

Number: WG35189



Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Environmental Principles and Governance in Wales Post European Union Exit

Date of issue: 18 March 2019

Action required: Responses by 9 June 2019

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview	The Welsh Government is consulting on proposals to address the gaps in environmental principles and governance in Wales.
How to respond	This is a written, electronic consultation. Questions are summarised in a questionnaire at the end of this document. Please use this questionnaire to provide your feedback. Responses can be e-mailed/posted to the contact details below.
Further information and related documents	<p>Large print, Braille and alternative language versions of this document are available on request.</p> <p>The consultation documents can be accessed from the Welsh Government's website here</p>
Contact details	<p>For further information:</p> <p>EU Exit & Strategy Unit Department for Energy, Planning and Rural Affairs Welsh Government 1st Floor East, Cathays Park 2 Cardiff CF10 3NQ</p> <p>email Environmental.Governance@gov.wales</p>

General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data holds about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:
Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

e-mail:

Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk/>



Ministerial Forward

We are fortunate to be a nation with a rich natural environment.

Our breath-taking landscapes, from the mountains running down the spine of Wales, to the edges of our coastline and the sea beyond, are not only important environmentally, but are a key part of our identity and culture. The natural resources they contain also provide benefits which are vital to our prosperity.

As we rapidly approach the UK's departure from the European Union, it is important to recognise the existing environmental governance has driven a marked improvement in the health of our environment. In Wales we now benefit from cleaner beaches and drinking water, improved air quality and a reduction in environmental pollution.

As a Government, we are committed to ensuring there is no drop in environmental standards. Our first priority was to deliver an extensive programme of correcting legislation to ensure all EU-derived environmental legislation was in place on exit day. We are also committed to continuing to improve environmental regulation as the UK leaves the European Union.

This is important for two reasons.

Firstly, although we benefit from diverse wildlife and varied habitats, the evidence is clear our biodiversity continues to be in decline. Addressing these issues alongside action on climate change is essential if we are to secure our future.

Secondly, Wales' reputation for high quality produce underpinned by the high standards is fundamental to our competitiveness in a global market.

The need to build on this reputation has been a very clear message from the engagement we have undertaken over the last two years since the referendum.

Our internationally recognised legislation, in terms of the Well-being of Future Generations and Environment Acts, will remain in place and continue to guide policy development. However, leaving the EU will cause us to lose other aspects of environmental governance we have come to rely on. As a Government, we are committed to addressing these gaps. In Wales, we recognise our environment is intrinsically linked to our economy and essential to our society. For this reason, our approach to the environment is cross-cutting. In developing the solutions to address the gap in environmental governance caused by leaving the EU, we must avoid creating a siloed approach to the environment, recognising that tackling environmental challenges and realising the significant opportunities requires social and economic action.

This is, therefore, the starting point for this consultation: how we address the gaps arising from the UK exiting the EU, in a way which continues to drive environmental improvement; enhances our reputation for high standards; provides a coherent, integration governance framework and, builds upon our internationally recognised legislation.

This is a complex issue, deserving careful consideration to enable us to develop governance arrangements, which are fit for purpose and meet our national need. I look forward to hearing your views.

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive, flowing style.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs

Contents

Consultation Overview	7
Executive Summary	8
1: The new context of EU exit	10
2: Environmental Principles	12
Principles in international environmental law	12
Principles in EU law	13
Principles in UK law and policy	14
Principles in Welsh law and policy	14
Gaps in Environmental Principles.....	18
Transitional Arrangements	20
3: Accountability, Accessibility and Enforcement Structure	20
The current position within the EU	21
Accountability, Accessibility and Enforcement in Wales	23
Gaps in Governance in Wales	26
Addressing the Gaps for Wales	27
Existing Structures	28
New Arrangements	28
Role, Scope and Constitution of a body operating in Wales	28
Functions of a body operating in Wales	31
Working across the UK	35
Annex 1: List of Questions	38
Annex 2: The Well-being of Future Generations (Wales) Act	40
Annex 3: Environment (Wales) Act 2016	43
Annex 4: EU Commission Functions	47
Annex 5: Existing Welsh mechanisms for environmental accountability	50
Annex 6: Analysis of Gaps	54
Annex 7: Sources of Further Information	59

Consultation Overview

This paper seeks your views on gaps in environmental governance, some of which arise as a result of the UK ceasing to be a member of the EU and on how we address these gaps in a way which, provides a coherent framework for enabling the long-term improvement of our environment.

How to Respond

We appreciate you taking your time to read and respond to this consultation.

All consultation questions are optional except for the 'About you' section. This section enables us to check if we have engaged with a diverse and broad range of people.

Responses on behalf of organisations will be analysed separately from responses from individuals, so it is important that we know in which capacity you are responding. If you are responding on behalf of an organisation we ask for your name and the organisation's name. However, you have the option to remain anonymous if you wish. Please refer to the Data Protection section for further information about how this is used.

The consultation will run from 18 March 2019 to 9 June 2019. Any responses received after this time will not be included in the analysis of the consultation responses.

Tell us what you think. Your views are important to us. They will help us refine and shape our proposals.

The closing date for the consultation is 23:59 on 09 June 2019.

You can reply in any of the following ways:

E-mail:

Environmental.Governance@gov.wales

Llywodraethiant.Amgylcheddol@llyw.cymru

Write to us:

Environmental Governance, EU Exit and Strategy Division, Welsh Government
Cathay's Park, Cardiff, CF10 3NQ

Further information and related documents:

Large print, Braille and alternative language versions for this document are available on request. If you would like a hardcopy version of the document please email:

Environmental.Governance@gov.wales

Llywodraethiant.Amgylcheddol@llyw.cymru

Executive Summary

Wales' natural resources underpin our well-being. They support our prosperity, our health and are a key part of our culture and identity. A healthy environment provides the natural resources, which are fundamental to our lives and livelihoods. We depend on our natural resources for raw materials, water and energy; from our individual needs up to the needs of our key industries.

EU environmental principles enshrined in the EU Treaty on the Functioning of the European Union (TFEU)¹ (see page 13) have guided the development of EU environmental policy and law over the last 40 years. Oversight of the implementation of environmental law and the accountability of Member States for their delivery against it has been overseen by the European Commission and the European Court of Justice.

On leaving the EU, these environmental governance structures will no longer apply in the UK. This consultation seeks views on what gaps will need to be addressed in Wales and how these gaps should be effectively addressed to provide an environmental governance framework, which meets the specific needs of Wales and ensures we continue to deliver on our environmental standards.

Importantly, the starting position for the governance of the environment in Wales is different to the rest of the UK. At the EU level, the EU Treaties provide a two tier approach to governance, which consists of an overarching context to promote sustainable development and applies across all policy areas. Within this the four EU environmental principles sit. In Wales, the overarching sustainable development context is enshrined through the Well-being of Future Generations (Wales) Act The Environment (Wales) Act, which integrates the management of our natural resources into the Well-being of Future Generations Act's sustainable development architecture, introduced a further set of principles to guide and support the development and implementation of policies on managing our natural resources. In this way, a two-tier architecture exists in both Wales and the EU.

Our domestic primary legislation will remain in place post EU exit, meaning the gaps in Wales are not the same as those in other UK administrations. In addition, legislation has also been passed, which has significantly reformed bodies responsible for supporting the delivery of environmental legislation in Wales. In having a set of environmental principles and a different set of bodies, Wales is already in a very different starting place, which, means that unlike in the rest of the UK, there is a legislative framework in place to build upon.

In Wales, the existing governance framework already includes:

- Long-term objectives for the management of our natural resources to contribute to the long-term prosperity of Wales and its people – including seven well-being goals;

¹ Article 191 Treaty for the Functioning of the European Union

- Placing our natural resources within the wider context of contributing to the seven well-being goals;
- An integrated approach to managing natural resources, which recognises our natural resources underpin our economy and society;
- An iterative framework to deliver the long-term objectives including an evidence base, strategic policy and an area-based approach to delivery;
- Duties on Welsh Ministers to contribute and deliver the objectives;
- A set of principles to guide how to deliver on the objectives and integrate into policy-making and delivery – this includes 5-ways of working (long-term; prevention; integration; collaboration; and involvement) and a set of environmental principles to support the sustainable management of natural resources; and
- A requirement for Public Bodies to contribute to the long-term objectives, and a Future Generations Commissioner – the guardian of future generations.

We already have well established structures for holding public bodies to account, in particular the National Assembly for Wales, the Public Services Ombudsman and the Future Generations Commissioner. These bodies will continue to operate post exiting the EU but we have an opportunity to enhance our national governance arrangements by introducing new mechanisms which address the gap, arising as a result of the loss of the oversight of EU law provided by the EU Commission.

In Wales, the key aim is to address the gap in a way which is compatible and in alignment with the wider approach to sustainable development.

Furthermore, as delivery against key international obligations and commitments will only increase in importance outside of the EU, building upon the existing legislation which was designed to be in line with those commitments and put in place a platform for future delivery is clearly sensible. That said, delivery against the international commitments requires collective UK-wide action. The consultation therefore identifies that addressing the gaps needs to be considered at two tiers, the first against the devolved responsibility for delivery within Wales and the second, against the collective obligations at a UK-wide level.

In seeking views on the approach that should be taken, this consultation is structured in two parts. The first part covers the issue of environmental principles, looking at what currently exists at an EU and a Wales level and seeking views on the gaps and how best to address it. The second part looks at the accountability mechanisms at both an EU and Wales level and seeks your views on how to address the gaps left when the UK will no longer have access to the EU's governance structures.

1: The new context of EU exit

1.1 In our white paper, “*Securing Wales’ Future*”, we set out our priorities to ensure Wales’ future prosperity after the UK’s exit from the European Union, which includes protecting and enhancing our natural resources and maintaining current standards in respect of air and water quality, emissions and environmental protection.

1.2 As a consequence of leaving the EU there will be gaps in the governance provided in the EU Treaties, including part of the architecture for developing policy and legislation as well as in the functions undertaken by the EU Commission as guardian of EU law.

1.3 This document is the latest in the series of papers produced by the Welsh Government setting out our policies to address issues that arise once the UK is no longer a member of the EU. Addressing the issues covered in this document is important as part of their wider contribution to our future prosperity and in delivering our Brexit priorities on:

Society and environment – help to ensure non-regression of environmental rights and to provide continued citizens’ right to hold government to account.

