



The network for environmental, countryside and heritage NGOs In Wales

Environmental Principles and Governance in Wales Post European Union Exit

June 2019

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

WEL strongly agrees that the principles of 'Rectification at Source' and 'Polluter-pays' should be included within primary legislation for Wales.

The consultation acknowledges the limitations in scope of those principles that it considers to already be represented in Welsh legislation, and proposes a way to widen this scope, which we will comment on under question 3. Currently the four core environment principles do not exist in isolation and hold an overarching and legally enforceable status across the European Union. To ensure non-regression of current environmental standards, it is critical to consider how the two additional principles should be included in primary legislation and how they relate to other principles.

WEL is concerned that the proposal to simply introduce the rectification and polluter-pays principles risks an inconsistent approach being taken to the four, as a whole, in Welsh legislation. This is because Welsh legislation does not currently include the prevention and precautionary principles in a way which is consistent with their current clarity, scope and legal strength under the EU, as neither hold a sufficiently overarching or legally enforceable status.

Our concerns include:

- The precautionary principle at EU level clearly encompasses potentiality - which reflects the approach at the heart of the precautionary principle - namely that scientific uncertainty should not be a reason to avoid taking action. The Welsh approach, with its reference to preventing significant damage cannot be clearly understood to do this.
- The SMNR principle (h) refers to taking action to prevent significant damage to ecosystems. The inclusion of significance further narrows the application of the prevention principle as it is not equivalent to preventing damage to the environment. Moreover the current Welsh legislation does not explicitly name the precautionary principle which we consider necessary for clarity.
- We are doubtful that the reference to ecosystems is sufficiently broad to cover all aspects of the environment given that the environment is not defined within Welsh legislation – which instead talks in terms of Natural Resources.

When the Well-being of Future Generations and Environment (Wales) Acts were being developed WEL members, as part of the SD Alliance, argued for the inclusion of these principles. However, at the time we were informed that to do so would be duplication and that the Acts needed to operationalise the principles as part of an overarching EU framework. Without this overarching

framework it is difficult to see how the content of these Acts alone is now sufficient to ensure non-regression.

For genuine non-regression to be secured, it is essential that all four principles are clearly articulated in Welsh primary legislation in a way that includes an overarching purpose, scope and environmental objective, which the application of the principles can be assessed against. This means that amendments will be required to existing primary legislation.

The prevention and precautionary principles are currently 'operationalised' in the SMNR principles. Some of the core principles are also put into effect in other legislation (e.g. the polluter pays principle via the Environmental Permitting Regulations and the precautionary principle by the Habitats Regulations). It is unclear how the proposed inclusion of the rectification and polluter-pays principles would be treated. Would they be included explicitly or 'operationalised'? There is a risk of incoherence if they are not treated in the same way.

The consultation is also unclear on the extent to which there may be a need to amend the 'operationalisation' of existing principles to reflect changes to their scope. For the sake of coherence and consistency (and to reflect the desire of paragraph 2.28 in the consultation), we expect elements of both will need to occur.

In the EU Treaties the core environmental principles are aimed at an overarching objective of 'a high level of environmental protection'. The SMNR duty is centred on the objective 'to maintain and enhance the resilience of ecosystems and the benefits they provide'. We do not consider this to be equivalent and interpret the SMNR duty to be narrower. Instead there should be an overarching objective towards which the application of the principles can be measured.

WEL is clear that the four core principles need to be explicitly represented in Welsh primary legislation in a clear, standalone, overarching and legally binding way, so that there is consistency across the UK, and so that they are easily interpreted by bodies that must implement them as part of their duties. This would also make them more easily understood by the public.

Question 2: Do you think there are other principles, which may also need to be included?

The UK Government is committed to legislating for an additional five principles in its Draft Environmental (Principles and Governance) Bill. These are a mixture of accepted EU principles and rights linked to the Aarhus Convention. It is disappointing that this consultation does not consider how these additional principles and rights will be upheld in Wales.

Without enshrining these rights into law, true public participation in environmental decision-making and the ability to hold public bodies to account risks remaining an aspiration rather than a requirement of Welsh law. We encourage the Welsh Government to legally enshrine enforceable rights in Welsh law, as a statement of our national values. This action has the potential to further strengthen governance arrangements.

