

Cynulliad Cenedlaethol Cymru | National Assembly for Wales  
Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig | Climate Change,  
Environment and Rural Affairs Committee

Fframweithiau cyffredin y DU ar amaethyddiaeth a'r amgylchedd | UK common  
frameworks on agriculture and environment

UK 15

Ymateb gan : Cyswllt Amgylchedd Cymru

Evidence from : [Wales Environment Link](#)

## Summary of key points

- The UK Government's methodology for its initial categorisation of common frameworks is not clear, and WEL members have concerns about this in a variety of areas.
- We recommend that the four governments of the UK should commission a thorough independent and objective analysis of where common frameworks are necessary for the continued strong protection and enhancement of the environment.
- Common frameworks must be co-designed and developed in partnership across the four governments of the UK, with all four parliaments to have a role in scrutiny of the implementation of common frameworks.

### **1. In which policy areas, within the remit of the Climate Change, Environment and Rural Affairs Committee, are legislative and non-legislative common frameworks needed? Does the provisional assessment published by the UK Government set out an appropriate approach, and is it complete? Do you have any specific concerns about the proposed categorisation?**

- 1.1 Wales Environment Link (WEL) welcomes the UK Government's provisional assessment on common frameworks, but the lack of detailed commentary and absence of underpinning methodology makes it very difficult to understand and interpret some of the decision making within the table. We would welcome an explanation from the UK Government for why certain policy areas have ended up in each category. Welsh Government has confirmed that it did not, and does not necessarily, agree with the UK Government categorisation.
- 1.2 On the face of it, it appears to our members and our colleagues in Greener UK, that the split is largely based on a narrow consideration of internal market issues. This is despite the JMC joint communique including the following principles to determine this classification:
  - to enable the functioning of the UK internal market;
  - to enable the effective management of common resource;
  - to ensure compliance with international obligations; and
  - to administer and provide access to justice.
- 1.3 We are concerned that the current categorisation ignores the importance of collaborating across borders to solve shared environmental challenges, and the need to ensure effective transboundary protection, management of common resources and a regulatory level playing field.

- 1.4 We cannot stress the enormity of the task ahead enough. To determine where both legislative and non-legislative frameworks are necessary with any certainty is too big a task for environmental NGOs alone, with our limited resources. **We recommend that the four Governments of the UK should commission a thorough independent analysis of where common frameworks are necessary for the continued strong protection and enhancement of the environment.** This analysis should be undertaken on an objective, environmental evidence basis and not from a political acceptability, or a purely internal market basis.
- 1.5 Many environmental issues do not respect borders. EU legislation and frameworks recognise importance of a co-ordinated transboundary approach, based on minimum common standards, for the effective protection of the environment and the prevention of competitive deregulation. Operating within this common EU framework, with oversight by EU institutions, has helped to address transboundary environmental challenges and to ensure a more level playing field for economic operators.
- 1.6 It has helped to:
- ensure that coherent and consistent approaches to environmental protection have been adopted across the four nations, such as the establishment of a common set of standards for the designation and management of protected Natura 2000 sites and the conservation of key habitats and species;
  - support the integrity of the UK's internal market and prevent unfair regulatory competition; for example, by requiring minimum standards to be met across all of the UK's jurisdictions, it has reduced the risk of any one jurisdiction seeking to gain a short term competitive advantage by unilaterally lowering its own environmental standards;
  - facilitate cross-border trade and cross-border environmental co-operation on the island of Ireland; and,
  - underpin compliance with the UK's international environmental commitments and obligations.
- 1.7 For the effective protection of the environment, the importance of these common frameworks will not diminish post-Brexit. Indeed, the principles justifying EU-level co-operation and regulatory alignment on environmental matters apply equally, if not more strongly, to intra-UK co-operation and regulatory alignment, as well as to co-operation and regulatory alignment on the island of Ireland.
- 1.8 Whilst by no means a comprehensive assessment of all environmental areas where common frameworks may be necessary, the following areas are of particular concern and importance to WEL members:
- Agriculture policy (what replaces the Common Agriculture Policy)
  - Birds and Habitats Directives
  - EIA and SEA Directives
  - EU Emissions Trading Scheme
  - Fisheries policy (what replaces the Common Fisheries Policy)
  - Invasive Alien Species (IAS) policy and legislation (also referred to as Invasive Non-Native Species / INNS)
  - Marine Strategy Framework Directive
  - Waste management legislation
  - Water Framework Directive and its daughter frameworks (including the Nitrates Directive, Urban Waste Water Treatment Directive, Environmental Quality Standards Directive, Directive on Sustainable Use of Pesticides, and the Industrial Emissions Directive)