The single market, customs union and international trade – action to address the gap in environmental governance will support delivery of our commitment to maintaining our environmental standards and in turn support our reputation for high quality, which will be fundamental to our competitiveness in a global market

Constitution and devolution – as environment is a devolved matter, the proposals reflect the devolution settlement and align with our ambitious sustainability agenda, which is enshrined in devolved legislation.

Transitional Arrangements – putting in place a governance structure, which may be required as part of transitional arrangements between the UK and the EU, post membership.

1.4 In our white paper, “*Brexit and Devolution*”, we called for deeper and more sustained cooperation between the UK nations after EU exit. This requires a shared governance approach developed on the basis of agreement between the four governments, building on the traditions of co-operation built up during the years of EU membership.

1.5 Whilst exit from the EU means the loss of a number of EU governance mechanisms, it also provides an opportunity to put in place new governance arrangements, which reflect and support international commitments and build on our approach to managing our natural resources as provided in the Environment (Wales) Act 2016. It provides an opportunity to develop a structure, which supports not only a commitment to non-regression, but more fundamentally a commitment to enhancing the environment to meet the challenges we face.

1.6 This is the basis upon which we have developed the proposals for consideration in this document. Our work has greatly benefitted from the input of stakeholders and we hope this document provides a vehicle to continue this engagement in the development of proposals fit for Wales.

2: Environmental Principles

2.1 Environmental principles help to drive environmental standards and inform the development of policy and legislation.

2.2 This section considers the implications of exiting the EU when the EU environmental principles, which have guided the development of EU policies and legislation will no longer apply in the UK and seeks your views on the gaps as they apply in Wales and on the approach to addressing these gaps.

Principles in international environmental law

2.3 Environmental principles have been incorporated into environmental law and have been a key part of the approach to responding to environmental challenges for many years. They were first mentioned in customary international law and latterly they were included in a number of UN Conventions for example OSPAR² and subsequently were considered in judicial decisions.

2.4 The Stockholm Declaration³ (1972) contained 26 principles, which were aimed at encouraging governments to act in a way to improve the environment. Further advances followed in 1992, with the Rio Declaration⁴ containing 27 principles, which paved the way for UN organisations to incorporate these principles in the decision-making process. This has seen the Rio Principles being introduced in environmental treaties and gradually becoming a part of international law. Examples of these include the UN Climate Change Convention and the Convention on Biological Diversity.

2.5 The same is also true in relation to the concept of sustainable development, with the Rio Declaration stating that long term economic progress is only ensured if it is linked with the protection of the environment. This is supported by a number of the principles which are designed to help to deliver sustainable development, including:

- Precautionary principle;
- Polluter-pays;
- Public participation;
- Resilient ecosystems;
- Sustainable use; and
- Prevention.

2.6 Sustainable development rather than being an environmental principle itself sets the context within which the principles apply. This can be seen in the approach at a UN level, as illustrated by the Conference on Sustainable Development⁵ (Rio +20) and the 2030 Agenda for Sustainable Development with its 17 sustainable development goals⁶ (*'Global Goals'*).

² *Convention for the Protection of the Marine Environment of the North-East Atlantic*

³ *The Declaration of the United Nations Conference on the Human Environment, or Stockholm Declaration, was adopted June 16, 1972 by*

⁴ *Rio Declaration on Environmental Development 1992*

⁵ June 2012

⁶ UN Sustainable Development Summit 2015

Principles in EU law

2.7 The European Treaties⁷ contain a number of general principles such as subsidiarity⁸, proportionality⁹ and public participation¹⁰ but Article 191 of the Treaty on the Functioning of the European Union (TFEU) lists what are generally referred to as the four EU environmental principles, these are:

- Precautionary;
- Preventive;
- Rectification at source; and
- Polluter-pays principle.

2.8 The principles sit within a wider context set out in the EU Treaties. Within the EU structure environmental protection is integrated in all policies and activities and in particular in promoting sustainable development (Art 11 TFEU and Art 3(3) TEU). Under the TFEU, EU policy shall contribute to preserving, protecting and improving the quality of the environment, protecting human health as well as prudent and rational utilisation of natural resources (Art 191(1) TFEU).

2.9 European Union environmental policy is based on the four principles, which provide guidance for EU environmental policy and decision-making. They are sometimes described as having a constitutional character and are a part of the environmental acquis.

2.10 The principles do not create any direct legal rights but guide and shape the development of EU environmental law and policy, including the setting of environmental standards. Some of the principles are directly incorporated into specific EU legislation, for example the precautionary principle is incorporated into both the regulation of chemicals and fisheries management laws. The principles are undefined in the treaties, but the EU Commission has issued guidance on the application of the precautionary approach¹¹.

2.11 The European Court of Justice (CJEU) applies the principles in the interpretation of EU legislation, including the Treaties. For example, the court has sometimes relied on the precautionary principle and the principle of prevention to help reach their conclusions in various cases for example in relation to animal health¹², habitats¹³ and waste¹⁴.

⁷ Treaty on European Union (TEU) and Treaty on the Functioning of the European Union (TFEU)

⁸ Article 5(3), Treaty on European Union

⁹ Article 5(4), Treaty on European Union

¹⁰ Article 15, Treaty on the Functioning of the European Union

¹¹ European Commission "Communication on the Precautionary Principle" COM (2000

¹² Case C-180/96 UK v Commission [1998] ECR

¹³ Case C-127/02 Landelijke Vereniging tot Behoud van de Waddenzee v Staatssecretaris van Landbouw [2004]

¹⁴ Cases C-175/98 and C-177/98 Fancesca Bizzaro et Paola Lirussi [1999]

Principles in UK law and policy

2.12 Rather than applying directly to Member States, EU environmental principles flow through the EU's policies and are adopted in EU law. Over the last 40 years, the majority of existing UK environmental law has been derived from the European Union.

2.13 In this way, the application of EU policy and law has had an appreciable effect on environmental law in the UK and Wales.

2.14 Through the body of EU derived legislation, which has taken effect in UK law either through direct EU law such as EU Regulations on REACH or the transposition of EU law by domestic legislation in the Waste Framework Directive, EU environmental principles have shaped domestic delivery.

2.15 Post the UK's exit from the EU, a vital first step is therefore to convert and save this body of EU derived legislation by converting it fully into UK law. This will be achieved by the EU (Withdrawal) Act 2018 (sections 2 and 3).

2.16 The principles also take effect where they have been referenced in case law for example the UK Court of Appeal has referenced the polluter-pays principle¹⁵.

Principles in Welsh law and policy¹⁶

2.17 From 2015, Wales passed a progressive programme of legislation, placing sustainable development at the centre of governance in Wales. Through the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016, sustainable development was enshrined as the overarching context for policy and the basis upon which natural resources are managed and used. In doing so, both the Well-being of Future Generations and Environment Acts introduced key principles to guide the delivery of the objectives of the Acts, which were integrated into policy-making and delivery.

2.18 Under the Well-being of Future Generations (Wales) Act, the sustainable development framework it sets out applies to all policy areas. The Act places Welsh public bodies (including the Welsh Ministers) under a duty to act "in accordance with the sustainable development principle", which means that these bodies must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

2.19 In order to do so, public bodies need to apply five principles, the *5-ways of working*. These are: integration, long-term, prevention, involvement and collaboration.

¹⁵ Re Celtic Extraction Ltd (In Liquidation), In Re Bluestone Chemicals Ltd (In Liquidation) [2001] CH 475

¹⁶ A more detailed overview of the both the Well-being of Future Generations and the Environment Acts is provided in Annexes 2 and 3.

2.20 The Environment (Wales) Act introduced a further set of principles designed to support natural resources in Wales to be managed more sustainably. These principles, drawn from international best practice, complement those in the Well-being of Future Generations Act, with four directly corresponding to the 5-ways of working and a further five designed specifically to implement the approach adopted by the Convention on Biological Diversity.

2.21 The 9 principles within the Environment Act (often referred to as the SMNR or Sustainable Management of Natural Resources principles) are:

- Adaptive management;
- Scale;
- Collaboration;
- Public Participation;
- Evidence;
- Short, medium and long-term consequences;
- Value of ecosystems;
- Prevention; and
- Resilience

Diagram 1: 5 ways of working and the principles of sustainable management of natural resources



2.22 The principles in Wales have a wide application from guiding policy to carrying out on the ground functions, in summary they apply within the two tiers in:

- Sustainable Development - the 5-ways of working and wider framework within the Well-being of Future Generations Act apply across the development of all policies.
- Management of Natural Resources – the SMNR principles in the Environment Act apply to Welsh Ministers in the development of policies contained in the Natural Resources Policy. The principles also form a key component of the general purpose of Natural Resources Wales and apply to the on ground-delivery of NRW's functions and by the Welsh Ministers in the implementation of these policies, including any legislation introduced to deliver the policies.

2.23 Collectively, the Acts introduced an integrated approach which:

- Places sustainable development at the core of decision-making for public bodies in Wales;
- Establishes long-term objectives (well-being goals) for the prosperity and well-being of the people and environment of Wales enabling public bodies to know what they need to work toward;
- Introduced an integrated approach to managing natural resources, which recognises the Environment is not only important in its own right, but natural resources also underpin our economy and society;
- Established an iterative framework, which ensures natural resources policy is based on evidence and is addressed at the appropriate scale;
- Placed duties on Welsh Ministers to contribute to and deliver the objectives;
- Introduced a set of overarching SD principles and environmental principles to guide how to deliver on the objectives

KEY CONCEPTS AND PRINCIPLES EXISTING IN WELSH LEGISLATION

- **Sustainable Development** – overarching context for policy making in Wales (Well-being of Future Generations Act)
- **Sustainable Development Goals** – as reflected in the 7 Well-being Goals
- **Sustainable management of Wales' natural resources** – an integrated approach to the management of Wales' natural resources based on the *ecosystem approach* (Environment Act)
- **Ecosystem Approach** – drawing on the approach adopted by the Convention on Biological Diversity;
- **Preventive principle** – principle of Sustainable Management of Natural Resources (Environment Act) and one of the 5-ways of working (Well-being of Future Generations Act)
- **Precautionary principle** – key components provided for in the principles of sustainable management of natural resources (Environment Act)
- **Scale** - principle of Sustainable Management of Natural Resources (Environment Act)
- **Integration** – one of the 5-ways of working (Well-being of Future Generations Act) and part of the sustainable management of natural resources (Environment Act);
- **Non-regression** – reflected in the objective of sustainable management of natural resources (Environment Act);
- **Resilience** – principle of Sustainable Management of Natural Resources (Environment Act)
- **Public participation** - principle of Sustainable Management of Natural Resources (Environment Act) and one of the 5-ways of working (Well-being of Future Generations Act)
- **Collaboration** – one of the 5-ways of working (Well-being of Future Generations Act) and principles of Sustainable Management of Natural Resources (Environment Act).

