

Welsh Government

Environmental Principles and Governance in Wales Post European Union Exit

Background to CIWEM

CIWEM is the leading independent Chartered professional body for water and environmental professionals, promoting excellence within the sector. The Institution provides independent commentary on a wide range of issues related to water and environmental management, environmental resilience and sustainable development.

CIWEM welcomes the opportunity to respond to the Welsh Government on its consultation on Environmental Principles and Governance in Wales Post European Union Exit. This response has been compiled with the assistance of members from our Welsh branch.

Response to consultation questions

Question 1: Do you agree the following principles should be included within legislation for Wales?

- Rectification at Source Yes
- Polluter pays Yes

Question 2: In addition, to the principles already within Welsh primary legislation and the two outlined in Question 1, do you think there are other principles, which may also need to be included?

CIWEM is pleased that the Welsh Government is committed to transferring the environmental principles into domestic law, and that they will continue to shape domestic environmental policy after the UK leaves the European Union. The environmental principles have underpinned and informed the development of our environmental legislation and are a fundamental reason behind improvements to our environment and natural habitats in recent decades. Wales' legislative framework is progressive and differs from the rest of the UK and several environmental principles have already been enshrined into domestic law, such as the sustainable development principle and public participation through the Well-being of Future Generations (Wales) Act and the preventative principle and precautionary principle through the Environment Act. However, although their elements are included, they are not explicitly specified, and we would advocate that all of those principles as proposed in the draft Environment (Principles and Governance) Bill and not currently enshrined in Welsh legislation should be included specifically. These are all currently enshrined in EU law or international treaties and the complete list is as follows:

(a) the precautionary principle, so far as relating to the environment,

- (b) the principle of preventative action to avert environmental damage,
- (c) the principle that environmental damage should as a priority be rectified at source,
- (d) the polluter pays principle,
- (e) the principle of sustainable development,
- (f) the principle that environmental protection requirements must be integrated into the definition and implementation of policies and activities,
- (g) the principle of public access to environmental information,
- (h) the principle of public participation in environmental decision-making, and
- (i) the principle of access to justice in relation to environmental matters

These principles have driven progress in the management and improvement of our environment in recent decades. They should be viewed as a suite which should be transferred to domestic legislation to ensure the continued protection and enhancement of our natural environment.

Question 3: Do you agree the duty to pursue sustainable management of natural resources and the application of the SMNR principles should be extended?

We support the duty to pursue sustainable management of natural resources and the application of the SMNR principles being extended to Welsh public bodies falling within devolved competence. We agree that this would ensure the public bodies, which may fall under the remit of new governance arrangements, have the same objectives and consistent basis for managing Wales' natural resources.

Question 4: On which Welsh public bodies, within devolved competence, do you consider a duty to pursue SMNR should apply?

A duty to pursue SMNR should apply to all Welsh public bodies with an authority over environmental matters and a role in implementing environmental legislation.

Question 5: Do you agree with the gaps identified, or do you consider there are other gaps, which need to be considered?

We agree with the identified gaps – independent accountability, public access to justice, and enforcement. Natural Resources Wales (NRW) and the Future Generations Commissioner play a valuable role in regulating and reporting on environmental performance but neither adequately replicate the functions of the European Commission (EC) and Courts of Justice of the European Union (CJEU) in scrutiny, monitoring and enforcement. We advocate a UK-wide approach to governance.

The EC and CJEU provide independent oversight and monitoring of implementation of environmental law, an enforcement function to hold those who commit failures to implement environmental law to account with significant fines and recourse, and a vehicle for citizens to

make complaints free of charge. These roles would not be replaced by any existing body in the Welsh framework and should be filled by UK-wide body which is compatible with the existing Welsh legal framework and monitoring and reporting functions. The environment does not respect political borders and boundaries, and neither should efforts to protect it.

Question 6: What role should existing accountability bodies provide in a new environmental governance structure for Wales?

Existing bodies should continue their roles as they currently function, as they are effective and progressive, but none is focused on or capable of enforcing environmental law, or scrutiny or monitoring of its implementation. The new UK-wide body should fulfil this role but should not replicate or overlap existing functions.

Question 7: Is the outlined role and objective appropriate for a body responsible for overseeing the implementation of environmental law in Wales?

We agree that outline role and objectives are appropriate and should lead to effective protection of the environment and continued sustainable development in Wales.

