

CONSULTATION

Response Document



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**Environmental principles and governance in Wales post
European Union exit
(Welsh Government)**

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Introduction to CIEEM

The Chartered Institute of Ecology and Environmental Management (CIEEM), as the leading membership organisation supporting professional ecologists and environmental managers in the United Kingdom and Ireland, welcomes the opportunity to comment on this consultation.

CIEEM was established in 1991 and has nearly 6,000 members drawn from local authorities, government agencies, industry, environmental consultancy, teaching/research, and voluntary environmental organisations. The Chartered Institute leads the way in defining and raising the standards of ecological and environmental management practice with regard to biodiversity protection and enhancement. It promotes knowledge sharing through events and publications, skills development through its comprehensive training and development programme, and best practice through the dissemination of technical guidance for the profession and related disciplines.

CIEEM is a member of:

- Environmental Policy Forum
- Greener UK
- IUCN – The World Conservation Union
- Professional Associations Research Network
- Society for the Environment
- United Nations Decade on Biodiversity 2011-2020 Network

Comments from CIEEM

Introduction

We welcome the opportunity to participate in the consultation on Environmental Principles and Governance in Wales. We would be happy to provide further information on this topic. Please contact Jason Reeves (CIEEM Head of Policy and Communications) at JasonReeves@cieem.net with any queries.

Overview

- All public bodies should have a duty to act in accordance with the four European Union (EU) environmental principles in addition to the environmental principles set out by international conventions and agreements.
- A new, truly independent, environment body is required to replace the role of the European Commission. The role of the new body must be four-fold: reporting, advising, investigating, and enforcing. The human right to environmental justice and access to environmental information must be protected.
- Wales already has progressive legislation to protect the environment, both now and for future generations. In replacing the functions of the European Union, Wales has an opportunity to further protect and enhance the natural environment.

Answers to Consultation Questions

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

CIEEM supports the four principles outlined in the consultation document:

- Prevention principle
- Precautionary principle
- Polluter Pays principle
- Rectification at Source principle

Whilst we support these four principles, we would also like to see additional principles added (see Q2).

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

We would like to see non-regression (IUCN definition¹) included as a principle. Non-regression is increasingly acknowledged as a key parameter in environmental decision-making, as reflected by its inclusion in the proposed United Nations (UN) Global Pact for the Environment², and in sustainable development, use and integration, the ecosystem approach, natural capital and access to environmental information under the Aarhus Convention³.

¹ The Principle of Non-Regression is an International Law Principle known by Human Rights specialists requiring that norms which have already been adopted by States not be revised, if this implies going backwards on the subject of standards of protection of collective and individual rights. <https://www.iucn.org/content/non-regression-principle-knowledge-forum>

² <https://globalpactenvironment.org/uploads/EN.pdf>

³ <http://ec.europa.eu/environment/aarhus/index.htm>

There must be no regression of environmental legislation and commitment to international agreements, particularly regarding the human right of access to justice for the environment, which is a fundamental component of the role of the European Commission.

On principles and standards, there must be no regression on what Wales accepts as best practice and minimum standards for the environment. There must not only be no regression, but a net environmental gain is also needed to meet many of the Aichi targets in 2020⁴.

The new duty should also include the environmental principles enshrined in international conventions and agreements, including:

- the principle of sustainable development
- public access to environmental information
- public participation in environmental decision-making
- access to justice in relation to environmental matters
- the principle that environmental protection requirements must be integrated into the definition and implementation of policies and activities

This is important for the development of common frameworks within the UK, as the draft Environment (Principles and Governance) Bill introduced by Defra includes all nine environmental principles.

The new duty should allow the inclusion of new principles as appropriate to enable Wales to keep pace with EU developments, but also to incorporate international environmental principles to improve the existing biodiversity duty.

The application of these principles is essential in meeting the UN's Sustainable Development Goals.

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 be in line with the existing biodiversity duties under Sections 6 and 7 of the Environment (Wales) Act 2016, which requires public authorities to maintain and enhance biodiversity and to maintain and enhance agreed priority species and habitats.

This must also extend to large companies, large organisations and large landowners, who have a responsibility for application of the SMNR principles as well. This could potentially be achieved through a public goods and services scheme or similar.

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

The duty should be applied to all public bodies, including all government departments, government agencies, non-departmental public bodies and local authorities that exercise authority in environmental matters.

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

⁴ <https://www.cbd.int/doc/world/gb/gb-nr-oth-p2-en.pdf>

In addition to the gaps identified in the consultation document in para. 3.22, we recommend that the governance architecture should allow a new environmental body to instigate its own investigations, and provide advice to Welsh Government on relevant matters.