Gaps in Environmental Principles

2.24 The steps that have been taken in Wales over the last 7 years mean that post EU exit, the starting position is very different to that in the rest of the UK. There is a clear overarching framework in primary legislation in Wales aligned to the pursuit of sustainable development, and it similar to the EU's objectives of sustainable development. It is also aligned to the UN's framework for sustainable development, including in relation to the Global Goals. Within this wider framework, key environmental principles have also already been set out in Wales within the Environment Act. In addition, key objectives in the TFEU, such as prudent and rational utilisation of natural resources¹⁷, have also been captured in the approach within the Welsh legislation.

Table 1: Comparison of EU Environmental Principles in Welsh Primary legislation

EU Principles	Welsh Primary Legislation
Prevention	Prevention (included in both the 5-ways of working and SMNR principles)
Precautionary	The EU approach is encapsulated within in SMNR principles
Polluter Pays	No equivalent
Rectification at Source	No equivalent

2.25 In terms of the EU's four environment principles, prevention is clearly present. In addition, although the precautionary approach is not directly specified, it is captured by the framework in the Environment Act. This is because the SMNR principles were designed to capture all the aspects relating to a precautionary approach, drawn from the content of EU Commission's guidance.

2.26 Set against the current EU framework, there would though be gaps within Wales' coverage of the EU environmental principles, specifically these not directly covered are the environmental principles relating to 'polluter-pays' and 'rectification at source'. There is also however a difference in the scope of their application. Although the 5-ways of working apply across all policy areas and to the 44 devolved public bodies identified in the Well-being of Future Generations Act (see Annex 2), the SMNR principles have a more limited application, applying to all of Natural Resources Wales' functions and to the Welsh Ministers in the development, production and implementation of the Natural Resources Policy, but not more generally.

¹⁷ Article 191(1) Treaty for the Functioning of the European Union

Filling the principles Gap

2.27 It is therefore proposed to introduce primary legislation to add the EU environmental principles that would not continue to be in place post EU Exit, namely *Rectification at Source* and *Polluter-pays*.

2.28 This will need to be done in a way that complements and enhances the environmental principles already reflected in the Environment Act. They will also need to operate within the overarching context of sustainable development as reflected in the Well-being of Future Generations Act.

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

- **Rectification at Source;**
- **Polluter-pays**

2.29 As the Environment (Wales) Act already provides for the application of statutory environmental principles, drawing from existing EU guidance on the precautionary principle, an additional statement on how the principles should be applied is not required. It is therefore proposed that the existing legislation will continue to set the context for the application of the SMNR principles. The principles being the mechanism by which the sustainable management of natural resources is carried out. Including the additional principles within this framework would enshrine the principles within primary legislation and provide a framework for their long-term application.

Question 2: In addition, to the principles already within Welsh primary legislation and the two outlined in Question 1, do you think there are other principles, which may also need to be included?

Addressing the scope of the application of Wales' existing SMNR principles

2.30 The incorporation of the missing EU environmental principles into the existing framework in Wales will address the gap in relation to the principles covered. However, as the scope of application of the supporting duty is limited to Natural Resources Wales and the functions of Welsh Ministers relating to the Natural Resources Policy, as it stands there would be a gap in terms of their application to wider public bodies.

2.31 To ensure the responsibilities on public bodies with respect to the application of the sustainable development and environmental principles is clear, it is proposed that the requirement to apply the principles and pursue the sustainable management of natural resources be applied to additional Welsh public bodies falling within devolved competence. This would ensure the public bodies, which may fall under the remit of new governance arrangements have the same objectives and consistent basis for managing Wales' natural resources and helps to enable collective decision-making.

Question 3: Do you agree the duty to pursue sustainable management of natural resources and the application of the SMNR principles should be extended?

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

Transitional Arrangements

2.37 In order to ensure the current environmental principles continue to apply and there is a consistent approach whilst legislation is developed, we will:

- Continue to apply the 5-ways of working in the development of all policy;
- Continue to apply the principles of sustainable management of natural resources in the implementation of our current Natural Resources Policy and in its review; and
- Apply the 4 EU environmental principles

Questions 1 to 4 of 18

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

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

Question 3: Do you agree the duty to pursue sustainable management of natural resources and the application of the SMNR principles should be extended?

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

3: Accountability, Accessibility and Enforcement Structure

3.1 As a government, we have committed to ensuring there is no reduction in people's rights as a result of exiting the EU. We have also committed to ensuring the continued implementation of environmental law and to continue to maintain and enhance standards. These commitments therefore underpin our approach.

3.2 As a result of exiting the EU, environmental law and policy, which was derived from the EU, will no longer be subject to the oversight of EU institutions and the Court of Justice of the European Union (CJEU). Whilst the future relationship between the UK and EU is being determined, there may be a requirement in a future agreement for independent arrangements for accountability and oversight to ensure environmental obligations are met. How we address governance gaps needs to take account of these changing circumstances.

3.3 In Wales, bodies such as the Public Services Ombudsman and Auditor General for Wales, currently provide oversight of public bodies and our Well-being of Future Generations (Wales) Act created an independent office - the Future Generations Commissioner - to provide advice and support to Welsh public bodies on sustainable development. In addition, we have already created a single environment body, Natural Resources Wales, whose purpose, as set out in the Environment (Wales) Act, is to work to ensure we manage and use our natural resources sustainably. All of these bodies will continue to provide this oversight post exit EU membership.

3.4 In this section of the consultation we do not propose a specific model to replace the supranational role of the EU Commission and the other EU institutions but we seek views on the governance gaps as they apply in Wales and views on what would constitute an effective governance framework for Wales, which is in line with existing governance arrangements, our legislative framework and be able to respond to any future developments between the UK and the EU.

The current position within the EU

3.5 Ensuring compliance and the enforcement of EU environmental law is undertaken by the EU Commission¹⁸ (See Annex 4 for a list of the EU Commission functions). Some of these functions include the monitoring of environmental law implementation, receiving citizen complaints, and where required, the ability to take a Member State in breach of their obligations to the CJEU¹⁹. The CJEU may subsequently impose sizable fines on Member States in breach of their obligations under EU law.

3.6 In summary, the EU Commission:

- **Monitors implementation** of environmental laws by reference to sets of national indicators and implementation reports, which are submitted to the EU Commission. Together, with any other publications relating to the environment, they describe the implementation of environmental laws within the Member State;
- **Receives citizens' complaints** - EU law currently empowers citizens to report to the EU Commission instances of lack of compliance with EU law. The Commission has discretion to act upon the information received, which can ultimately lead to infringement proceedings before the CJEU. The process is via a free and simple efficient service; and
- **Takes enforcement action** where a Member State is in breach of Treaty obligations, including taking a Member State to the Court of Justice of the European Union. Cases can be taken to the CJEU via a number of routes:
 - from Member States' national courts on the interpretation of EU law;
 - EU Commission taking a case against an EU state regarding any breach of its obligations to the EU;
 - An EU state taking another Member State to the court; or

¹⁸ Article 17, Treaty on European Union and Articles 234, 244 to 250, 290 and 291 of the Treaty on the Functioning of the European Union

¹⁹ Articles 258, 259 & 260 Treaty on the Functioning of the European Union

- The court can perform a judicial review of EU law. This means it has the power to review EU regulations and directives and make sure they comply with EU treaties and general principles of law.

3.7 The CJEU can require a remedy and impose sanctions upon a Member State for an infringement. The CJEU, however is often criticised due to the length of time cases take to be considered and determined. This can result in years before any final determination can be reached.

3.8 An important feature of the EU process is complaints raised to the EU Commission and heard by the CJEU are not restricted to the scope of what can be heard and are not limited to considering due process but whether or not a breach has occurred.

3.9 Combined, the EU Commission and the CJEU provide a wide range of monitoring, compliance and enforcement mechanisms for the implementation of and governance for EU environmental laws. Critically, they also provide UK citizens and businesses with an avenue for consideration when their rights or obligations under EU law are not being upheld.

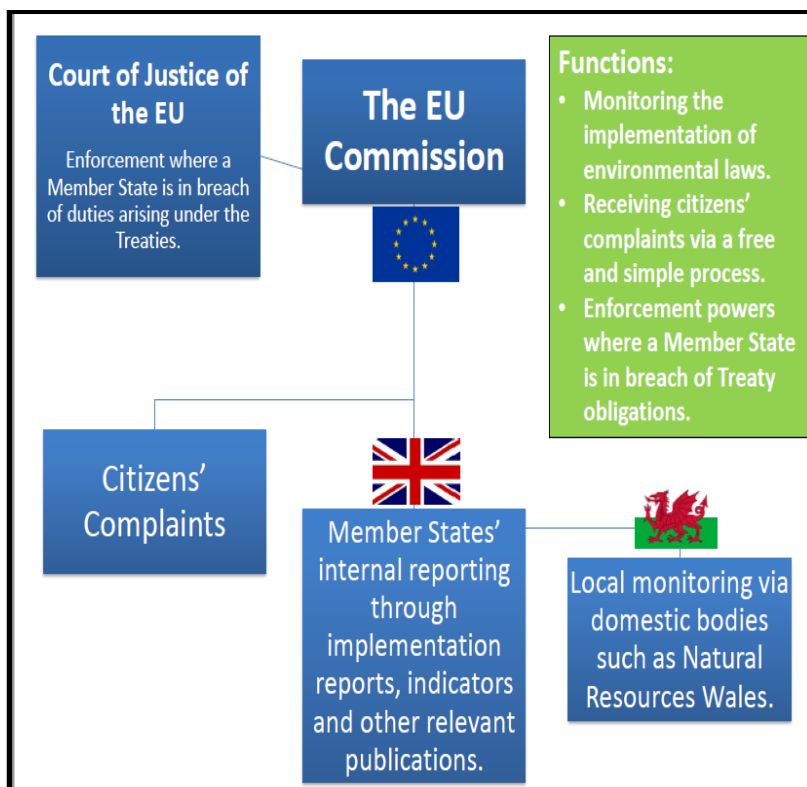


Diagram 2: EU Commission structure

Accountability, Accessibility and Enforcement in Wales

3.10 At both the UK and Wales level, there are established systems and procedures for holding public bodies to account for their performance and to provide challenge in the event that there is a perceived breach of legal powers and duties or a failure of performance. *Annex 5* provides an outline of the existing bodies operating in Wales and a summary of their functions. A summary of these bodies is provided in *Table 2*.

