

By email

07/06/2019

RE: Correspondence from the Chair of the Climate Change, Environment and Rural Affairs Committee |  
Gohebiaeth gan Gadeirydd y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig

Dear Mike Hedges AM,

Thank you for your letter dated 8 May 2019 regarding the Climate Change, Environment and Rural Affairs Committee's inquiry into environmental governance and principles.

I agree that the potential environment governance gap post-Brexit needs to be addressed. We need to ensure that we do not lose any protection we currently have from the EU framework but also from Welsh law and we should take this as an opportunity to even raise the current level of protection whenever possible.

#### Contents of the law

It is important that post-Brexit we have arrangements in place which ensure that we are not losing any of the overarching principles currently in place (for example the EU precautionary principle or the sustainable development principle in Wales) in addition to the operating principles used every day in Wales through SMNR and the five ways of working as set out in the Environment (Wales) Act and the Well-being of Future Generations (Wales) Act, for example.

I am concerned that the government in England places the sustainable development principle on an equal footing within their 'environmental principles' listed in Draft Clause 2 of the Draft Environment (Principles and Governance) Bill.

*Draft Clause 2 states:*

*In this Act "environmental principles" means the following principles—*

- (a) the precautionary principle, so far as relating to the environment,*
- (b) the principle of preventative action to avert environmental damage,*
- (c) the principle that environmental damage should as a priority be rectified at source,*
- (d) the polluter pays principle,*
- (e) the principle of sustainable development,*
- (f) the principle that environmental protection requirements must be integrated into the definition and implementation of policies and activities,*
- (g) the principle of public access to environmental information,*
- (h) the principle of public participation in environmental decision-making, and*
- (i) the principle of access to justice in relation to environmental matters.*

In Wales, the Sustainable Development Principle is overarching. Our concept of well-being is holistic. It brings together the economy, society, environment and culture. Focusing only on the environment and having principles only applying to the environment or treating the environment separately is not in line with our concept of well-being in Wales. It is important to continue to look at wider and cross-cutting issues because all things impacting on the environment are not necessarily environmental e.g. human mobility has a huge impact on the natural environment. Equally, we already have protective operating principles such as SMNR and 5 ways of working including prevention, integration, etc. in Welsh Law and any new (UK) principles should not go against them or diminish their scope and depth. Equally some of the Welsh legal concepts might need amending as the consultation points. For example, the precautionary principle does not appear as such in Welsh law but SMNR principles 'capture the key components' of it as the consultation document states however, SMNR only applies to Welsh Government and NRW and not to all public bodies nor to the private or third sector. This is why great care needs to be taken to ensure the current level of protection is maintained and enhanced.

I understand that devolution is complex, but it is important that Wales does not operate post Brexit to any principles which would dilute both the overarching and operating principles we currently enjoy now in Wales within any post-Brexit UK, England and Wales or Wales only setting.

The principles set out in the Well-being of Future Generations Act should be used to design the new governance system.

### Governance

I am clear that whatever structure replaces the EU ones, they will need to be well-resourced, expert, independent body which enjoys full enforcement powers which are no less than those currently available through the EU institutions and the Court of Justice of the European Union.

It is important to continue to have a structure which can hold to account and sanction governments, public bodies and ideally private companies too in cases of environmental law breaches. But it is essential that the holistic concept of well-being with its four pillars is considered and protected here.

The new system must ensure that the different functions of advising on policy, monitoring progress and sanctioning are still undertaken but this must be done in a way which takes into account the duties including advising and supporting and monitoring and assessing of the Future Generations Commissioner.

I do not have particular views as to which organisation(s) or structure(s) is to be used or created it is essential that it enhances rather than contradict existing structure, is expert, appropriately resourced, independent, easily accessible by citizens.

I believe any new body or reformed body, or bodies should be more than a regulator and it must be able to handle individual complains and be detached from government. I agree with the Public Services Ombudsman that any proposed system should be citizen centred and of easy access. It is important once more that we do not lose what we can currently enjoy within the EU framework and Welsh framework and seek to enhance the protection given to the environment and the access to justice given to current and future generations.

I believe it is important to consider whether all the public bodies listed in the Well-being of Future Generations Act should fall under the remit of new body and not only some of them.

Finally, the natural environment does not stop at human borders and it is important that the post-Brexit arrangements work in the UK context made of several devolved nations and for the longer-term for both current and future generations.

I will respond to the Welsh Government consultation in these terms.

Yours sincerely,

Sophie Howe  
Future Generations Commissioner for Wales