- 1.9 In terms of the UK Government's provisional analysis, WEL members would like to understand the reasoning behind the categorisation process and highlight some particular examples where we have concerns with this categorisation, particularly with some of the areas that have been placed in the category of "no further action needed", or in the case of Invasive Alien Species, not mentioned at all.
- 1.10 We must also recognise the important interactions between policy areas. For example, agriculture is listed as an area potentially needing legislative frameworks, but some of the environmental implications of policies that are very closely linked (for example, nature protection) sit in a different basket. Specifically, the environment has been identified, in England and Wales at least, as a key component of future farming policy (legislative framework needed), but itself does not seem to be listed as needing legislative frameworks, or in some cases any frameworks at all. We query how interactions between these policy areas will work in practice. The same applies to fisheries management and support (listed as an area potentially needing legislative frameworks) but those environmental areas closely linked to and impacted by fisheries policies, including nature conservation and seabed integrity, are listed as potentially needing non-legislative frameworks. This could result in a less integrated approach to addressing such issues post-Brexit.

### **Environmental Assessment Directives (EIA and SEA)**

- 1.11 The UK's provisional analysis puts the EIA Directive (except elements relating to energy generation) and elements of the SEA Directive relating to elements of rural land use in to the category for "no further action needed". Whilst we recognise that these policy areas are devolved and implemented slightly differently in each of the four countries of the UK, current EIA and SEA EU legislation has provided a common framework for UK and devolved action in these areas. The provisional analysis appears to be taking different approaches to common frameworks in respect of EIA, proposing no action in respect of certain areas e.g. Forestry and Harbours (we note that EIA as a whole is identified as an area where no further action is required), whilst proposing non-legislative common frameworks in other areas (e.g. EIA of energy planning consents – such as generation stations and overhead lines). SEA is also identified as an area where non-legislative common frameworks may be required. It is not clear what methodology has been used to reach these conclusions or what they would mean in practice. This is of particular importance to Wales where so many functions are reserved to UK Government, although they affect Welsh territory and people.
- 1.12 The adoption of a common approach to environmental assessment provides a common framework to assess the likely environmental effects of plans, programmes and projects (providing consistency to developers and others involved in the planning and development process). It also ensures there is a common approach to assessing environmental impacts.
- 1.13 In the UK, this common framework also facilitates the assessment of impacts of projects and activities that have transboundary impacts. For example the UK Government's Strategic Environmental Assessments of oil and gas licensing rounds and other offshore energy developments, including renewables and gas and carbon dioxide storage.
- 1.14 At UK level it ensures consistency in the approach across countries within the UK to the assessment of the likely significant effects on the environment, including issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, and cultural heritage, and the inter-relationship between the above factors. It also helps support consistency in relation to the need to identify measures envisaged to prevent, reduce and, as fully as possible, offset any significant adverse effects on the environment of implementing a plan or programme. In summary, the SEA and EIA Directives provide for the establishment of a

consistent framework for the assessment of environmental impacts of proposed plans and projects, and the consent procedures for projects captured under those directives, and to prompt consideration and integration of environmental mitigation into those projects, and the procedures under which those decisions can be challenged together with the monitoring obligations.