Table 2: Existing Welsh mechanisms for environmental accountability

Type	Body
Parliamentary	National Assembly for Wales Assembly Committees (e.g. Climate Change, Environment & Rural Affairs Committee)
Oversight bodies	Future Generations Commissioner (FGC); Public Services Ombudsman for Wales (PSOW); and Auditor General and Wales Audit Office (WAO)
Advisory committees	Joint Nature Conservation Committee (JNCC) (UK-wide body); UK Climate Change Committee (UKCCC) (UK-wide body)
Oversight and accountability organisations in other policy areas	Equalities & Human Rights Commissioner (UK-wide body); Information Commissioner (UK-wide body)
Regulatory and operational bodies	Natural Resources Wales Marine Management Organisation (UK-wide body)

3.11 The National Assembly for Wales and its Committees will continue to be the body responsible, as our legislature, for holding the Welsh Government to account and our domestic framework of environmental legislation will remain in place, enforced by existing regulatory bodies. The PSOW will continue to receive complaints from citizens about the delivery of functions by Welsh public bodies and the courts will continue to be able to review the lawfulness of a decision or action made by a public body.

3.12 In the same way that there are differences in relation to the approach to principles in Wales, there are also key differences in the way some bodies are structured in Wales, in line with the progressive approach to sustainable development and the mechanisms for monitoring and reporting.

Welsh Bodies

3.13 Two of the key Welsh bodies are Natural Resources Wales (NRW) and the Future Generations Commissioner.

Natural Resources Wales

3.14 NRW is the primary on-the-ground environmental regulator in Wales; its mandate is to 'pursue sustainable management of natural resources in relation to Wales' applying the principles of the same sustainable management of natural resources that we covered earlier in the consultation. In doing so, NRW provides a number of functions in an advisory, regulatory, response and management capacity amongst others. NRW receives complaints concerning damage to the environment and is the first point of contact for those seeking to prevent or remedy environmental damage.

3.15 Additionally, NRW produces the State of Natural Resources Report, which is required to include: its assessment of the extent to which sustainable management of natural resources is being achieved; its assessment of biodiversity; and its identifiable trends and factors that affect the state of natural resources, amongst others.

Future Generations Commissioner

3.16 The Well-being of Future Generations Act has established the role of a Future Generations Commissioner, an independent authority in Wales, who reports on whether public bodies in Wales are meeting well-being objectives and are acting in accordance with the sustainable development principle. The Commissioner can conduct a review into how public bodies are taking account of the long-term impact of their decisions, and make recommendations based on the findings.

3.17 The Commissioner also reports on whether public bodies in Wales are meeting well-being objectives and are acting in accordance with the sustainable development principle. However, the Commissioner's powers do not extend to the implementation of law and the focus of the Commissioner's role is more on encouraging bodies to comply with their duties under the Well-being of Future Generations Act.

Monitoring and Report under the Well-being of Future Generations Act and the Environment Act

3.18 The Well-being of Future Generations and the Environment Acts also introduced new reporting and monitoring tools, (outlined in *Table 3*), which help to monitor progress on the well-being goals and the management of our natural resources.

Table 3: Monitoring and Reporting under the Well-being of Future Generations and Environment Acts

Document	Purpose	Author
National Indicators ²⁰ (Well-being of Future Generations Act Act)	Measuring progress towards the achievement of the well-being goals and therefore cover economic, social, cultural and environmental progress. They can be measured in relation to Wales or any part of Wales. Environmental indicators include: 1) Concentration of carbon and organic matter in soil; 2) Ecological Footprint of Wales; 3) Amount of waste generated that is not recycled, per person; 4) Emissions of greenhouse gases within Wales; 5) Emissions of greenhouse gases attributed to the consumption of global goods and services in Wales; 6) Areas of healthy ecosystems in Wales; 7) Status of Biological diversity in Wales; 8) Percentage of surface water bodies, and groundwater bodies, achieving good or high overall status.	Welsh Ministers
State of Natural Resources Report (Environment Act)	Provides an assessment of the state of natural resources in relation to Wales and shows the condition and extent of our natural resources, their ability to respond to the pressures they face and their capacity to adapt to climate change. It provides a monitoring tool for progress on sustainable management of natural resources.	Natural Resources Wales
Well-being objectives and statement published (Well-being of Future Generations Act)	Each body develop its objectives showing how it will improve the social, environmental, economic and cultural well-being of Wales and contribute to the seven national well-being goals and publish a statement explaining why they feel the objective will help them achieve the goals and how it has applied 5-ways of working.	All listed Welsh public bodies
Well-being of Wales Annual Report (Well-being of Future Generations Act) ²¹	Provides an update on progress being made in Wales towards the achievement of the 7 well-being goals by using the 46 national indicators. the report can also be used to consider Wales' contribution towards the United Nations' Sustainable Development Goals.	Welsh Ministers

²⁰ <https://gov.wales/topics/people-and-communities/people/future-generations-act/national-indicators/?lang=en>

²¹ <https://gov.wales/statistics-and-research/well-being-wales/?lang=en>

Annual Reports (Well-being of Future Generations Act)	Provides an update on the progress being made to meet the well-being objectives set out by each public body.	All listed Welsh public bodies
Future Generations Commissioner Report (Well-being of Future Generations Act)	Publish a report containing the Commissioner's assessment of the improvements public bodies should make to achieve the well-being goals	Future Generations Commissioner
Well-being Assessments, plans and reviews. (Well-being of Future Generations Act)	Assessing the state of economic, social, environmental and cultural well-being in its area, in doing so they must utilise any evidence provide in 'Area Statements' relating to their area produced by NRW. Setting objectives that are designed to maximise the PSBs contribution to the wellbeing goals. Each PSB will carry out an annual review of their plan showing their progress.	Public Service Boards

3.19 Currently, the main mechanism to challenge failures in the implementation of environmental law, or a decision by a public body, including the Welsh Government, is through judicial review. Any person with appropriate standing can bring forward a judicial review, which involves the courts considering the legality of the actions undertaken by a public body. A court can for example issue injunctions but not impose fines.

Gaps in Governance in Wales

3.20 There are several bodies operating in Wales, which hold public bodies to account, whilst governance bodies such as the Auditor General and the Public Sector Ombudsman provide oversight of Welsh public bodies, in general these bodies:

- were established to address a more defined focus in areas like the effective and efficient use of public money than in relation to the implementation of environmental law and therefore are not responsible for scrutinizing the proper implementation of environmental law;
- consequently are not specialized to address complex environmental issues, in particular for Wales, in line with the requirements for the sustainable management of natural resources within the Environment (Wales) Act;

- do not have the equivalent functions to undertake the continuous monitoring or enforcement, which includes referring a public body to court for failure to fulfil its duties on the environment.

3.22 On exiting the EU, the governance architecture provided by the EU Commission and the CJEU no longer applies and without any changes to the current position within Wales it could lead to three potential gaps (see Annex 6), namely the loss of:

- Independent accountability – there would be no independent supervisory body with responsibility for the oversight of the implementation of environmental laws and policies by governments or potentially other public bodies;
- A simple and inexpensive mechanism to raise complaints –the simple and free citizen complaint procedure provided by the EU would no longer be in place;
- Enforcement mechanisms - the EU has both formal and informal complaints procedures and mechanisms that enable disputes to be addressed via negotiations. It can also seek recourse to the CJEU, which can result in significant financial penalties where there is failure to comply with the court's judgements.

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

Addressing the Gaps for Wales

3.23 Exiting the EU provides an opportunity to put in place a governance structure for Wales, which:

1. Aligns with the overarching context of sustainable development set by the Well-being of Future Generations (Wales) Act;
2. Ensures delivery against the statutory framework for the sustainable management of natural resources put in place by the Environment (Wales) Act;
3. Compliments and is compatible with the existing Welsh bodies, established to scrutinise, advise or hold public bodies in Wales to account (such as the FG Commissioner);
4. Aligns with existing reporting and monitoring mechanisms provided under the Well-being of Future Generations and Environment Acts;
5. Respects the role of the National Assembly as a legislature in holding the Welsh Government to account;
6. Provides a coherent framework designed to address governance at a national level;
7. Is independent and impartial; and
8. Helps to maintain and enhance environmental standards.

3.24 There is an opportunity for a wide conversation on environmental governance. We, therefore, seek your views on what will provide the most effective and coherent approach to improving environmental governance, including whether or not improvements could be made to the existing structures or whether a specific oversight body is required, where there are economies of scales and efficient use of available resources. For this new governance structure, we seek your views on key factors, which would be necessary to provide effective and proportionate governance rather than state the model, which needs to be introduced.

Existing Structures

3.25 A coherent, integrated governance arrangement needs to reflect the specific Welsh context including established mechanisms for accountability.

3.26 As outlined in *Annex 5*, a number of bodies already provide key governance functions in Wales, the Public Service Ombudsman can receive complaints about the delivery of functions by public bodies, the Future Generations Commissioner reports on the progress public bodies have made and should make in relation to setting and meeting well-being objectives in line with the sustainable development principle.

3.27 We seek your views on the role of existing accountability bodies in an improved governance structure post exiting the EU. Whilst these bodies, where not established to provide environmental governance, they contribute to the oversight of public bodies who deliver functions, which can have an impact on status of our environment.