Whilst we recognise the intentions of this and previous Welsh Governments in legislating for sustainable development, these laws were created as part of the EU framework and have not been tested as a replacement environmental governance system outside that framework. We would urge

the Welsh Government not to miss this opportunity to continue its role as a leading environmental voice in the UK, and to use this process to fully retain and strengthen the standards and protections that we have had as part of the EU.

The consultation states (Paragraph 1.5) that whilst exit from the EU means the loss of a number of governance mechanisms, it also provides an opportunity to put in place new governance arrangements, which reflect and support international commitments and build on the Welsh Government's approach to managing natural resources as provided in the Environment Wales Act 2016. It states that there is an opportunity to develop a structure which supports not only a commitment to non-regression, but more fundamentally a commitment to enhancing the environment to meet challenges faced.

The consultation also states that the need to establish environmental principles and governance in Wales post EU exit provides "an opportunity here to enhance our national governance arrangements by introducing new mechanisms which address the gap, arising as a result of the loss of the oversight of EU provided by the European Commission."

We agree with this sentiment. Whilst the consultation proposes to legislate on environmental principles and governance, and address gaps arising from EU exit, there is an opportunity to consider additional measures including addressing weaknesses in the existing legislative framework for the environment and sustainable development.

The Welsh Government has argued that the objective of SMNR is sufficient to reflect principles such as non-regression; we do not accept this. This is partly due to the limited ambition contained in the SMNR duty to 'maintain and enhance', rather than to protect and restore resilience. We would suggest consideration is given towards adding a principle of progression which will ensure that we are constantly trying to achieve a higher standard.

Within the Treaty of the Functioning of the European Union, Article 11 states that "Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development". The current application of the integration principle is a concern, as it occurs within the WFG Act with a specific definition. Further investigation is needed to decide whether this definition and its scope of application give real equivalence to its intention at EU level. By this we mean that integration in the Act is specifically about integration between goals and objectives. This is not the same as the general principle explained in article 11 of the treaty mentioned above.

We recognise the SMNR duty itself is a vehicle for integration if properly applied; however, as indicated, we believe the SMNR duty will need to be enhanced, or an additional duty added (with specific reference to the four core principles and overarching environmental objective) to secure equivalent impact of the principles.

We recognise the inclusion of the Aarhus rights in the Westminster Environment Bill, and that the UK will not cease to be a signatory of the Aarhus Convention as a result of leaving the EU. However, this does not prevent the Welsh Government from enshrining these rights in primary legislation and we encourage it to do so as a statement of intent and of our national values, which has the potential to further strengthen governance arrangements subsequently discussed in this consultation.

Finally, we argue that there should be an overarching objective of achieving high environmental protection, towards which the application of all principles should aim. This has proven to be an effective tool in the European context, which has supported the interpretation of environmental principles from policy making through to CJEU judgements.

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

WEL is pleased that the Welsh Government has recognised the limitation of the SMNR duty to NRW, and Welsh Ministers in the development of the National Resources Policy. If the four core environment principles are to be enshrined in Welsh law in a way that provides equivalence with their current scope under the EU, this duty will certainly need to be extended at the least.

As well as the scope – in terms of which public bodies the SMNR duty applies to – the Environment Act will need to be amended in other ways. It will be critical to ensure the amended drafting makes public bodies’ duties explicitly clear to all concerned. Currently, the drafting is aimed explicitly at two bodies and functions. To broaden this scope to non-environmental public bodies, and the range of matters they cover, may need amendments aimed at operationalising in different ways. We believe including the four core principles as standalone, overarching principles will help with the clear and consistent interpretation of public bodies’ duties, but will not be sufficient on its own.

We look forward to participating further in the development of these changes.

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

WEL strongly recommends that the duty should apply to all public bodies operating in Wales. This should include public bodies created since the passing of the WFG and Environment Acts, such as the Welsh Infrastructure Commission. We also see benefits in this applying to public authorities and public-body/private-sector coalitions such as City/Regional Growth Deals.

We are concerned that only applying the duty to public bodies would likely cause a regression from the status-quo. We also recognise that the devolved constraints placed on the Welsh Government mean some public authorities¹ would not be included unless the Welsh Government ask the Secretary of State for Wales to act on its behalf. This demonstrates that non-regression cannot be achieved without co-operation between the Welsh and UK Governments. We urge both to ensure non-regression.

