

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 : Cymdeithas Tir a Busnesau Cefn Gwlad (CLA Cymru)
Evidence from : Country Land and Business Association (CLA Cymru)

CLA Cymru: The voice of the Rural Economy

1. CLA Cymru represents the broadest possible range of economic players in Wales. These include rural businesses and service-providers, manufacturers and the supply chain for primary producers and those who can manage land. In Wales, rural business totals nearly 105,000 enterprises.
2. The CLA offers expertise on the requirements of the full range of land uses, the needs of rural communities and the importance of economic resilience to achieve sustainable development for rural Wales. Our members are the owners and custodians of our land and natural resources.
3. In Wales, CLA Cymru's membership reaches 3,000 businesses. We play a full and dynamic part in government and stakeholder engagement. Part of a well-established organisation, the CLA includes some 33,000 members across England and Wales.

General Comments

4. CLA Cymru acknowledge the need to maintain high environmental standards. As the UK works towards leaving the European Union, the issue of how to sustain these standards is of critical importance. What governance arrangements are needed in Wales to ensure we do not degrade progress is an important consideration, but how we achieve this outside the EU, with full understanding of the evolution of legislation in Wales is essential. It is not a black and white issue and the 'solution' must fit within the context of sustainable development and natural resources management.
5. A primary strength of the EU is that it enables member states to work within common principles to achieve common goals whilst retaining flexibility to implement these in a way that reflects national and domestic priorities. This balance between creating common principles and recognising national delivery has been particularly prevalent in the development of environmental standards, an area in which the EU is a global leader. It is essential that this flexibility and collaborative working is retained in the context of the UK.

Environmental Principles in Wales

6. The Welsh Government consultation, Environment Principles and Governance in Wales after EU Exit, provides a comprehensive analysis of the situation with regard to environmental standards, legislation and interaction. However, the consultation approaches the exercise from a perspective of recreating the current EU principles and functions directly to Wales.

¹CLA research, *Standing Up for Rural Business*, p 4-5

While this makes it a robust gap analysis, it fails to provide a needs analysis of what the optimal solution would be for an infrastructure that embeds the ambition of world leading environmental principles and governance in Wales. Maybe this is unsurprising in the context of leaving the European Union and the immediacy of the issue, but might this be a lost opportunity to create a bespoke solution as opposed to 'plugging the gaps'?

7. The Welsh Government consultation focuses almost exclusively on the four main EU environment principles that stem from article 191 of the Treaty on the Functioning of the European Union (which itself stems from the Maastricht Treaty) – precautionary, preventative, rectification at source and polluter pays. Whilst these form the backbone of the interpretation and delivery of environmental standards and law in the EU, there have been a number of supplementary additions to these principles over decades as awareness and understanding of environmental impact has grown. The concentration on core principles in the Welsh Government consultation, excludes consideration of subsequent developments, for example, the Cardiff process on integration and the importance of the Aarhus Convention, which are actually essential to understand and interpret some of the decisions and development in EU thinking. This is a concern and needs to be reviewed.
8. In more recent times, the 'environment question' itself has expanded beyond the confines of the topic, reflecting and acknowledging that integrated policy around sustainable development is more beneficial than fractured policies around environment, economic and social issues. Whatever the outcome to the environmental governance and principles debate, it must not be a static solution, stuck in the words of legislation. The concept of environmental principles must be able to mature and adapt in a way that reflects the understanding of the day and reach across all policy. It is not clear from the consultation if this will be the case.
9. In many ways, while in the European Union, it may be argued that the Welsh Government had essentially replicated the all-embracing approach to European principles with the Well-being of Future Generations (Wales) Act. It is a novel piece of legislation in as far as it sets ambition for the public sector to work towards sustainable development in a holistic way, acknowledging that no single pillar of sustainability can be considered more important than the others. It could be argued that considering environmental matters in isolation in the wake of leaving the European Union is a retrograde step. This point that requires further exploration.
10. To ensure Wales is achieving its overarching social, economic, environmental and cultural goals, CLA Cymru would suggest that a more nuanced needs analysis around environmental principles and necessary governance structures would be beneficial. More consideration needs to be given to understand the role of environmental principles in Wales and how the idea of specific principles for the environment fit into the broader picture of sustainable development already enshrined here.
11. In addition to the principles and treaties directly relating to the environment, consideration also needs to be given to broader principles and ways of working across the EU that allowed the environmental principles to operate effectively and develop into the more cohesive foundation that has underpinned European thinking. Article 5 of the Treaty on European Union (TEU) defines general principles for the functioning of the EU and EU law. These principles of Conferral, Proportionality and Subsidiarity are the context within which the EU environmental principles and governance were developed. If the ambition of Welsh Government is to bring EU environmental principles and governance to Wales, this broader context also needs to be

considered as without the general principles, the environmental principles would have little meaning.

