

Environmental principles and governance in Wales post European Union exit

Environmental principles

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

We agree that the above principles should be included.

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

We consider that a clear commitment to a high level of environmental protection, the precautionary principle, the principle of integration and cross-border co-operation is required.

Furthermore, we seek clarification on the means by which these new principles will be enshrined in law. Will this be by the Well-being of Future Generations (Wales) Act 2015 or the Environment (Wales) Act 2016 or indeed a new Act? We would caution against a further Act where there is the potential for legislative 'gaps' between the relevant Acts referred to here.

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, this would ensure a consistent approach across the public sector.

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

Local planning authorities in the context of setting overarching planning policy.

Accountability

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

Yes. We seek clarification on how far the jurisprudence of the Court of Justice of the European Union will be taken account in formulating the definitions of the principles (as required). For example, Case T-13/99 Pfizer Animal Health SA v Council [2002] and Case C-236/01 Monsanto Agricoltura Italia SpA and Others v Presidenza del Consiglio dei Ministri and Others [2003], which both considered the definition and application of the precautionary principle.

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

Public bodies should be accountable to an independent body when they are acting as competent authorities, that is when their decision-making functions and actions impact on the environment (either directly or indirectly). The Future Generations Commissioner's powers could be modified to include new powers but would the environment be subsumed amongst all the well-being goals.

Furthermore, it may be appropriate to provide for the appointment of an Environment Commissioner with specific focus on this area of legislation.

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

Whilst we agree with the objectives outlined, the ability of a new body to succeed in holding government to account will depend on the extent of its powers beyond simply scrutiny and guidance.

We agree that the new body should be able to scrutinise, advise and report on the delivery of key environmental policies.

The new body should have the power to investigate and sanction/fine government for failure to adhere to its environmental obligations.

Furthermore, we submit that in addition the new body should have the ability to set up an independent inquiry and to appoint independent judiciary to such an inquiry.

However, the measure of success of a new body (and indeed that of government) in its oversight function, should not be measured by an increasing level of investigation and fines but rather by a low level of the same which would indicate successful 'on the ground' management of delivery and compliance with environmental objectives. If sanctions and/or fines are high then this would indicate a failure in the delivery and management frameworks adopted.

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

The definition of 'natural resources' in the Environmental (Wales) Act would appear to be the most appropriate legislation to underpin the ambit of the new body.

It could be interpreted broadly/narrowly but governance arrangements should also engage with the environmental dimensions of agricultural and food policy, human and environmental health and with planning authorities.

Also, the new body should have a role in overseeing the implementation and success of any existing agri-environment scheme or future land management scheme as part of the government's schemes for meeting its obligations to the environment.

We do not consider that the remit of a new body should be as a statutory consultee in relation to planning matters and specifically, individual planning applications, however, it should have the ability to respond to national strategic planning policy.

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

Yes

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

We are concerned with the ability of government to hold other public authorities to account should a new body direct the government accordingly; where the actions of another public authority result in the government failing to meet its obligations.

We therefore consider a new body should have the ability to hold other public authorities to account directly.

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

The oversight body should be independent of government by being accountable to the National Assembly for Wales. It should have independent appointment structures and sources of funding.

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

Yes

An additional role for a new body should also be to advise on nationally applicable derogations in situations of significant environmental risk or climatic events.

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

Yes

Whilst there are mechanisms in place for compliance with international law, the new body would fulfil a useful function in having the powers to oversee the Government's compliance with, and as part of, the UK's wider international obligations.

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

We would suggest that the proposed model of the Office of Environmental Protection in England should be considered.

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 new body should have a remit and powers to respond to and investigate complaints from members of the public on failures to implement environmental law.

Complaints should be free of charge; with the independent body having discretion to decide whether or not to accept the complaints; assessing both substantive and procedural grounds

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?

In addition to that which is set out in the Consultation, we consider that a new body should have the power to appoint an independent judiciary panel which not only deals with issues of investigation and enforcement but also on any misinterpretation of policy by government and/or other public bodies; to include the power to set up a judicial inquiry.

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

In addition to stop notices, there should be a power to impose fines, on government where failures in environmental obligations have occurred that warrant such a remedy by the courts.

Other

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

Yes

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

Any new body created should be cross-UK not only simply Anglo-Welsh and duly represent Wales and the devolved administrations. This would assist in establishing a minimum baseline for oversight and enforcement.

Submit your response

You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name Mike Holland
Organisation (if applicable) Agricultural Law Association

If you want to receive a receipt of your response, please provide an email address. Email address

mike.holland@ala.org.uk