We also stress the importance of including public-body/private-sector coalitions such as City/Regional Growth Deals, given the power that these have been given to set the strategic direction

¹ By public authority, WEL uses the definition in Section 6 (9) of the Environment (Wales) Act (this definition includes, but is much broader than ‘public body’ as defined in S6(9)(e) or S10 of the Environment (Wales) Act. :: (9) “Public authority” means– (a) the Welsh Ministers; (b) the First Minister of Wales; (c) the Counsel General to the Welsh Government; (d) a Minister of the Crown; (e) a public body (including a government department, a local authority, a local planning authority and a strategic planning panel); (f) a person holding an office– (i) under the Crown, (ii) created or continued in existence by a public general Act of the National Assembly for Wales or Parliament, or (iii) the remuneration in respect of which is paid out of money provided by the National Assembly for Wales or Parliament; (g) a statutory undertaker.

and significant financial spending decisions across Wales. These coalitions are currently a grey area with regard to the Well-being of Future Generations Act, as only some of their partners are covered by the Act. This needs to be clarified and the coalitions fully and clearly integrated into any expanded SMNR duty.

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 gaps identified in paragraph 3.22 with some amendment.

With regard to ‘A simple and inexpensive mechanism to raise complaints’ we would also add that the current system is also liability-free for any complainant. This enables them to make complaints without the fear that they will be subject to future action by those they complain against, or would face costs should the complaint not proceed, or be ruled against.

With regard to ‘enforcement mechanisms’ we would also add that the EU’s powers also include the rectification of damage caused by the offence. This is a vital aspect of the EU’s enforcement mechanisms and its loss would be a significant regression.

In addition to the above we would also add the extensive monitoring and data collection activities of the EU. While we do have some national data collection and analysis it is not as expansive, nor does it proactively monitor compliance with objectives and regulations in the same manner. These additions are critical if the Welsh Government is going to deliver on its commitment to “ensure there is no reduction in people’s rights as a result of exiting the EU”. Equivalent rights will not be achieved if there are not equivalently powerful ways of giving effect to those rights.

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

WEL members are clear that none of Wales’ existing public bodies, as identified by the consultation, meet all of our criteria for a successful governance body. These are independence, resourcing, the right environmental expertise and having the ‘teeth’ to enforce environmental law.

NRW has a particular role in achieving the sustainable management of natural resources and will continue to be required to perform its day to day role of managing land, regulating, permitting and enforcing environmental protections. We still need NRW to perform as a strong, and preferably more independent, environmental body. However, it does not currently have the resources or independence to perform the additional functions that are currently undertaken by the EU. Furthermore, NRW is one of the bodies charged by Government with delivery of environmental law, and advises Government on its (Government’s) application of environmental law. It is therefore impossible for them to act as an independent watchdog of their own, and Government’s compliance.

There are various important scrutiny mechanisms currently undertaken by the National Assembly for Wales Committees, Wales Audit Office and the Public Services Ombudsman, as the consultation identifies. However, whilst all of these mechanisms will still be required, they do not provide equivalent enforcement functions with the EU Commission. Nor do they provide an equivalent citizen complaints mechanism, which is finance and liability-free, and which has the breadth of scope and

the level of access to environmental expertise that the Commission can provide. Replacing these EU Commission and CJEU functions with these existing Wales bodies would be wholly inadequate.

The Office of the Future Generations Commissioner also does not have the level of independence, the resources, the environmental expertise or the teeth to perform the monitoring, enforcement and citizen's complaints functions that are currently provided by the EU. The FG Commissioner was not designed to provide these functions and WEL members are not convinced that it could be retro-fitted to do so. In particular, the environmental expertise of the FG Office would need to be increased enormously, if it were to be able to investigate breaches of environmental law with the same level of detail that the EU Commission is able to do. This would change the entire nature of the body, as it is currently constituted as an advisory champion, and it could lead to considerable skewing of the focus and resources onto environmental matters.

Whilst, in theory, an existing public body could be given new powers, duties and functions, to do so would be to fundamentally change that body, potentially giving rise to further complications and difficulties. The loss of the oversight role of the Commission will leave a significant gap which will need to be filled. This new and significant governance gap will not be plugged by changing our existing bodies, which already have important functions to deliver.

It is our view that the creation of a new independent environmental watchdog is necessary. The simplest way of integrating this new body into the existing institutional landscape is to make any new governance body responsible for advising on, investigating, and enforcing compliance with environmental law and require existing bodies to report to it on these matters; any additional matters the new body deems necessary; and for others to abide by its guidance and decisions.