12. Another important distinction which could be better understood in the consultation is the distinction between what 'principles' are required and those which are 'policy objectives' that Government seek to deliver. Furthermore, the concept of 'principles' need to be broken down to understand which are guiding principles in terms of decision making and which are operational principles in terms of ways of working.
13. The Welsh Government consultation concludes that the prevention and precautionary principles are already embedded in Wales by virtue of the provisions of the Well-being of Future Generations (Wales) Act and further embedded through the commitment to delivering Sustainable Management of Natural Resources (SMNR). However, these legislative instruments were enacted during a time when the UK was a member of the European Union. The provisions within were intended to complement and co-exist with the EU general and environmental principles and not replace them.
14. CLA Cymru would suggest that the five ways of working in the Well-Being of Future Generations (Wales) Act and the policy of SMNR imbibe the spirit of these principles as opposed to overtly encapsulate their precise function. If a needs analysis was completed, it may become apparent that this approach works for Wales, but in the absence of this broader analysis, it is necessary to question to what extent a more prescriptive definition of these principles may be needed.
15. Questions can also be raised around the extent to which the Environment (Wales) Act, which introduced SMNR into our legal framework, is an operational piece of legislation as opposed to a legal instrument that embeds far-reaching principles. Timing is unfortunate as the scope of the legislation has not been fully tested - some elements, such as Area Statements, are not yet enacted and in general SMNR is not yet fully embedded into wider Welsh Government policy. To stretch the meaning and purpose of the legislation, without first understanding its capability to deliver its primary function could create even bigger gaps and unintended consequences at a later point in time.
16. Furthermore, the first five sections of the Environment (Wales) Act sets out the duties placed on Welsh Ministers and Natural Resources Wales. Duties on the wider public bodies are not included until section 6 of the Act. This raises question not only how effectively the act covers the principles of precaution and prevention but also if all necessary public bodies are adequately within its full scope.
17. Finally, an important consideration when assessing the role of principles is the recognition that the legal system of the UK (and Wales) works in a fundamentally different way from European law. The way the EU environmental principles operate is more interpretive and ingrained into ways of working. The legal system in the UK is literal and placing principles on a statutory footing make them specific to a point in time with a defined and fixed definition which is difficult to change as evidence or understanding evolves. In looking to adopt EU environmental principles to Wales, consideration needs to be given to the consequences of taking interpretive principles and creating statutory legislation; particularly what this means in the long term understanding of the role that principles play in our legal system.

Environmental Governance in Wales

18. In the absence of a comprehensive needs analysis to compliment to gap analysis already prepared by Welsh Government for the consultation, it is difficult to understand what new bodies or governance reform is needed to ensure that environmental standards in Wales are met. Again, there is a feeling of 'plugging the gaps' as opposed to exploring the possible.
19. This point is particularly well demonstrated in the suggestion that the office of the Future Generations Commissioner for Wales could be adapted and supplemented to cover environmental governance. Whilst technically probably achievable, such as alternation could be detrimental to the integrity of the role as defined. Furthermore, as currently defined, the extent to which the Future Generations Commissioner can truly be held to be independent of political intervention is questionable as the reporting lines are directly to Welsh Ministers. If the role was to be expanded and replicate what many consider to be lost in terms of being able to hold Governments and Ministers to account, its remit and accountability would need to change considerably. The role of the Commissioner is to be the 'guardian of future generations' and ensuring that public bodies in Wales commit to the delivery of sustainable development in the long term. Adding a separate function that looks closely at an individual element of sustainable development, the environment, could undermine confidence in the role and the office overall.
20. Many people would argue that one of the greatest strengths of the European environmental governance structure has been the ability for individuals and organisations to instigate action against national Governments. Being able to hold your Government to account so directly has undoubtedly had an impact on driving forward the environmental debate. While domestic offices like the Future Generations Commissioner or even the Auditor General and Public Services Ombudsman may be able to replicate some elements, and established legal processes like judicial review could be a helpful substitutes, these do not replicate the power of the individual. Serious consideration needed to be given to the need to develop a mechanism through which individual citizens can shape our collective conscious. Recent examples show how individuals have shaped our collective views on climate change or how a TV programme can change our actions on plastic waste.