Within the remit of “*independent accountability*”, we recommend that the new environmental body is required to report to the Welsh Assembly on government performance in relation to the environment.

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

Existing bodies should continue to carry out their duties as noted in Annex 5 of the consultation document. It is critical that they communicate and cooperate effectively with a new environmental body and with each other.

Crucially, none of these existing bodies have any enforcement powers. The new environmental body must have meaningful enforcement powers and the resources to implement them, which can be used in conjunction with advice and evidence provided by the existing bodies.

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

CIEEM agrees with the objectives as set out in the consultation document, namely to:

- Ensure policy and legislation is developed in a way which maintains and enhances Wales’ natural resources in line with the principles in Welsh legislation (e.g. that already specified within the Environment (Wales) Act);
- Ensure legislation is implemented effectively and delivery is in line with the aim of maintaining and enhancing Wales’ natural resources;
- Act in an advisory capacity on the sustainable management of natural resources for public bodies;
- Act impartially in assessing the effective implementation of Welsh legislation relating to the environment;
- Act impartially in receiving complaints from citizens.

In order to effectively deliver these objectives, the body must have powers to investigate non-compliance with the law and enforce rulings.

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

CIEEM is pleased to see the scope of a body operating in Wales will be guided by the integrated approach provided in the Environment (Wales) Act 2016, and that it will include (but not be limited to): (a) animals, plants and other organisms; (b) air, water and soil; (c) minerals; (d) geological features and processes; (e) physiographical features; (f) climatic features and processes. And that this will include water, air, nature conservation, climate change, soils, forestry, chemicals, pesticides, waste, circular economy and where these intersect with other policy areas for example where water and agriculture intersect.

We agree that where other bodies already provide advice, there is no need to replicate this function. However, these bodies do not have enforcement powers and these will need to be provided by the new environmental body.

CIEEM advocates that the following areas (which could be included within the areas outlined above but are not explicitly so) are also included in the scope of the new governance arrangements:

- a. transboundary pollution issues
- b. environmental impact assessment and planning
- c. access to environmental information and environmental justice
- d. marine environment
- e. flooding
- f. radioactive substances
- g. genetically modified organisms
- h. biosecurity, including animal and plant diseases

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

Yes. However, the remit of the body must go beyond advisory and scrutiny functions. It must also have investigative and enforcement functions.

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

The duty should be applied to all public bodies, including all government departments, government agencies, non-departmental public bodies and local authorities that exercise authority in environmental matters.

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

CIEEM advocates a body accountable to the Welsh Assembly. It should be able to produce its own strategy and budget, which are approved by the Assembly. Additionally, appointments to the positions of Chair, Board members and CEO should be overseen by the Assembly.

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

Yes.

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

Yes.

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

We agree that one of the general functions of an oversight body should be to scrutinise extant legislation in order to address any complaints about the implementation of environmental legislation, and that the body will need access to data and evidence from other bodies.

However, we also recommend that the body be able to scrutinize draft legislation as it is developed or passes through the Assembly, in order to inform the Assembly of potential issues in relation to environmental impacts.

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?

We agree that the new body's investigative powers should replicate as far as possible those of the European Commission and that there should be no gap in this respect once the UK exits the EU.

We agree with the consultation document's proposal that an oversight body would need to be able to undertake the following:

- conduct investigations and require the provision of information;
- assess the validity of complaints and have the discretion to exercise its powers to act in appropriate cases, rather than a duty to act in response to all complaints. This would be important to ensure the use of its resources is prioritised to the most significant concerns;
- make recommendations arising from its finding.

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?

CIEEM agrees that a new body should have similar functions to the European Commission, in that it should be able to carry out both formal and informal enforcement as set out in the consultation document.

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

We agree that judicial review is not the right course of action in most instances as it is prohibitively expensive and also only determines whether or not the law has been adhered to.

Enforcement actions that should be considered include enforcement orders and notices, and must include the power to require remediation work for environmental damage done.

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

Yes. Wherever possible, we believe that the UK nations should work together on a framework for environmental performance and governance. This will have benefits for cross-border business and future UK trade agreements, as well as enabling better UK-level environmental reporting.

The application of a common set of environmental principles is essential to meeting the UN's Sustainable Development Goals, of which the UK is a signatory.

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

The UK nations should work together on a common framework for environmental performance and governance. This must be co-designed and co-owned.

CIEEM advocates that Wales (and the UK) should wherever possible continue to align with EU environmental standards, and work in collaboration with the European Environment Agency. There should also be effective data sharing between equivalent bodies within the UK.