The above solution also ensures a central point of contact for citizens, who might find it difficult to navigate which of the existing Wales public bodies are best suited to deal with their enquiry or complaint. WEL would be concerned if functions are portioned out across numerous existing bodies as this would create further complexity in our environmental governance, increase the risk of breaches of environmental law being addressed effectively and potentially make it more difficult to co-operate at a UK level.

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

In developing a new environmental governance body for Wales, WEL would like to see the Welsh Government bringing forward solutions that provide:

1. A co-ordinated transboundary approach to managing shared environmental resources

Environmental processes do not recognise borders, so the Welsh and UK governments need to ensure co-operation on a range of transboundary issues, such as managing river catchments, invasive species, cross-boundary protected areas and air pollution.

2. A race to the top, with no backsliding

If environmental policymaking takes place completely independently in each of the four countries, there is a risk of confusion, undermining of each other's aims, or, in the worst case, a race to the bottom with deregulation for competitive advantage. To support the integrity of the internal market

and prevent unfair regulatory competition, there need to be minimum common standards across the UK. But to ensure each government is constantly striving towards a healthier environment and nature's recovery, there should not be a ceiling to anyone's ambition.

3. International credibility

Although the UK government is the sovereign state that participates in multilateral discussions and is the formal signatory to international agreements, the devolved administrations have full or partial responsibility for delivering on such commitments. To ensure the UK's international promises are credible, mechanisms are needed to translate them into progress on the ground in each country. This includes relevant provisions in the Withdrawal Agreement with the EU (if approved), and any future trade deals.

4. Accountability, transparency and access to justice

Trusted institutions and processes, such as dispute mechanisms, are required to underpin the delivery of all of the above. New robust, transparent and well-resourced domestic governance arrangements will need to replace functions currently carried out by EU institutions in securing compliance with common standards across the four nations. People in Wales need to have equivalent access to information, participation in decision-making and access to justice as set out in the Aarhus Convention. These new arrangements will need somehow to be shared or co-ordinated across the UK, while working with the different systems of accountability and respecting the devolution settlements.

We agree that the broad role for a new body, which is identified in the consultation, contains appropriate objectives, and we agree that the scope should be all-encompassing and that the body should have a clear role and remit, with no overlap or duplication with the functions of existing bodies. In our answer to question 8 we explain why we think the definition of natural resources still may be too narrow a scope.

We are also pleased to see the clarification that the body would be empowered to monitor compliance with and enforce all environmental law in Wales, whether this is specific Welsh law or EU-retained law operating in Wales. The body also needs to be easy for citizens to engage with.

We have expanded on the role of the body below, to identify the functions, duties and powers (within devolved competence) we argue that it should have:

Overall Functions

- Oversee implementation in Wales of all domestic environmental law (adapting the definition from the Environmental Information Regulations), regardless of whether originally domestic or retained EU law, including the environmental principles and rights discussed above.
- Monitor compliance by the Welsh Ministers; Public Bodies & Authorities in Wales; business and other actors.
- Enforce environmental law by initiating investigations into possible breaches and responding to complaints from citizens and civil society organisations.
- Identify and act on breaches, with the application of appropriate remedies and sanctions (including legal and financial sanctions).
- Review and report information regarding both the state of the natural environment in Wales and performance against policy objectives.

- Publish environmental information fully and transparently.
- By way of referral or complaint, engage with planning decisions that raise issues of a significant and strategic nature.
- Play a role in overseeing compliance with international environmental agreements in Wales.
- Strategic advisory function could be developed, but would need to be carefully defined to ensure no duplication with other bodies.

Duties

- Statutory duty to take proportionate action against the Welsh Ministers and Welsh public bodies in the public interest for breaches of environmental law.
- Duty to review (and report to the Welsh Assembly) environmental planning and reporting carried out by Welsh public bodies.
- Review and report information regarding both the state of the natural environment in Wales and performance against policy objectives.
- Publish environmental information fully and transparently.
- Routine scrutiny of implementation of legislation and assessing whether it is on track, challenging apparent failure.

