

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

Ymateb gan : Greener UK

Evidence from : Greener UK

1. Introduction

Thank you for the opportunity to provide written evidence to the Committee's inquiry into environmental principles and governance. This written evidence is submitted on behalf of Greener UK, a group of 14 major environmental organisations, with a combined public membership of over 8 million.

This evidence focuses on whether Welsh Government's proposals on environmental principles and governance will adequately address the gaps created by Brexit and the importance of ensuring that arrangements work effectively across the UK. This evidence complements the more detailed evidence submitted by our partners RSPB Cymru and WWF Cymru.

2. Environmental principles

It is essential that all four core EU environmental principles (precautionary, polluter pays, rectification at source and prevention) are explicitly listed and enshrined in Welsh primary legislation to provide equivalence with existing EU legal protections and legal and public clarity on the status and the application of the principles.

We disagree that existing Welsh legislation provides equivalence for the precautionary and prevention principles. While the Well-being of Future Generations Act and Environment (Wales) Act reflect these principles to a degree, they do not provide legal equivalence as the scope and effect of the Acts differ from how the principles function at the EU level. The current approaches in these Acts mean the principles would not apply to all policies, laws and activities.

In the EU Treaties the core environmental principles are aimed at an overarching objective of 'a high level of environmental protection'. However, the Sustainable Management of Natural Resources (SMNR) principles have been designed to function at an operational level in specific contexts and the SMNR duty is centred on an ecosystems resilience objective. This means that only including environmental principles in a legal context defined by SMNR will be narrower than the current EU position.

Instead, we believe that Welsh Government must provide a legislative framework that:

- Explicitly lists all four key EU principles in primary legislation
- Sets an overarching objective, ensuring the principles aim at achieving a high level of environmental protection
- Includes a non-regression commitment (we do not agree this is encapsulated within the SMNR framework given the limited scope of the SMNR duty and application framework)
- Provides for the principles to be legally enforceable through a clear duty applying to all public bodies in Wales

Welsh Government should also take this opportunity to incorporate the procedural rights for the public to environmental information, participation and access to justice set out in the Aarhus Convention into

primary legislation. This would be a powerful statement of intent from Welsh Government and a visible commitment to public participation in environmental decision making.

We are keen to ensure there is consistency across the UK for public bodies and the public on implementing environmental principles, for example through a shared high level statement.

3. Governance arrangements

The consultation identifies the environmental governance gaps that will be created by Brexit, which we agree are in three broad areas: enforcement, scrutiny and advice. A new body will need to be created as no current body within the Welsh delivery landscape has the sufficient remit, status and powers to deliver this breadth of functions independently from government. We are also concerned at suggestions that an existing body could be repurposed to fulfil these functions. We would strongly guard against this as retrofitting an existing body would not deliver as coherent and functionally effective a body as one specifically designed to meet clearly identified needs and functions. It would also be unlikely to deliver either cost savings or a simpler solution.

Any new governance body must have the necessary independence, resources, remit, powers and expertise to deliver its functions effectively.

We agree with the consultation proposal that the body should be transparent, accountable to the National Assembly for Wales, independently audited, and, critically, independent of government with regard to appointments and funding.

One of the key strengths of current EU structures is the powerful and dissuasive deterrent effect provided by a system which can result in financial, practical and reputational penalties. In Wales, current environmental enforcement structures are weak due to the lack of remedy and sanction for non-compliance with legislation. This is therefore a key opportunity for Welsh Government to strengthen existing protections as well as to replace existing functions.

It is therefore essential that the body should have dedicated and bespoke enforcement processes which include the power to issue binding decision notices and the ability to seek enforcement action when its decision notices are not complied with. It must also have the power to initiate formal investigations into potential breaches of environmental law and inquiries on systemic problems. It must also be able to issue guidance and recommendations as a result of these investigations.

4. The need for effective governance systems across the UK

Given that the environment does not respect boundaries, a joined up approach to environmental governance across the UK will be essential.

The UK government has said it “would welcome the opportunity to co-design proposals with [the devolved administrations] to ensure they work across the whole of the UK”, and Welsh Government has expressed its keenness to work with other administrations in addressing the environmental governance gap.

These welcome commitments offer a good basis on which to discuss and develop proposals that would ensure that governance and enforcement gaps are addressed and join up across the whole of the UK.

It is difficult to assess whether there has been sufficient collaboration between the UK government and the devolved administrations on environmental governance, and whether the right processes are in place to agree the most environmentally rational settlement. This is because many of the discussions take place within processes such as the Joint Ministerial Committee, or in quadrilateral working groups of officials, which currently have no direct stakeholder engagement and lack transparency.

A UK-wide approach (as a single/joint body or an arrangement between four bodies) would have a number of potential advantages including greater durability and resilience, greater resource efficiency, a more co-ordinated approach to transboundary issues and a counter to competitive deregulation (a 'race to the bottom') by one or more of the other governments. But a UK-wide approach would only succeed if it was the product of genuine co-design and ownership that respected the devolution settlements and their asymmetric nature.

If a Wales only body is created, there will need to be co-ordination with whatever arrangements are put in place across the rest of the UK. We strongly recommend that stakeholders are involved in shaping how this co-ordination is delivered in legal and practical terms. This should include discussion of a number of matters including:

- Developing and delivering common standards
- Co-ordinating action and decisions, particularly on matters with transboundary impacts
- Co-operating on the scrutiny of international agreements and commitments
- Mechanisms for resolving inter-governmental disputes