1.15 Key functions of the EIA and SEA Directives:

- **Establishing decision making procedures:** sets out information requirements for applications, and the framework for the assessments and decision making process, including public participation.
- **Establishing regulatory consistency and certainty:** a consistent approach across the UK is of particular value to developers and investors who operate across national boundaries.
- **Providing information and transparency to the public on proposed activities:** sets out standards for notifications on applications and decisions.
- **Establishing Access to Justice rights:** The EIA Directive is key to the UK's implementation of several key Aarhus Convention obligations. It sets out requirements for challenging decisions, including the rights of eNGOs and non-nationals to challenge these decisions. Such mechanisms need to be fully in line with the characteristics for such reviews as set out in Article 9(4) of the Aarhus Convention, which provides that remedies need to be adequate, and costs should not be prohibitively expensive.

1.16 In environmental justice terms alone, we consider that it is incorrect to place EIA in the “no further action needed” category, as this falls short of the JMC principles on access to justice and compliance with international obligations i.e. Article 9(4) of the Aarhus Convention.

### **Waste Management Legislation**

1.17 Waste management legislation is listed as an area where non-legislative common frameworks may be required. This contrasts with some waste packaging and product regulations where it says legislative common framework arrangements may be needed. We are unclear as to why these policies have been divided in this way, especially as current EU legislation was designed for the regimes to work together. For example, the Restriction of Hazardous Substances Directive (considered possibly to need a legislative common framework) was explicitly designed to work with the Waste Electrical and Electronic Equipment Directive (considered to need a non-legislative common framework). We also question why producer responsibility legislation has been split across both categories and we would like to further understand why the shipment of waste is included in the non-legislative common frameworks category as opposed to legislative.

### **Environmental quality – flood risk management, water quality and water resources**

1.18 WEL members consider the Water Framework Directive (WFD) and its daughter directives to be crucial for tackling water quality issues, including transboundary water quality. The EU Floods Directive is also a crucial framework for transboundary flood risk management. We question why these are placed in the “no further action” category when we consider a UK framework is necessary.

1.19 The Water Framework Directive includes both quality objectives for water bodies, and the introduction of source controls to limit pollution outputs from specific sources. The common framework established by the WFD and its daughter directives ensures a coordinated approach across the UK to identifying sources of pollution, and introducing measures to tackle these. This

approach embodies the polluter pays principle, and ensures that those responsible for pollution are accountable and made responsible for introducing the measures needed to reduce or eliminate it. A common approach to identifying and tackling pollutants not only ensures that approaches are consistent across transboundary catchments but also allows significant cost savings compared with a situation where each country developed its own list based on its own investment in research.

- 1.20 The WFD adopts a river basin district approach to water quality management, and requires different jurisdictions to cooperate in drawing up management plans for river basins that cross jurisdictional boundaries, implementing agreed control measures, monitoring improvements in water quality, and reviewing progress and revising water management plans to achieve water quality objectives. Across the UK, the common framework provided by the WFD facilitates a coordinated approach to the management and improvement of transboundary river basins.
- 1.21 A common UK-wide approach to monitoring and reporting, as required under the WFD, enables direct comparisons to be made, thus helping to identify shared pressures and enabling countries to combine resources in tackling these pressures.
- 1.22 Key functions of the WFD:
  - **Establishing water quality objectives:** common objectives for water quality must be set across the four countries of the UK
  - **Identifying novel pollutants:** identifying and adding new pollutants to lists of controlled pollutants is a key to ensuring the continued functioning of the legislation
  - **Ensuring compliance:** requires competent authorities to ensure compliance with minimum standards, and consistent application across borders.
  - **Inter-sectoral coordination:** achieving water quality standards will require the coordination of standards and practices across different sectors. Any UK framework must ensure this function is maintained.