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

New Arrangements

3.28 This section of the document outlines the key elements, which would be required to provide independent, effective and robust oversight. The structure of this section considers what these key factors would need to be irrespective of the type of body, which may operate as an oversight body in Wales.

Role, Scope and Constitution of a body operating in Wales

Role of a body operating in Wales

3.26 The role of a body would be to provide independent oversight of the implementation of legislation relating to Wales' natural resources in a way which is aligned to the existing Welsh primary legislation. The aim of such a body would, therefore, be to act as a guardian of Wales' natural resources in ensuring policy and legislation is developed in accordance with the principles set out in the Environment (Wales) Act (including the missing EU environmental principles) and that delivery is in line with underpinning environmental regulations.

3.27 Therefore, the objectives are 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.

3.28 These objectives would help to set a broad purpose for a body providing oversight, which are fully aligned with the approach provided for in the Environment (Wales) Act, which is in turn aligned to the Well-being of Future Generations Act and contribute to the overarching context provided by that Act. This would also be in line with the relevant UN frameworks from which both Acts draw.

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

Scope of a body operating in Wales

3.29 It is important the body is provided with a clear scope, and this can be guided by the integrated approach provided in the Environment (Wales) Act 2016 and the existing definition of 'natural resources' as provided in section 2:

In this Part, "natural resources" includes (but is not 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.*

3.30 This would mean that the scope of a body would for example 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.

3.31 Providing a body with an all-encompassing scope enables us to fully protect the environment in Wales, ensuring that no element is left out of the new governance architecture and replicating the current scope of the EU governance structure. As such, a body would not only scrutinise the EU-derived legislation saved or converted

under the EU (Withdrawal) Act 2018 but all domestic legislation relating to the above list of areas.

3.32 In areas, where an existing body provides advice, for example the UK Committee on Climate Change, which also provides specific functions for Wales²², there will need to be clear delineation of roles to ensure there is no overlap or duplication. The advisory functions of this body, in relation to Wales, have been brought more in line with the sustainable development architecture.

3.33 In Wales, we recognise the close relationship between the entire range of policy areas and specifically the impact climate change has on the environment and biodiversity. Further still, working within the proposed scope ensures that we legislate within our devolved competence, importantly maintaining consistency with the current devolution settlement.

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

3.34 The scope of a body also relates to the bodies it may be able to oversee. It is proposed that the remit of a body's advisory and scrutiny functions extend to the following bodies:

- Welsh Ministers;
- Natural Resources Wales;
- Welsh local authorities; and
- Ministers of the Crown (e.g. consistent with their responsibilities under the Environment (Wales) Act).

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

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

Constitution of a body operating in Wales

3.35 It is our view any oversight body should be independent of government. Independence will be assisted by:

- Being accountable for its activities in Wales, to the National Assembly for Wales,
- Being independently audited by a body such as the Auditor General for Wales;
- Having independent appointment structures; and
- Having independent sources of funding.

3.36 In addition, a body will need to operate in a transparent and impartial manner.

²² See Part 2 Environment (Wales) Act 2016. Under section 50(3) of the 2016 Act, the UK CCC (as the default advisory body for Wales – section 44) must have regard to a specific set of matters under section 32(3), which includes the State of Natural Resources Report, the Future Trends Report, the Future Generation Commissioner's report.

3.37 We seek your views on how such a body should be constituted, such as should it take the form of a commission, a commissioner or another form best suited for the delivery of its role and objectives?

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

Functions of a body operating in Wales

3.38 We are seeking your views on which functions a body would need to undertake, in order to deliver its role and objectives outlined above and address the gaps.

Advisory

3.39 To assist public bodies, contribute to sustainable management of natural resources and to deliver environmental legislation, there is a potential role for a body to act as an advisor. This body could provide expert advice on how public bodies can contribute to sustainable management of natural resources but also how they can deliver their other functions in a way which will further enhance ecosystem resilience and therefore help contribute to the well-being goals as provided in the Well-being of Future Generations Act.

3.40 Working with public bodies and providing advice at an early stage can help public bodies meet their duties and potentially reduce any breaches. The aim of this proposal would be to ensure a body was able to act early by providing support where and when it was required. This would operate on the basis of preventive measures being more effective and considerably cheaper than having to resort to court action.

3.41 Advice could be sought in two ways:

- Public bodies requesting advice from the body; and/or
- The body, as part of its scrutiny and compliance functions, working with a public body to provide advice at an early stage to redress any potential breaches.

3.42 Part of the advisory role could be to provide guidance, where appropriate and to encourage the sharing of best practice. The body could also be able to draw upon the expertise and knowledge of other bodies to assist it in the exercise of its functions and act in an impartial and independent manner in how it selects external expertise.

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

Scrutiny

3.43 A number of bodies in Wales already provide monitoring and reporting functions, for example NRW produces a report of its assessment of the state of natural resources in Wales²³ (which will continue to be published post EU exit). The National Assembly for Wales scrutinises the activities of the Welsh Government and Welsh public bodies and the Public Services Ombudsman and the Auditor General also carry out scrutiny functions (see *Annex 5*). An oversight body should not conflict with, but complement and enhance the existing structures.

3.44 One of the general functions of an oversight body could be to scrutinise extant legislation in order to address any complaints about the implementation of environmental legislation. In order to undertake this function, it should be able to utilise the reports published by other bodies such as Natural Resources Wales and be able to commission or request additional information from other public bodies as appropriate.

3.45 We seek your views on the extent of these functions and whether a body should be able to undertake thematic reviews of implementation in line with the Environment (Wales) Act.

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

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

Receive Complaints

3.46 In Wales, we believe there should be no reduction in citizens' rights as a result of exiting the EU. In Wales, citizens already have a range of options to pursue concerns, for example through the complaint's procedures of public bodies (such as the Public Services Ombudsman Wales) or by raising a complaint to an elected Assembly Member or by the Assembly's own complaint procedure. However, as outlined in this document, there are still gaps even with these bodies providing valuable monitoring of public bodies.

3.47 Whilst our existing compliant procedures will continue to apply, gaps will still exist as outlined above in terms of no specific environmental focus within existing bodies and the process is limited in contrast to the enforcement powers provided at the EU level. To provide a coherent process, we therefore seek views on the functions, which would be required for an oversight body to be able to receive complaints from citizens and civil society on the proper implementation of environmental law.

²³ State of Natural Resources Report 2016 (SoNaRR) <https://naturalresources.wales/evidence-and-data/research-and-reports/the-state-of-natural-resources-report-assessment-of-the-sustainable-management-of-natural-resources/?lang=en>

3.48 The functions of this body would need to be sufficiently clearly defined to ensure there were no conflicts or duplication with the complaint functions of other Welsh public bodies.

3.49 In relation to the complaint's functions, 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.

3.50 In line with the current system, this should also be simple and free for citizens to use.

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?

Enforcement

3.51 In line with our devolution settlement, we seek your views on how effective enforcement could be delivered.

Informal and formal mechanisms - process

3.52 Similar to the functions of the EU Commission, a body should be able to carry out both formal and informal mechanisms to seek solutions to any issues, which have been identified either as a result of a complaint or from its own investigations. This can begin with informal discussions. Where this does not result in a solution, more formal approaches can then be pursued.

- Informal - In line with the 5-ways of working, where an issue has been identified, an oversight body and the government or other public body should work collaboratively including with other relevant parties to seek a solution, taking a long-term and preventative approach.
- Formal - Where an oversight body has to pursue formal procedures as a result of its investigations and failure to seek a solution via informal mechanisms, similar to the EU system, it could:
 - issue a formal notice requesting further information and a time limit for a reply and the body under investigations should cooperate with an oversight body;
 - issue a notice of its opinion and recommendations (similar to the reasoned opinion by the EU Commission) requesting a response within a set timeframe of the actions to be taken by the public body.
 - refer the matter to the courts, where a breach continues.

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?

Enforcement Actions

3.53 Recourse to the courts should be a final method of enforcement only where other methods have failed - only a small number of cases are heard by the CJEU. Currently, the mechanism for redress is by judicial review, which has received criticism as an appropriate mechanism to replace the infraction procedures available to the CJEU²⁴.

3.54 We want to ensure deterrents relating to compliance with environmental law are genuine and effective. We believe, there still needs to be credible means of enforcement, including where appropriate interim measures to prevent additional harm or mechanisms for restoration for any environmental damage.

3.55 We seek your views on what you consider to be the most effective enforcement actions to be provided to an oversight body operating in Wales

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

²⁴ National Assembly for Wales, Climate Change, Environment and Rural Affairs Committee, Environmental Governance Arrangements and Principles Post Brexit, June 2018

Questions 5 to 17 of 19

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

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

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

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

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

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

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

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

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

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

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?

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?

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

Working across the UK

3.56 With the overarching context of sustainable development at the core of decision-making and the gaps in principles in Wales being significantly different to gaps elsewhere in the UK, the response to address the gaps is therefore not the same for each administration.

3.57 Our starting point was to address the governance gaps in a way, which would meet the specific requirements in Wales in line with our existing legislative and governance frameworks.

3.58 However, we recognise the importance, post EU membership for the four UK administrations to work more collaboratively. Our White Paper – *Brexit and Devolution: Securing Wales' Future* proposed deeper and more sustained co-operation between governments in the exercise of our individual, but connected, competences.

3.59 In line with our 5-ways of working and our principles of sustainable management of natural resources, collaborative and integrated working is central to the Welsh Government's development of policies, including working with the UK Government and the other devolved administrations.

3.60 We recognise where there are common UK obligations or where there is interface between the UK nations on environmental matters, a UK-wide governance mechanism may be appropriate and we have always welcomed the opportunity to collaborate on how such a mechanism could be designed.

Environmental Principles

3.61 The Welsh Government has always stated its willingness to discuss a potential UK-wide response to the application of principles where there is commonality across the administration in particular in relation to legislation, which applies across more than one administration.

3.62 As currently, the four EU environmental principles have guided the development of EU derived legislation, which will be converted into UK domestic law by the EU (Withdrawal) Act 2018²⁵, we believe these four principles could provide a core set of principles, which could be applied in relation to areas of joint decision-making and legislation between the administrations.

