

Environmental Principles and Governance in Wales Post European Union Exit

Consultation response form

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Cytûn is the umbrella body for the main Christian denominations and a number of other Christian organisations in Wales. A full membership list can be found at: <http://www.cytun.co.uk/hafan/en/who-we-are/> The member denominations have between them around 150,000 adult members in every community in Wales, and meaningful contact with many more children, young people and adults. This response was prepared by the Wales & Europe Working Party of Cytûn, in which all member churches participate, and agreed at its meeting on 6th June 2019.

Responses should be returned by **9 June 2019** to

EU Exit & Strategy Unit
Department for Energy, Planning and Rural Affairs
Welsh Government
1st Floor East, Cathays Park 2
Cardiff
CF10 3NQ

or completed electronically and sent to:

e-mail: Environmental.Governance@gov.wales

Environmental Principles

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

Yes, we endorse the suggestion of achieving the necessary coherent legal framework post Brexit by building on Wales's progressive Well-being of Future Generations and Environment Acts. However, the full four principles should be included on the face of new legislation. The argument that the Prevention and the Precautionary Principles do not need to be included because they have informed some elements of Welsh environmental legislation does not stand up. There is no single statement of those four foundational principles in Welsh legislation; as Table 1 and paragraph 2.25 of the consultation document acknowledge. New legislation should enshrine all 4 principles in law as founding principles, to which the courts can refer simply and easily. Legislation should aim at a broad inclusion in Welsh law of the goals set out in the EU framework directives, not simply the preservation of specific regulatory steps.

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

Paragraph 2.15 recognises that the EU (Withdrawal) Act converts and saves existing EU environmental law and paras 1.3 and 1.5 commit the Welsh Government to "non-regression" in this regard. We welcome this, but note that EU standards will almost certainly continue to be raised over time. There should therefore be a principle that Wales will keep in line with improvements in EU standards – as was proposed in the Law Derived from the EU (Wales) Act 2018, subsequently repealed.

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. The duty to pursue environmental standards and the 4 underlying principles should be extended to all the functions of Welsh Ministers, as many other functions of Welsh Ministers have a direct or indirect impact on the environment eg taxation policy (increasingly important in future), economic development policies, transport and housing policies etc. The duty should not be simply to apply SMNR principles but to apply the 4 founding principles and contribute to meeting the environmental standards that flow from these.

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

On all public bodies receiving funds from Welsh Ministers.

Accountability

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.

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

Of the current accountability bodies, only the Auditor General/WAO has the necessary culture of independence; and we agree with para 3.20 that it would not be appropriate for WAO to police environmental standards. The function of the Future Generations Commissioner is, as para 3.17 states, enmeshed in commenting on policy development in Welsh Government, which detracts from the independence needed to enforce environmental standards. The same applies to the UK Climate Change Committee. A new body is needed, which is appointed by and accountable to the National Assembly as a whole, and not to Welsh Ministers alone. We noted in our response to DEFRA's equivalent consultation that there would need to be clear understanding of the respective roles of a new Welsh body and any new UK bodies, and there may be a case for a UK body, appointed by and answerable to all four UK parliaments, provided that it covers all the areas referred to in paras 3.30-3.32 (see Q. 8 below).

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

No. The body should have no role in overseeing the development of policy, or in acting as an advisory capacity (the first and third bullet points in para 3.27), these being covered by NRW and the FG Commissioner, as noted previously. These functions would draw a new body into the trade-offs and dilemmas of policy-making, and gradually undermine its ability independently to enforce environmental standards. The environment needs a body that can be a single-minded and tough enforcer. That is why the current EU system has been so effective (eg in driving progress in Wales on waste, through the threat of massive fines). The detachment of the EU bodies is a key factor that has helped them to be so impartial and robust in enforcement.

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

The scope on environmental matters should be all-encompassing as suggested in paras 3.30 and 3.31. In regards to paragraph 3.32, the demarcation between policy advice and enforcement outlined in our answer to Q. 7 would solve the delineation issue identified here. It would be a nonsense if the scope of the new body did not include climate change, which is the biggest environmental challenge humanity faces. The UK Committee on Climate Change has so far undertaken no enforcement work. The role of that Committee, as set out on their website, is advisory rather than to undertake enforcement work; and as the Committee is composed of Government-appointees, it is hard to see how it could ever take on the enforcement work needed. So a new enforcement body would sit comfortably along side the existing role of the UKCCC in Wales.