Powers

- Investigate potential breaches of environmental law in Wales.
- Consider and investigate citizen complaints about breaches of environmental law in Wales from members of the public.
- Issue advisory notices for failure to implement environmental law in Wales, and identify corrective action.
- Issue binding notices requiring breaches of environmental law in Wales to be remedied and setting out how this is to be remedied (for example through the publication of action plans, the implementation of certain policies or compensation payments).
- Initiate legal proceedings. Issue (or apply to the High Court/ Specialist Environmental Tribunal) for sanctions if an authority fails to comply with a binding notice/court order. These could include fines or introducing 'special measures' or mandatory orders. These could also include structural injunctions setting out the steps needed to be taken by a public body to comply with a binding notice issued by the new body.
- Fund litigation in Wales, or related to Wales, and other activities relating to its functions.
- In line with current EU level emergency powers, issue interim measures and stop notices to prevent irreversible environmental damage where the power to do so lies outside the remit of other regulatory bodies (such as NRW).
- Accept enforcement undertakings (an offer or promise to carry out certain activities, made by the regulated entity to the regulator in charge of enforcement, as an alternative to a criminal charge or other administrative sanctions). The details of such undertakings would be publicly available.
- Apply remedies similar to those under the Environmental Liability Directive, such as preventative measures, remedial action and compensatory measures.
- Undertake formal investigations into potential breaches of environmental law in Wales (including an own-initiative power in keeping with the majority of ombudsman schemes).

- Conduct inquiries into systemic problems in particular Welsh policy areas and make recommendations to the Welsh Government, including in relation to any policy changes that may be necessary as a result.
- Require information from competent bodies where this relates to an issue relating to the Welsh environment, especially where this relates to information that may be commercially sensitive or not in the public domain.
- Produce public reports on compliance with international law in Wales, and any other matter it thinks is important (respecting the devolution settlement).
- Ability to conduct investigations into any body within its remit without a complaint being raised.

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

WEL recommends that the scope of new governance arrangements should include all policy areas which have an impact upon the environment, e.g. economic, transport, social and health policies. We welcome the intent set out in the consultation document for the scope of governance arrangements to include all natural resources (as set out in the EWA) and other policy areas that intersect with them, e.g. climate change, chemicals, and agriculture. We assume the same would apply to e.g. land use and marine planning, fisheries management and forestry. We recommend further careful analysis to ascertain this captures all aspects of the environment and all relevant requirements to ensure equivalence to the European model, whereby the Commission considers environmental impacts across all areas of competence.

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

WEL does not think that this list of bodies is sufficient on its own. See answer to question 10 for a further indication of bodies that we recommend the scope of the new governance body should cover.

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

The new body must be a champion for the environment and one which is responsible for advising on, investigating and enforcing compliance to environmental law. Given this, its oversight remit should be appropriately extended so it can, at the very least, support all public bodies covered by the proposed extension to the SMNR duty.

In line with our answer to question 4 we believe the remit should apply to all public authorities operating in Wales, including reserved bodies with functions falling within devolved competence, and to public-body/private-sector coalitions such as City/Regional Growth Deals. The remit needs to be worded in such a way that it captures any public bodies which might be created after the passing of the Act.

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

WEL agrees with the proposal to make any new body transparent, accountable to the National Assembly for Wales, independently audited, and independent of Government with regard to

appointments and funding. This represents a significant improvement on many bodies in Wales and is welcome. We do not, at this time, have a strong view on the specifics of how it is constituted in terms of whether to be a Commission, or any other such structure. Our priority is that it should be able to deliver upon the functions, duties and powers outlined in response to Question 7, that it is well-resourced and employs the right level of expertise, and that it delivers (perhaps in cooperation with other UK oversight bodies):

1. A co-ordinated transboundary approach to managing shared environmental resources
2. A race to the top, with no backsliding
3. International credibility
4. Accountability, transparency and access to justice

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

WEL suggests that the body could act in a strategic advisory capacity, but this role should be clearly and carefully defined, and should avoid duplication with other advisory bodies.

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

WEL agrees that an oversight body should be able to scrutinise implementation of environmental legislation – in fact it is vital that it does so. It should also be able to scrutinise non-environmental legislation if it has an impact on the environment.

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

The extent of this scrutiny function should not be limited to environmental legislation alone. The body needs to be free to make maximum use of its expertise to become a champion for the environment. This includes conducting thematic reviews (and other duties listed in response to Question 7) to evaluate whether a particular piece of legislation is being effectively applied, or a public body as a whole is sufficiently contributing to improving the state of the Welsh environment. This function must also not be limited to responding to complaints, or requests.

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?