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

Accountability and Oversight

3.63 In line with our proposals for deeper and more sustained co-operation between the four governments in the exercise of our individual, but connected, competences after the UK leaves the EU, there are opportunities to address matters, which may benefit from a collective UK-wide approach, whilst also respecting the current legislative landscape in Wales, notably the role of the Well-being of Future Generations (Wales) Act and the Environment (Wales) Act.

3.64 Under the EU Treaties, the EU is able to be a party to numerous international agreements²⁶, many EU measures were introduced to implement the EU's

²⁵ EU (Withdrawal) Act 2018, sections 2 and 3

²⁶ Article 3 of the Treaty on the Functioning of the European Union for those areas in which the EU had exclusive competence or Article 4, TFEU jointly with Member States in a mixed agreement where competence for the subject matter of the treaty was shared.

international obligations and/or to jointly implement those of its Member States. After exit, the UK will remain a party to all international environmental treaties it has ratified as a party in its own right.

3.65 The Government of Wales Act, as amended by the Wales Act 2017, reserves to the UK Government competence for matters relating to international relations. This means that international reporting obligations after EU Exit will rest with the UK Government, representing the nation state (the 'UK'). However, often the implementation of international obligations falls within devolved competence.

3.66 The fulfilment of international environment obligations will be of central importance in future relations with the international sphere, particularly in areas of environmental coordination and trade. International treaties and conventions will still require regular reporting on the implementation of environmental law across the UK.

3.67 A collaborative approach is also appropriate where reserved and devolved areas intersect as there is a legitimate interest where reserved policy areas have an impact on the delivery of devolved policy areas.

3.68 EU governance mechanisms have often provided a more stringent enforcement of the obligations (as interpreted into EU law) than is provided at the international level.

3.69 To achieve co-operation between the administrations in areas of commonality and consolidation, there is an opportunity to design governance mechanisms, which not only address the specific, unique frameworks in each nation but also the interface relating to the environment and the totality of delivery across the UK.

3.70 We seek your views on the potential structure of governance mechanisms, which respects the devolved frameworks (including the role of the National Assembly for Wales) and provides a structure for collaboration and collective decision-making.

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

Questions 18 to 19 of 19

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

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

Annex 1: Questions

Environmental Principles and Governance in Wales Post European Union Exit

Consultation response form

Your name:

Organisation (if applicable):

e-mail/telephone number:

Your address:

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?

- Rectification at Source;
- Polluter-pays

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

Question 3: Do you agree the duty to pursue sustainable management of natural resources and the application of the SMNR principles should be extended?

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

Accountability

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

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

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

Question 8: Which policy areas should be included within the scope of new governance arrangements? Question 9: Do you consider the proposed list of bodies to be appropriate?

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

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

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

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

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

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?

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?

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

Other

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

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

Annex 2: The Well-being of Future Generations (Wales) Act

The WFG Act introduced a new duty on 44 Welsh public bodies, requiring them to carry out sustainable development, which includes setting and publishing well-being objectives to maximise their contribution to the well-being goals provided in the Well-being of Future Generations Act as well as taking reasonable steps in exercising functions to deliver the objectives.

Well-being of Future Generations Act – Listed Public Bodies

- The Welsh Ministers;
- Local authorities;
- Local Health Boards;
- Velindre National Health Service Trust;
- Public Health Wales;
- Welsh National Park Authorities;
- Welsh Fire and Rescue Authorities;
- Natural Resources Wales;
- The Higher Education Funding Council for Wales;
- The Arts Council of Wales;
- The Sports Council for Wales;
- The National Library of Wales; and
- The National Museum of Wales.

In the Act, sustainable development is defined as:

*“...the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the **sustainable development principle**...aimed at achieving the well-being goals...”*

The Act requires a culture change and shift in how public bodies work in order that they can work towards achieving social, economic, environmental and cultural well-being. The well-being goals provide a shared vision of well-being in Wales for the future – that is, shared outcomes which listed public bodies and partners are all working towards. The Well-being of Future Generations Act requires public bodies to carry out their duties in accordance with the sustainable development principle, requiring the bodies to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

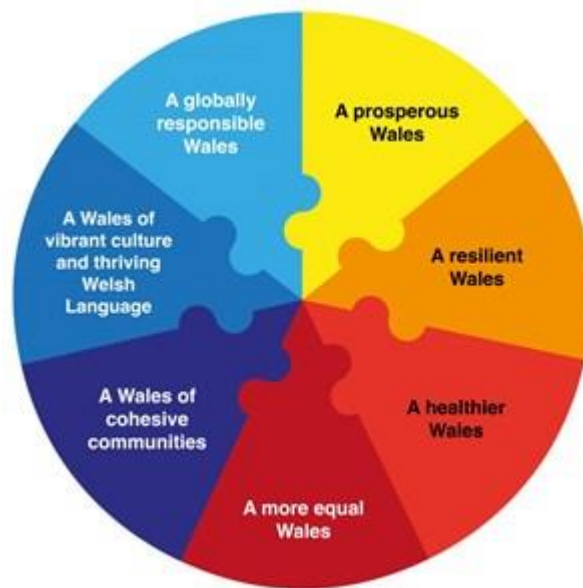
The sustainable development principle, which sets down how public bodies must operate, aims to assist better decision-making by ensuring that public bodies take account of the long-term, help to prevent problems occurring or getting worse, take an integrated and collaborative approach, and consider and involve people of all ages. These are the 5-ways of working:



5-ways of working

1. Long-term: The importance of balancing short-term needs with the need to safeguard the ability to also meet long-term needs.
2. Prevention: How acting to prevent problems occurring or getting worse may help public bodies meet their objectives.
3. Integration: Considering how the public body's well-being objectives may impact upon each of the well-being goals, on their other objectives, or on the objectives of other public bodies.
4. Collaboration: Acting in collaboration with any other person (or different parts of the body itself) that could help the body to meet its well-being objectives.
5. Involvement: The importance of involving people with an interest in achieving the well-being goals, and ensuring that those people reflect the diversity of the area which the body serves.

Public bodies are required to take action aimed at achieving the seven well-being goals set out in the Act of:



Well-being Goals

A prosperous Wales - An innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately

A resilient Wales - A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change

A healthier Wales - A society in which people's physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.

A more equal Wales - A society that enables people to fulfil their potential no matter what their background or circumstances

A Wales of cohesive communities - Attractive, viable, safe and well-connected communities.

A Wales of vibrant culture and thriving Welsh language - A society that promotes and protects culture, heritage and the Welsh language, and which encourages people to participate in the arts, and sports and recreation.

A globally responsible Wales - A nation which, when doing anything to improve the economic, social, environmental and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being.

The Act also established Public Service Boards which provide a level of governance over Local Authorities in their pursuit of sustainable development; crucially, these boards are also required to send to the Commissioner a copy of their annual progress report.

Further, the Act also provides that the Auditor General for Wales may carry out examinations of the public bodies listed in the Act with regard to their compliance with relevant aspects of the Act.

Annex 3: Environment (Wales) Act 2016

The Environment Act introduced a set of key principles to apply sustainable development to the management of Wales' natural resources these are known within the Act collectively as the Sustainable Management of Natural Resources (SMNR) principles.

SMNR applies the approach to sustainable development within the Well-being of Future Generations Act by requiring the management of natural resources in a way that meets the needs of the present are met without compromising the ability of future generations to meet their own needs and contributes the well-being goals.

The provisions relating to SMNR cover five areas that deliberately mirror the Ways of Working in the Well-being of Future Generations Act – collaboration and co-operation, public participation, preventative approach, and looking at the long term – whilst also drawing in four others from key international agreements. The purpose of doing so is to ensure an integrated approach to the management of our natural resources within the framework for the delivery of the Well-being Goals.

At the core of the Environment (Wales) Act and the SMNR approach is the recognition that if our ecosystems are not maintained and enhanced, we will not be able to deliver the long-term prosperity and well-being described by the Goals.

The approach is integrated as it:

- Applies across policy areas and activities with a view to promoting sustainable development and recognises that activities affect directly or indirectly the status of our natural resources and ecosystems;
- Recognises the interconnections between policy areas and responding to issues cannot be siloed;

The SMNR Principles

Principle	Description
Adaptive Management	planning, monitoring, review and changing work as a better understanding is achieved through improved evidence and experiences.
Scale	decisions and actions will need to be taken at the right level, be it national, regional, local or landscape to address at the appropriate ecological scale.
Working together	everyone has a stake in our natural resources and to ensure that these resources are sustainably managed everybody has a role to play, through engaging in projects, providing evidence, or cooperating and collaborating at the local, regional and national level.
Engaging with the public	ensure that everyone has an opportunity to have their say on how our natural resources should be managed at all stages of decision-making.

Evidence	a wider and improved evidence base is needed in order to increase our understanding of our natural resources, how they function and of the benefits that they provide. Improved evidence will help us all to better understand the steps that we can take to manage our natural resources more sustainably. A full range of evidence will be needed, not only environmental, but also, cultural, social and economic evidence will be needed from experts, stakeholders and local communities.
Understanding all of the benefits we receive from our natural resources	we all need to increase our understanding of the value of our natural resources and the ways in which they support each other so that we and future generations can continue to have economic, social, cultural and environmental benefits whilst reducing the impact we have on the environment around us.
Long term impacts	the impacts of our decisions and actions need to be considered not only for their effect in the short term but also over the long-term
Prevention	to take steps to prevent significant damage of our ecosystems
Resilience	to be able to deal with increased demands and pressures our ecosystems need to be healthy. This includes ensuring that our decisions consider the resilience of our ecosystems and their ability to provide their benefits in the long term. This will also help to ensure they are capable of adapting to the impacts they face from climate change and future demands.
In addition to the above SMNR principles we have other principles which correspond to the 5 Ways of Working	
Considering the appropriate scale	which means ensuring that environmental management should take place at the appropriate spatial scales to ensure that environmental issues are addressed at a scale that makes best ecological sense.
Temporal impacts	(or temporal scale), requiring consideration of the consequences of actions over the short, medium and long-term, which combined with taking account of the benefits (including intrinsic value) of natural resources and ecosystems means considering the resilience .
Precautionary	whilst, the Environment Act does not directly mention the precautionary principle, the key elements of applying a precautionary approach are reflected in the other principles, drawing upon the guidance developed by the EU Commission on a step by step approach to applying the principle.

