsible for
- **Designator:** for Sites of Special Scientific Interest – areas of particular value for their wildlife or geology, Areas of Outstanding Natural Beauty (AONBs), and National Parks, as well as declaring National Nature Reserves
- **Responder:** to some 9,000 reported environmental incidents a year as a Category 1 emergency responder
- **Statutory consultee:** to some 9,000 planning applications a year
- **Manager/Operator:** managing seven per cent of Wales' land area including woodlands, National Nature Reserves, water and flood defences, and operating our visitor centres, recreation facilities, hatcheries and a laboratory
- **Partner, Educator and Enabler:** key collaborator with the public, private and voluntary sectors, providing grant aid, and helping a wide range of people use the environment as a learning resource; acting as a catalyst for others' work
- **Evidence gatherer:** monitoring our environment, commissioning and undertaking research, developing our knowledge, and being a public records body
- **Employer:** of almost 1,900 staff, as well as supporting other employment through contract work