The ability for any new body to receive and investigate public complains on the environment is a vital function which WEL strongly supports. We listed the powers that we believe the body should have in our response to question 7. In particular, to effectively investigate citizen complaints and provide equivalent enforcement options, we believe the body would need powers to:

- Investigate potential breaches of environmental law in Wales.
- Issue advisory notices for failure to implement environmental law in Wales, and identify corrective action.
- Issue binding notices requiring breaches of environmental law in Wales to be remedied and setting out how this is to be remedied (for example through the publication of action plans, the implementation of certain policies or compensation payments).

- Initiate legal proceedings. Issue (or apply to the High Court/ Specialist Environmental Tribunal) for sanctions if an authority fails to comply with a binding notice/court order. These could include fines or introducing 'special measures' or mandatory orders. These could also include structural injunctions setting out the steps needed to be taken by a public body to comply with a binding notice issued by the new body.
- In line with current EU level emergency powers, issue interim measures and stop notices to prevent irreversible environmental damage where the power to do so lies outside the remit of other regulatory bodies (such as NRW).
- Accept enforcement undertakings (an offer or promise to carry out certain activities, made by the regulated entity to the regulator in charge of enforcement, as an alternative to a criminal charge or other administrative sanctions). The details of such undertakings would be publicly available.
- Apply remedies similar to those under the Environmental Liability Directive, such as preventative measures, remedial action and compensatory measures.
- Require information from competent bodies where this relates to an issue relating to the Welsh environment, especially where this relates to information that may be commercially sensitive or not in the public domain.
- Conduct investigations into any body within its remit without a complaint being raised.

There is no existing body in Wales which has a sufficiently strong remit to replace the complaints function of the EU, so this will need to be created to avoid regression. We also welcome the recognition that in line with the current system, a new Welsh citizen complaints mechanism should also be simple and free for citizens to use. In addition to that it also needs to be free of any civil or financial repercussions for the citizen making the complaint.

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

WEL agrees that a new body should have informal and formal enforcement methods akin to those available within the EU. We refer to some of these in the list of powers in questions 7 and 15. A key improvement which could be made to the status-quo would be to improve the transparency and speed of the informal methods. Under the current system, informal methods can go on for several years without a public statement on progress. We would recommend a publicly accessible log of the details of all informal processes underway, and frequent updates on work underway in relation to them.

These processes need to be responsive to the scale and severity of the case at hand, with swift action being taken to stop any damaging action while a longer investigation can be conducted. A key point in the effectiveness of the current structures is the knowledge that the enforcement structures are strong and carry with them a 'stick' (both financial and reputational) which is sufficient to discourage bad behaviour so much so that cases do not arise. WEL is concerned that environmental enforcement procedures are currently weak in Wales, with enforcement in response to agricultural pollution events being a case in point. It is also critical that the body has the power to refer matters to a court or tribunal for a judgment where necessary.

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

WEL agrees that recourse to the courts/tribunals should be a last resort. We also argue that Judicial Review is significantly weaker than the processes available as part of the EU, and welcome recognition in the consultation that a better process is required to prevent regression.

Please also see our answer to question 5 on enforcement mechanisms.

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

Given that the environment does not respect borders it is logical that a shared set of common environmental principles across the UK brings benefits. It would be especially advantageous given the current devolution settlement and the scope of the proposed UK Bill on reserved functions in Wales, providing coherence of approach.

There is a potential scope for a degree of ‘dynamic alignment’ between the nations of the UK were there to be core principles agreed, and an overarching objective to improve the environment, but at an operational level, each were free to pursue a slightly different approach to achieving that objective.

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

WEL recognises that this issue is not unique to the environment and that Brexit has exposed new challenges in the way that the countries of the UK function and work together. We also recognise the attempts to grapple with these challenges by the Welsh Government in Brexit and Devolution: Securing Wales’ Future.

WEL’s view is that there clearly needs to be collaboration between the governments of the UK to ensure non-regression, a complaints procedure which enables a disputes resolution function between governments, and a way to collaborate to meet our international commitments.

Ideally, a governance body that operates across the four countries of the UK, accountable to devolved parliaments as well as UK Parliament, would be the best option to achieve this. We believe such a body would be more independent, more robustly resourced and better able to hold the four governments to account. This body would need to be co-owned and co-designed by all four UK governments. However, if this is not possible, then we believe a new Welsh oversight body that collaborates closely with its UK counterparts, and which has access to a clear dispute resolution mechanism when dealing with cross-border issues, will be necessary.

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.



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