Statutory Duties

SMNR is the general purpose of Natural Resources Wales (NRW), which is required to pursue SMNR and apply the supporting principles in the carrying out of its functions. Each year, NRW must report on how it is complying with this duty.

In addition, the Welsh Ministers must also apply the principles of SMNR when they are preparing, publishing and implementing the Natural Resources Policy²⁷, which contains policies for contributing to the achievement of SMNR.

Application

The SMNR principles, guide the development and implementation of the NRP but also of all of the policies contained within it and their implementation, which includes any legislation introduced to implement the policies.

In setting out the SMNR principles, the Act identifies the key steps needed to manage Wales' natural resources more sustainably and connects them to the application of sustainable development in the Well-being of Future Generation Act.

Both the Well-being of Future Generation Act and the Environment Act draw upon international principles and best practice in setting out the 5-ways of working and the principles of sustainable management of natural resources. Importantly, as in the European context, these benefits are not limited to the environmental domain but apply across all areas of policy devolved to Wales, as the benefits are critical in supporting our current and long-term prosperity and provide significant economic, social and cultural benefits.

In an approach similar to that taken by the EU, the principles established in the Acts sit within the overarching context of sustainable development and are designed to provide a clear link to international obligations, in particular to sustainable development and the sustainable use of natural resources.

Iterative Framework

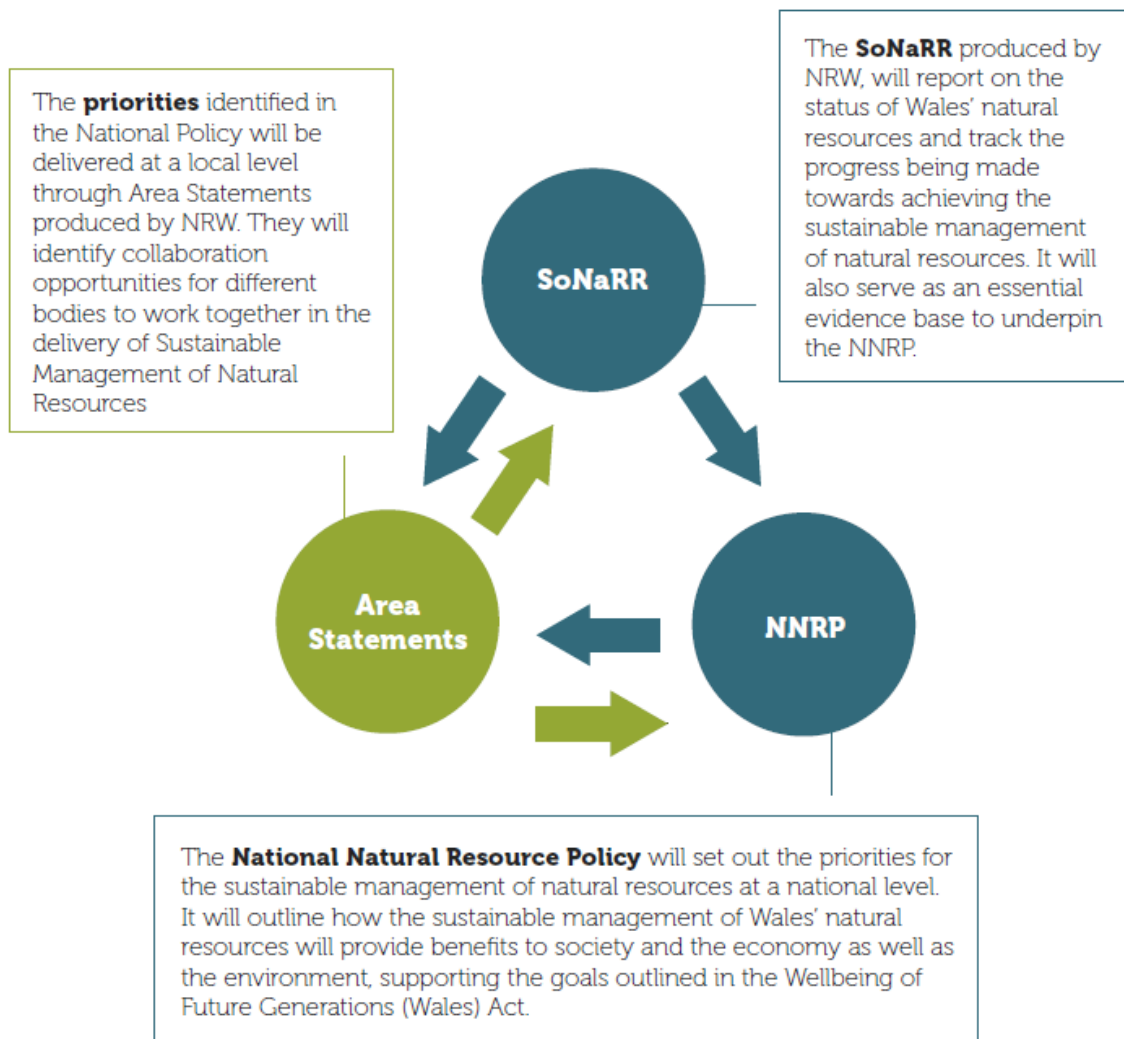
We recognise that our natural resources are amongst our most important assets. The Environment (Wales) Act includes an iterative framework that will ensure managing our natural resources sustainably will be a core consideration in decision-making. This framework includes the State of Natural Resources Report, the National Natural Resources Policy and area statements.

State of Natural Resources Report (SoNaRR)– Natural Resources Wales (NRW) must produce a report that gives an assessment of natural resources and how well we're doing to manage them in a sustainable way. The policy is produced every 5 years and the next Report is due to be published at the end of 2020.

²⁷ <https://gov.wales/docs/desh/publications/170821-natural-resources-policy-en.PDF>

Natural Resources Policy (NRP) – the Welsh Government must produce a policy setting out our general and specific policies for the sustainable management of natural resources. The Policy must take into account the findings of the State of Natural Resources and review the policies in light of any new Report published by NRW.

Area statements – NRW apply an area-based approach to the policies provided in the NRP, this includes a more detailed evidence base, which feeds into the next iteration of the next SoNaRR. Area statements help to implement the priorities, risks and opportunities identified in the NRP.



Annex 4: EU Commission Functions

Function	Wales Level
Developing long term strategy	In Wales – Natural Resources Policy – set down in Primary Legislation – linked to evidence and implementation. Application of SMNR principles – purpose of policy to deliver SMNR and by implication – Well-being Goals. Set within an adaptive management framework
Initiating policy proposals	Developed across WG in line with the Well-being of Future Generations Act and applying the 5-ways of working. In relation to natural resources – general and specific policies in NRP developed for SMNR and following the SMNR principles.
Appraising policy proposals	National Assembly for Wales and its Committees assess policies
Developing Legislation	Where related to the implementation of natural resources – the WMs apply the principles of SMNR. In general, in line with the Well-being of Future Generations Act and the 5-ways of working.
Guiding implementation	FG Commissioner: <ul style="list-style-type: none"> - Provides advice to public bodies, supporting them to meet their well-being objectives and encouraging best practice; - Provides advice to Public Services Boards about the preparation of their Local Well-being Plan <p>WMs must in relation to the NRP encourage others to take all reasonable steps to implement the NRP,</p>
Sharing and transferring expertise and best practices	FG Commissioner: <ul style="list-style-type: none"> - Carries out research to include the well-being goals, the national indicators and milestones, and the SD principle and how public bodies apply it;
Horizon Scanning	State of Natural Resources Report and the Future Trends Report
Monitoring and assessment.	NRW – duty under the Environment (W) Act to publish every 5 years a State of Natural Resources Report, which feeds into the review of the Natural Resources Policy. PSBs under a requirement to assess the well-being of their area (Well-being of Future Generations Act). All Welsh Public Bodies to report annually on their well-being objectives (to contribute to the well-being goals). FG commissioner Some reporting requirements in domestic legislation to report to Assembly - e.g. Part 2 of Environment Wales Act – requirement to report on targets etc

<p>Proactive scrutiny</p>	<p>National Assembly and its committees FG Commissioner Auditor General PSOW civil society</p> <p>Assembly Committees and Auditor General publish reports.</p> <p><u>FG Framework</u> The FG Commissioner: - prepares and publishes a Future Generations Report every five years, which presents an assessment of the improvements that public bodies have made and should make in relation to setting and meeting well-being objectives in line with the SD principle. - Conducts reviews into how public bodies are taking account of the long-term impact of decisions, and make recommendations based on the findings - body must take all reasonable steps to follow;</p> <p>Auditor General for Wales can carry out examinations of public bodies for the purposes of assessing the extent to which a body has acted in accordance with the sustainable development principle when:</p> <ul style="list-style-type: none"> • setting well-being objectives, and • taking steps to meet those objectives. <p>But must report at least once in every five-year electoral cycle and lay reports before the Assembly.</p>
<p>Investigation</p>	<p>The Assembly and bodies such as AOW have powers to conduct inquiries into performance.</p> <p>PSO has powers to investigate and obtain evidence.</p> <p>The Assembly can conduct inquiries on its own initiative.</p> <p>Many bodies have powers and capacity to conduct studies and investigations as part of their wider functions in presenting and analysing information on performance and which can be used in calling the public sector to account.</p> <p>Well-being of Future Generations Act <u>Framework</u> FG Commissioner can conduct reviews into how public bodies are taking account of the long-term impact of decisions, and make recommendations based on the findings.</p> <p>FGC can carry out research to include the well-being goals, the national indicators and milestones, and the SD principle and how public bodies apply it.</p>