### **Invasive Alien Species (IAS)**

- 1.23 Invasive Alien Species (IAS) are species that are introduced accidentally or deliberately into an area where they do not naturally occur, with serious negative consequences for their new environment. IAS are a critical threat to the UK's economy and environment. They have contributed to >50% of all global extinctions since the 1500s, and are currently the second greatest extinction driver in the world. IAS are estimated to cost the UK's economy £1.7 billion annually.
- 1.24 The EU IAS Regulation (1143/2014) focuses on reducing the risk of IAS establishing in the wild. It does this by restricting the import, keeping, transport, release, reproduction and sale of the most dangerous IAS. This emphasis on preventative measures contrasts sharply with existing UK legislation and significantly improves existing UK biosecurity legislation.
- 1.25 It is of particular concern that the UK analysis does not mention IAS at all, as measures relating to control and prevention of the spread of IAS will need to be tackled cooperatively across the UK. Further information about the EU IAS Regulation can be found and implications across the UK can be found in Environment Links UK's statement, [The EU Invasive Alien Species Regulation & Brexit.](#)

## Birds and Habitats Directives

- 1.26 These are currently listed as needing non-legislative frameworks. As mentioned, we need to see a transparent process to determine categorisation, which considers environmental need before accepting this or indeed any of the published listings.
- 1.27 Habitats and species do not respect national boundaries and are often distributed across, or move between, the four countries of the UK, and therefore require coordinated action for their effective protection and restoration. To date, a common framework for nature conservation has been established under the EU Birds and Habitats Directives. This common framework has driven coordinated and targeted action for protected species and habitats wherever they occur across the UK, and has supported consistency in approaches to protection across political boundaries.
- 1.28 The in-built flexibility of EU Directives has allowed the four countries to adopt their own approach to implementation in fulfilment of the objectives set out at EU level, and the four countries of the UK have used different instruments to implement the legislation.
- 1.29 Post-Brexit, cross-border coordination will continue to be essential for effective nature conservation in line with both country-level and UK international commitments, and is also beneficial for business and other stakeholders who operate across those boundaries.
- 1.30 Monitoring frameworks established under these Directives are also based on a common approach, enabling the four nations to more consistently assess progress, thereby giving a more ecologically representative picture of the status of habitats and species. Common frameworks for monitoring enable the four UK countries to compare the status and trends of protected species across borders and identify and respond to transboundary drivers of biodiversity loss.
- 1.31 Some of the key common elements include:
- **Species lists:** drawing up complementary lists of habitats and species;
  - **Standards:** establishing consistent minimum standards for site and species protection regimes, and stipulating and driving requirements for protection initiatives;
  - **Decision making:** establishing common requirements for the assessment of impacts on habitats and species in the context of proposed plans and programmes (e.g. Art 6(3) and (4) Habitats Directive), or other activities which could impact (e.g. Art 12-16 Habitats Directive);
  - **Enforcement:** requires competent authorities to ensure compliance with minimum standards, and consistent application across borders;
  - **Monitoring approaches:** establishing coordinated protocols for monitoring and reporting that satisfy both EU and international obligations;
  - **Data management:** designating a body to act as a coordinator and data repository for monitoring, responsible for assessing progress against conservation objectives; and
  - **Responding to change:** ensuring common frameworks are in place to deliver effective conservation action in response to monitoring data to tackle new or emerging threats.

## Marine Strategy Framework Directive

- 1.32 The Marine Strategy Framework Directive (MSFD) was introduced in 2008 by the EU to promote sustainable use of seas and conserve marine ecosystems. The MSFD has been transposed into UK law through the Marine Strategy Regulations (MSR) (2010) and a Marine Strategy (in three sections) has been produced and agreed by the UK and devolved administrations. The

main goal of the Marine Strategy Regulations is to achieve Good Environmental Status across European seas by 2020.

- 1.33 We believe that the common UK framework provided by the Marine Strategy Regulations, the Marine Strategy targets and their indicators is a great strength and should be retained, whilst allowing each UK country the freedom to take the necessary actions to meet or go beyond these targets.
- 1.34 Continued implementation of the Marine Strategy Regulations:
- ensures a coherent approach to delivering a healthy marine environment, across the UK;
  - provides the overarching framework for a number of other key pieces of legislation, which are applicable to the marine environment, including the Marine & Coastal Access Act (2009);
  - helps Wales to meet our international commitments including under OSPAR6, the Convention on Migratory Species (CMS), the Convention on Biological Diversity (CBD) and the Sustainable Development Goals. This includes providing a key mechanism for delivering nature recovery in the Welsh marine environment, as highlighted within the Wales' Nature Recovery Action Plan (Part 1); and
  - provides an existing, fit for purpose framework under which to deliver upon the Environment Act's commitments of the sustainable management of natural resources and ensuring ecosystem resilience in the marine environment.
- 1.35 To restore nature at sea, we believe that a fully integrated and revised UK Marine Strategy, setting out the overarching framework and long-term level of ambition for restoring the health of our seas, is required. This Strategy should be embedded across governments, rather than simply within environmental departments. As Part One of the Strategy is revised in the coming 12 months, it will be particularly important for Welsh Government to work with other UK governments to set the level of Good Environmental Status, in line with its aspirations to be world leaders in environmental stewardship.