Question 8: Which policy areas should be included within the scope of new governance arrangements?

The policy areas outlined in the consultation paper should be included within the scope – water, air, nature conservation, soils, forestry, chemicals, pesticides, waste, circular economy and climate change, in so far as they are consistent with the devolution framework. All of these policy areas have the potential to have significant impacts on the environment. The Committee on Climate Change already provides specific functions for Wales but crucially does not hold enforcement powers which we would advocate for a new governance body to hold or risk leaving a governance gap in this crucial environmental issue.

Question 9: Do you consider the proposed list of bodies to be appropriate?

The list of bodies should include any public body with an authority over environmental law and policy.

Question 10: Do you consider there are other Welsh bodies, which should also fall within the remit of a body?

Question 11: What should be the status, form and constitution of an oversight body?

An oversight body should be independent, impartial, transparent and adequately resourced. A body similar to that of the National Audit Office at Westminster would be an appropriate model.

Question 12: Should an oversight body be able to act in an advisory capacity?

We would advocate an advisory role a new oversight body, to enable sharing of best practice, contribute to environmental protection and enhancement, and sustainable management of natural resources. A well-resourced body of experts would enable best practice to be

implemented from an early stage, and potentially reduce breaches of environmental law in future.

Question 13: Should an oversight body be able to scrutinise implementation of environmental legislation?

The system of scrutiny currently provided by the European Commission (EC) and the Court of Justice of the European Union (CJEU) will not be transferred across to the UK post-Brexit. It is this system which has repeatedly held the government to account on environmental compliance matters. European law and this third-party scrutiny has led to improved air and water quality, and increased environmental standards. The new oversight body must have at least the same scrutiny powers as the existing arrangements to meet the ambition for a 'world-leading body' and to ensure increased standards of environmental protection can be achieved.

Question 14: What should be the extent of this function?

This function of the new oversight body should not replicate or replace existing scrutiny and monitoring undertaken by existing bodies in Wales such as NRW. It should, however, scrutinise the implementation of environmental law, using reports published by other bodies as well as undertaking its own investigations and analysis, with the power to require the provision of information from other parties.

Question 15: What powers should a body have in order to investigate complaints from members of the public about the alleged failure to implement environmental law?

Public access to justice is extremely important and we strongly advocate that members of the public have the power to submit complaints to the new oversight body free of charge, as is permitted under the current arrangements with the European Union. We suggest that it would then be for the body to consider whether these complaints are reasonable, and whether they warrant further investigation and escalation, and that its funding should be proportionate for this remit.

Question 16: What informal and formal methods of enforcement do you consider an oversight body should operate in order to delivery on its role and objectives?

The new body should hold a range of effective enforcement powers in a system of escalation to use at its discretion, starting with informal discussions with relevant ministers, governmental departments and public authorities as appropriate, leading to advisory notices, binding notices, legal action and ultimately a fine. In order to replicate the existing system, the new environmental body must have the power to levy fines at those who have been found in breach of environmental law. The risk of reputational damage is not enough of a deterrent to encourage sound implementation of environmental law, economic sanctions are required to give the new body adequate authority. Any funds collected should be ringfenced and used for environmental enhancement projects. It is envisaged that fines would be levied rarely, and only as a last resort once a system of escalation had been exhausted and unsuccessful.

Question 17: What enforcement actions do you consider need to be available?

As detailed in response to Q16, the new oversight body should hold a range of enforcement actions in a system of escalation, which are equivalent to the full suite available to the EC and CJEU under the current system.

Question 18: Would there be advantages in having a shared core set of common environmental principles?

A core set of principles would be advantageous as the environment does not respect political borders and boundaries. Environmental issues transcend borders in the UK and therefore so should efforts to protect the environment. We support a UK-wide collaborative approach which respects the devolution framework.

Question 19: What potential governance structures do you consider are needed to enable collaboration and collective decision-making to enable interface between administrations?

A collaborative and collective UK-wide approach to governance is the most appropriate way to ensure long term environmental protection across the UK for the benefit of future generations. The governance structure of the new oversight body with regards devolved matters could mirror that of the Committee on Climate Change which provides specific functions for Wales.

Leaving the European Union should be used as an opportunity to design a world-leading framework of advice, scrutiny and enforcement which will protect our environment, biodiversity and natural habitats for future generations, whilst respecting the devolved frameworks.