

Consultation: Environmental principles and governance in Wales post European Union exit

Confor is the not-for-profit organisation for sustainable forestry and wood-using businesses in the UK. We have more than 1,500 member companies representing the whole forestry and wood supply chain. Confor focuses on the strategic issues that are vital to the success and sustainable future of the sector. These include helping to build the market for wood and forest products, creating a supportive policy environment and helping members to become more competitive and successful.

Confor has previously responded to the consultation on environmental principles and governance after EU exit in England: our response can be accessed at

<http://www.confor.org.uk/resources/consultations/environmental-principles-and-governance-after-eu-exit/>

Environmental Principles

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

- o Rectification at Source;**
- o Polluter-pays**

Yes.

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

No, additional principles are covered by the Environment (Wales) Act and UK law includes underlying governance about proportionality. If any additional principles are included they should not act to restrict or specifically direct but should be maintained as a guide to influence future law and policy.

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

Yes, all Welsh public bodies and private business should have a duty to pursue SMNR as part of an integrated approach to sustainable development; it should not be left to NRW alone.

The incorporation of these principles into farming and land use form a significant element of the tool kit required to manage threats to Wales from climate change. The continued non-sustainable management as practiced through the protection of failed habitats is a prime example of where application of SMNR by NRW is failing and should fall to the land manager to lead the decision-making process.

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

SMNR should apply to all public bodies, covering activities such as land use, construction, transport, procurement, waste and energy use.

Accountability

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

Yes, the gaps identified in 3.2.3 and the principles of rectification at source and polluter-pays principle are appropriate.

There is a need for an independent UK Body with specialised expertise in environmental issues and the ability to refer a public body to court.

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

The existing roles as outlined comprise a sensible continuation of responsibilities. As none of these bodies hold expertise to make decisions or advise on specific matters it would constitute significant change of purpose to change their role. It should be considered whether the Future Generation Commission should be able to enforce the law in a situation where no other new organisation takes this role.

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

Yes, it is of key importance the body formed or identified is independent and is capable of enforcing or requiring enforcement of the primary legislation in Wales.

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

The all-encompassing scope proposed is a good approach. We have two observations on the examples of how natural resources and policy areas are described:

1. It must be clear that 'protecting the natural environment of Wales' must have global responsibility at its heart. For example, procurement or land-use policies which drive degradation of habitats or carbon emitting activities overseas will not protect Wales in the long run. The new governance should begin from the principle that environmental damage caused overseas is as serious as damage caused in Wales.
2. It must be clear that 'urban' activities have as great, or greater, environmental impact as 'rural' ones, so the impact of activities such as procurement or energy use on the land should be given equal importance with direct land-use activities.

This will help to ensure that activities on Welsh land are not at a competitive disadvantage to activities overseas where environmental standards and governance may be lower.

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

No, it should include:

- Welsh Ministers;
- Natural Resources Wales;
- Welsh local authorities; and
- Ministers of the Crown (e.g. consistent with their responsibilities under the Environment (Wales) Act).
- Welsh Audit Office (where it may be held equally accountable if another public body fails an audit for more than 2 years running)
- Welsh Civil Service where Ministers are placed under scrutiny.

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

In addition to the bodies listed, consideration should be given to including other Welsh public bodies, which should not be exempt from a duty of environmental protection in their activities. For example, a 'Welsh timber first' policy should apply to all public sector construction projects to drive forward the development of low-carbon renewable construction. Bodies with responsibility for industry and construction should have a duty to develop the zero-carbon circular bioeconomy for Wales which delivers the SMNR.

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

There should be one oversight body for the whole of the UK. Divergence in environmental regulations is liable to result in confusion, wasted resources and lowering standards.

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

Yes, where appropriate but not be limited to it and should retain full legal capacity to enforce national and domestic legislation.

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

Yes, this scrutiny should then be subject to debate within the Welsh assembly with acceptance or rejection within a reasonable period.

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

We believe that this body should be able to insight review and where appropriate make recommendation to change legislation where sufficient challenges are brought either through public or private sector applicants and/or the legislation shall not be deemed fit for purpose.

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 powers should be in line with powers of investigation by other bodies, for example the Public Ombudsman, for complaints of comparable severity in other areas.

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 proposed methods appear appropriate.

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

The option of taking public bodies to courts should be available, and the body will require sufficient resource to be able to do this. This is a better option than providing it with extra-judicial powers to issue fines, for example.

Other

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

Yes. Divergence in environmental standards across the UK would be detrimental to development of a sustainable economy.

See also our response to the UK-wide consultation on environmental governance in July 2018, available at:

<http://www.confor.org.uk/media/247069/environmental-principles-and-governance-response-july-2018.pdf>

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

Retain European regulatory framework (General Binding Rules) as common standard across the UK.

Anthony Geddes

07 June 2019