### **Common frameworks for agriculture and fisheries**

- 1.36 Land and fisheries management are areas that will require further discussion, and may contain aspects that are legislative and non-legislative, recognising the need for integration with related policy areas as discussed above. WEL's [Sustainable Land Management Vision](#) makes clear that our members support a public money for public goods approach to land management policy. For the purposes of a functioning internal market, and to avoid competitive deregulation, we believe all four countries of the UK need to commit to this same approach to the distribution of funds for land management. We welcome recent commitments to this approach from the Welsh Government and UK Government.
- 1.37 A commitment to fishing at sustainable levels means setting total allowable catches in line with the best available scientific advice from established and internationally recognised scientific institutions. The precautionary principle also needs to be applied so that fish stocks are maintained above levels capable of producing the Maximum Sustainable Yield and ensuring that, by 2020, fishing mortality is below levels that will deliver Maximum Sustainable Yield.
- 1.38 Greater stewardship of fish stocks and the wider marine environment should be achieved by providing incentives and allocating quotas using transparent and objective criteria, including those of an environmental, social and economic nature. New marine and fisheries legislation resulting from the UK's withdrawal from the EU must recognise that wild fish are a fundamental component of the marine ecosystem and are a natural resource that must be managed for the public good.

- 2. How should both the legislative and non-legislative frameworks be developed and implemented?**
- 3. How prescriptive should the common frameworks be and how much discretion should each administration have within the frameworks?**

2.1 WEL strongly believes that for both legislative and non-legislative frameworks to be effectively developed, the four administrations need to start with a far more open, transparent, evidence-based and collaborative process for identifying the types of common frameworks that will be necessary for effective environmental protection.

2.2 Any new common frameworks should:

- be based on a robust and transparent assessment of the environmental impacts under a range of plausible scenarios;
- maintain ambitious common standards that are at least as high as those set out in existing EU law, at the same time as retaining an appropriate degree of flexibility to allow implementation tailored to the specific environmental context in each nation;
- prevent competitive deregulation within the UK by setting a minimum common baseline but not prevent any nation from introducing higher standards;
- be developed alongside a new set of fair and transparent environmental funding arrangements, based on objective environmental criteria and the delivery of public benefit, to replace the loss of EU funding streams and enable effective implementation;
- include shared governance arrangements, as set out above, to replace the current set of processes by which EU institutions ensure that all the UK's jurisdictions are acting in accordance with their obligations under EU law; and,
- take into account the need to preserve cross-border environmental cooperation on the island of Ireland.

2.3 A genuine collaborative process should be put in place to design, implement, and enforce frameworks across the four nations of the UK. Frameworks should be delivered in partnership to ensure that they work for all of the countries of the UK. All four parliaments should have a role in scrutinising common frameworks, and holding each of the four administrations to account for implementation and enforcement.

**Wales Environment Link (WEL)** is a network of environmental, countryside and heritage Non-Governmental Organisations in Wales, most of whom have an all-Wales remit. WEL is a respected intermediary body connecting the government and the environmental NGO sector in Wales. Our vision is a healthy, sustainably managed environment and countryside with safeguarded heritage in which the people of Wales and future generations can prosper.

This paper represents the consensus view of a group of WEL members working in this specialist area. Members may also produce information individually in order to raise more detailed issues that are important to their particular organisation.