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

No. It should include all public bodies funded by Welsh Ministers, for two reasons. First, more bodies than Natural Resources Wales have an impact on the environment in Wales. Second, Ministers will no doubt continue from time to time to change the public bodies that exist in Wales, closing some and creating others. Natural Resources Wales could itself be split up at some point in the future. Who knows? The list of bodies for the proposed legislation should be proof against such changes; the best way to do this is for any body funded by Welsh Ministers, to be within scope of the oversight body, with regard to its impact on the environment.

We also support the inclusion, as in para 3.34, of Ministers of the Crown to the extent that Welsh devolved competence would permit legislation in this regard. If a new UK wide body were established by all four parliaments, then all the functions of Ministers of the Crown would need to be included in its scope. In our response to the DEFRA consultation we objected strongly to the proposed exclusion of some functions of Ministers of the Crown (e.g. relating to national security and the Finance Acts) from its scope.

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

Yes; see answer to question 9.

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

We support the principles in paragraph 3.35; the body must be accountable to the National Assembly for Wales rather than to Welsh Ministers; be independently audited by WAO; have independent appointment structures and have

independent sources of funding. Welsh Ministers should not be responsible for appointing people to the body, or for determining the level of its funding.

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

No. That would compromise the body's capacity to enforce environmental standards effectively. It would draw the body into too close a relationship to Welsh Ministers and civil servants, which would blur the body's responsibilities, and suck it into considering the awkward policies and trade-offs that are intrinsic to government. If that happens, the culture of the body will not be one that is capable of enforcement. In a situation of 'climate and environmental emergency', as declared by the Welsh Government and Assembly, clear and unequivocal enforcement of the responsibilities of public bodies in addressing such an emergency is essential – as in any other kind of emergency.

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

Yes, clearly.

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

This should be a broad function for the reasons already given.

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?

As the consultation document argues, there should be no reduction in the ability of members of the public to raise complaints which the body should have power to investigate, where it judges that would be appropriate. Paragraph 3.49 seems right and para 3.50, regarding the ease of citizens' access, is very important.

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 formal powers proposed in the second bullet point of paragraph 3.52 are absolutely necessary, but in addition it is essential that the oversight body should have the power to impose heavy fines. The remarkable progress by local authorities in Wales on waste disposal since devolution began might well not have been made without the threat of punitive fines from the European Union's enforcement machinery.

The informal mechanisms outlined in the first bullet point, while superficially attractive, could prove an insidious trap. If the oversight body gets drawn into

working “to seek a solution” to a particular complaint, it will be compromised, and if the collaborative solution is not satisfactory, the body will then lack the independence needed to undertake robust enforcement action. This way of working will also undermine the distance required to be a robust enforcement body.

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

As in answer to question 16.

Other

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

If the rest of the UK is able to sign up to the 4 foundational principles, and other EU environmental standards, yes (see also our answers to Q. 6 & 8). But if the UK Government, either with regard to reserved matters or with regard to England, wanted to reduce environmental standards (or fail to keep up with rising EU standards – see Q. 2 above), it would be a terrible mistake to compromise Welsh standards to level down to English standards. It would therefore be essential that any UK legislation or bodies be established by and answerable to all four parliaments in the UK, so that the UK Parliament or Government could not reduce standards and enforceability in devolved areas unilaterally. This may be especially important in the current circumstances where the Welsh Government and Assembly has declared a ‘climate and environmental emergency’ (a long-term situation), but the UK Government has not unambiguously done so.

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

Cytûn has consistently supported the development of coherent UK wide governance mechanisms in all devolved policy areas, including those repatriated from the EU, with a strong oversight role for the national parliaments as well as for the governments concerned. The continued failure to develop these is a cause of concern. Any future arrangements should be publicly transparent and accountable and, with regard to environmental and climate change impact, be subject to scrutiny by the proposed new Welsh body and its equivalents across the UK. The risks of not getting this right are a driving down of standards or a straight-jacketing of ambition.