Working within the UK

21. Matters of land use and environment do not respect political boundaries and it is concerning that this consultation seems insular in approach and does not recognize the fact that Wales is not an island. While environmental policy is clearly a devolved matter and it is appropriate that policy is Welsh focused, this should not be at the expense of collaboration and working at a UK level where this is most efficient and beneficial.
22. Devolution of powers to Wales is an ongoing process, and there remain many instances where the 'jagged edge of devolution' create grey areas that make having wholly disjointed solutions for England and Wales impractical and, probably, unworkable. For individual businesses, the prospect of separate solutions for environmental governance and principles is problematic and concerning.

23. For this reason, CLA Cymru has long advocated to need for UK Framework(s)² in response to leaving the European Union. Understanding how the UK will function as a whole is fundamental to understanding how devolution in Wales will develop in the future. While for some policy areas ‘doing your own thing’ may be an acceptable outcome, for issues relating to environmental governance this is unrealistic and consistency in terms of understanding of environmental principles and governance structures is essential.

UK draft Environment Bill and Office for Environmental Protection

24. The UK Government’s draft Environment Bill primarily aims to bring into force the proposals set out in the recently published ‘25 year Environment Plan’. In many ways, it could be argued that the legislation is taking England down a path that Wales already tread with the formation of Natural Resources Wales and the introduction of the Environment (Wales) Act. However, the proposed legislation also includes elements where there is the potential to cross over and collide with the on-going Welsh Government governance and principles consultation.

25. As is the case with the Welsh consultation, the work on the UK draft Environmental Bill has been somewhat diverted by the need to address imminent new environmental matters arising as a result of leaving the European Union. In response to this ‘governance gap’, and primarily the political need to replace or replicate the Court of Justice of the European Union (CJEU) and its function in holding member states to account in delivering the environmental obligations, the proposals are to establish an English ‘Office for Environmental Protection’

26. While this establishment may be a logical solution to fill the governance gap, its function as an ‘England only body’ is fundamentally flawed. The territorial extent of the proposed new body is further complicated by the fact that its remit covers England and also decisions by the Ministers of the Crown in Wales to the extent that they are applied to reserved matters. It is suggested that such an approach will soon become a legal minefield if not resolved quickly.

27. In looking at the needs of a governance body to replace the CJEU, CLA would again suggest that a needs based analysis would be beneficial. Historically, a low number of cases have been referred to the CJEU from the UK and looking from a resources and cohesion perspective, a single suitable body that delivers this function across the UK would be sensible.

28. It is essential to respect devolution and the role of the Devolved Administrations in this issue and there is a challenge of time and resource to either change the current proposals, develop a new UK solution or ensure that all four areas of the UK have an adequate solution to deliver environmental governance.

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<https://www.cla.org.uk/sites/default/files/CLA%20New%20Opportunities%20Devolution%20email%204pp%20D4%20V2%2022.09.16%20HR%20SPREADS.pdf>

Conclusion

29. CLA Cymru call on the CCERA Committee to explore and interrogate further the interrelationship between the Welsh Government consultation on Environmental principles and governance and the ongoing work of the UK Government in relation to the development of the Environment Bill and specifically the proposals for the Office of Environmental Protection.
 30. There is no doubt that these fundamental issues of environmental principles and governance is being considered against the backdrop of leaving the European Union, but the fear is that the response of Government(s) is reactionary as opposed to understanding the opportunities that exist outside the European Union.
 31. In creating separate 'solutions' CLA Cymru believe that both the UK and Welsh Government are seeking to deliver along the path of least resistance, avoiding the need to work collaboratively to deliver workable, pragmatic, and realistic outcomes. This seems another example where political factions arising from Brexit are interfering in sensible progress.
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CCERA Questions

- Gaps in environmental governance structures and principles post-Brexit in Wales and whether the Welsh Government's analysis (within the consultation) correctly and comprehensively identifies the deficiencies;
- The Welsh Government's consultation proposals and questions regarding the environmental principles, and the function/constitution/scope of the proposed governance body; and
- The value and practicality of a UK joined approach given the [UK Government's Department of Environment Food and Rural Affairs's \(DEFRA\) proposal](#) that new governance structures in England could exercise functions more widely across the UK.