<p>Complaint procedures</p>	<p>Public bodies will continue to be required to have established complaints procedures which also include commitments to fully investigate and respond to complaints about their performance.</p> <p>Citizens' can still petition elected representatives including the Assembly.</p> <p>Individuals and organisations can complain about the delivery of environmental authorities to the Public Services Ombudsman for Wales.</p> <p>Individuals can raise issues with the FG Commissioner</p>
<p>Formal and informal mechanisms to seek solutions to concerns about the implementation of environmental law, through interaction with Government</p>	<p>PSOW generally does not usually seek a solution through negotiation, although it will recommend changes to procedure and practice.</p> <p><u>Well-being of Future Generations Act Framework</u> FG Commissioner has powers to work with public bodies to assist them comply with their obligations under the Well-being of Future Generations Act Act. In addition, Commissioner can provide advice to Public Services Boards about the preparation of their Local Well-being Plan.</p> <p>This advice and assistance does not operate within a formal enforcement regime.</p>
<p>Powers to refer a public body to a court for alleged failure to implement environmental law in order to seek a remedy</p>	<p>There are a number of public and private law actions that individuals can take where public bodies are not complying with the law – this would apply to retained EU law as part of domestic legislation.</p> <p>The main current mechanism is judicial review which is based only on a challenge to the legality or reasonableness of an action by a public body.</p>
<p>Powers to order interim measures to prevent irreversible damage before judgment is handed down</p>	<p>Courts and public bodies have a range of interim powers to stop activities that breach environmental laws, normally subject to appeal.</p>
<p>Powers to require Government to take such action as is necessary to bring it into compliance and to impose sanctions if action is not taken (including fines)</p>	<p>Courts can quash decisions in certain circumstances and grant financial compensation where there is an identifiable loss to a private interest.</p> <p>Political and policy accountability through Assembly or legal accountability through the courts would remain the main routes to sanction government.</p> <p>In Wales the FG Commissioner has no enforcement powers but can make recommendations which are persuasive not legally binding</p>

Annex 5: Existing Welsh mechanisms for environmental accountability

Body	Description
National Assembly for Wales	<p>General responsibility for holding the Welsh Government and other public bodies such as NRW to account.</p> <p>In certain circumstances WMs required to submit specific reports to National Assembly for Wales (e.g. under Part 2 Environment (W) Act) and Report on various requirements under existing legal framework.</p>
Climate Change, Environment & Rural Affairs Committee	<p>Assessments and inquiries by the Climate Change, Environment & Rural Affairs committee within the National Assembly of Wales.</p>
Constitution and Legislative Affairs Committee	<p>Considers constitutional, legislative or governmental matter within or relating to the competence of the Assembly or the Welsh Ministers, including the quality of legislation.</p>
Future Generations Commissioner	<p>Established under the Well-being of Future Generations (Wales) Act. General duty to promote sustainable development as defined in the Act.</p> <p><u>Appointments:</u> Welsh Ministers' appoint an individual as an independent Commissioner after consulting with the National Assembly for Wales.</p> <p><u>FG Commissioner Duties:</u></p> <ul style="list-style-type: none"> • Providing advice to public bodies, supporting them to meet their well-being objectives and encouraging best practice; • Providing advice to Public Services Boards about the preparation of their Local Well-being Plan; • Carrying out research to include the well-being goals, the national indicators and milestones, and the SD principle and how public bodies apply it; • Conducting reviews into how public bodies are taking account of the long-term impact of decisions, and make recommendations based on the findings - body must take all reasonable steps to follow; • Making recommendations to a public body about the steps taken or proposed to set and meet well-being objectives;

	<ul style="list-style-type: none"> • Preparing and publishing a Future Generations Report every five years, which presents an assessment of the improvements that public bodies have made and should make in relation to setting and meeting well-being objectives in line with the SD principle. <p><u>Enforcement</u> No enforcement powers but provides advice and assistance. <u>Funded by:</u> Welsh Government. The Commissioner is supported by an Advisory Panel. The Panel includes the other Wales Commissioners, the Chief Medical Officer for Wales, a representative of Natural Resources Wales, Wales TUC and can be supplemented by others.</p>
<p>Public Services Ombudsman for Wales</p>	<p><u>Appointment:</u> By the Queen following a nomination from the National Assembly for Wales.</p> <p><u>Duties</u> Individuals and organisations can complain about the delivery of environmental authorities to the Public Services Ombudsman for Wales Work of PSO is not specifically focussed on environmental issues; PSO has powers to investigate and obtain evidence</p> <p><u>Enforcement:</u> Formal report can be issued by the PSO on breaches of the code of conduct. Adjudication Panel for Wales. It will be for the authority or the Panel to decide if the code of conduct has been broken and if so, what penalty to impose on the member concerned.</p> <p><u>Funding:</u> Welsh Consolidated Fund - scrutinised by National Assembly for Wales.</p>
<p>Auditor General for Wales and Wales Audit Office</p>	<p><u>Appointment Auditor General</u> Appointed by the Queen following a nomination from the National Assembly for Wales.</p> <p><u>Duties</u> The body responsible for auditing the Welsh Assembly Government, Welsh public bodies including National Health Service bodies and local government in Wales. Publishes reports, some of which are submitted to NAW. Its accounts are audited by an independent firm appointed by the National Assembly for Wales.</p> <p><u>AG and the Well-being of Future Generations Act</u> Auditor General for Wales can carry out examinations of public bodies for the purposes of assessing the extent to which a body has acted in accordance with the sustainable development principle when:</p> <ul style="list-style-type: none"> • setting well-being objectives, and • taking steps to meet those objectives.

	<p>But must report at least once in every five-year electoral cycle and lay reports before the Assembly.</p> <p><u>Funding:</u> Welsh Consolidated Fund - scrutinised by National Assembly.</p>
<p>Equalities & Human Rights Commissioner</p>	<p>Established under the Equalities Act 2006 – to promote and encourage understanding and good practice on equality, diversity and human rights and to monitor and report on the effectiveness of the law. It is an expert body and enforcer of the Equalities Act 2010 and the Human Rights Act 1998. It has general powers to conduct general inquiries, make recommendations and improvements to the law. It has legal powers to investigate and remedy non-compliance and can conduct formal investigations and assessments and can agree an action plan with a body it is investigating or issue binding notices. Where a body continues to breach the EHRC can apply to the courts for orders requiring compliance. It also has powers to initiate and intervene in legal proceedings and under the Human Rights Act it has powers to bring judicial review cases based on a failure of a public authority to act in accordance with human rights. In reality, the body tends to use ‘soft’ law options</p> <p>Appointed by Government Ministers. Funded by government. Spending decisions signed off by the same government – the body may be enforcing.</p>
<p>Information Commissioner</p>	<p>Established under the Data Protection Act 1998 (DPA), the Commissioner is appointed by the Crown following approval by the Culture, Media and Sports Select Committee. It is accountable to Parliament. ICO promotes good practice (including through the production of guidance), collates similar information on relevant issues, lays annual reports before Parliament, and monitors how public authorities are complying with their duties. The ICO also investigates compliance with the law, including by looking into concerns raised by the public. It can issue binding information, assessment and enforcement notices and prosecute for offences under the Act. Under section 47 of the Act, failure to comply with an enforcement or information notice is an offence. ICO can also issue monetary penalties for “serious contraventions of the DPA” on “all data controllers in the private, public and voluntary sectors including ... Government Departments”</p>
<p>UK Committee on Climate Change</p>	<p>An independent, statutory body established under the Climate Change Act 2008.</p> <p><u>Appointments</u> UK Government and devolved administrations</p> <p><u>Duties</u> Advises the UK government and devolved administrations on emissions targets and report to Parliament on progress made in reducing greenhouse gas emissions and preparing for climate change.</p>

	<p>Must lay before Parliament each year a report setting out its views on progress towards meeting the carbon budgets and the 2050 target. It is required to report on the way in which the budget was or was not met and the action taken to reduce net UK carbon emissions.</p> <p><u>Funding</u> Committee UK Government (BEIS) and devolved administrations Adaptation sub-committee Defra and devolved administrations <u>UKCCC in Wales</u> Part 2 of the Environment (W) Act places duties onto the body in relation to the Welsh targets and carbon budgets and WMs can ask the body for advice in the development of interim targets and budgets. Under the Act, the WMs are under a legal duty to seek the advice of the body before acting and must give reasons to the Assembly if it wishes to act contrary to that advice. The UK CCC when advising the WMs in relation to make regulations changing the 2050 target, or setting changing an interim target or budget must have regard to matters including: a) SoNaRR; b) Future Trends Report; and c) Future Generations Report</p>
JNCC	<p>JNCC is led by the Joint Committee – drawn from the nature conservation bodies for England, Scotland, Wales and Northern Ireland and independent members appointed by the Secretary of State for the Environment, Food and Rural Affairs under an independent Chair. JNCC’s role is to provide evidence, information and advice</p>
Marine Management Organisation	<p><u>Appointment</u> UK Government Set up a marine planning system and a marine licensing regime, manage UK fishing fleet capacity and UK fisheries quotas, work with nature conservation organisations and the Joint Nature Conservation Committee (JNCC) to create and manage a network of marine protected areas).</p> <p><u>Funding</u> UK Government</p>
Natural Resource Wales	<p><u>Appointment</u> Welsh Government</p> <p>NRW required to report annually on its activities.</p> <p><u>Funding</u> Welsh Government</p>

Annex 6: Analysis of Gaps

Function	After leaving EU	Existing Mechanisms	Gap
Monitoring, measuring and reporting – reporting environmental data	<p>UK Government no longer required to submit implementation reports for EU environmental measures to the Commission.</p> <p>Requirements for data to be published.</p>	<p>The UK will still be required to report under a range of international agreements and conventions. Where this is currently done through the EU, the UK will need to do this on its own. Monitoring and reporting duties on public bodies should continue.</p> <p><u>In Wales</u> NRW – duty under the Environment (W) Act to publish every 5 years a State of Natural Resources Report, which feeds into the review of the Natural Resources Policy</p>	<p>Existence of EU systems developed to facilitate reporting. Economy of scale of information gathered via the various EU institutions e.g. EEA, ECHA Access to wider expertise, systems and data and knowledge holdings. Existing EU mechanisms are often burdensome and inefficient, in addition they are not aligned (e.g. timing requirements)</p>
Monitoring, measuring and reporting: Reporting on the implementation of environment law	<p>The UK will no longer be required to report to the EU Commission on the implementation and effectiveness of applying environmental laws. Various EU legislation requires reports on practical steps taken and results achieved in implementing specific environmental measures Reports required within specific timeframes and follow up by the Commission.</p>	<p>Information is gathered and co-ordinated at a UK level by other public bodies. Parliament/Assembly and committees assess legislation. Some reporting requirements in domestic legislation to report to Parliament/Assembly - .e.g. Part 2 of Environment Wales Act – requirement to report on targets etc.</p>	<p>Loss of EU pressure to improve quality and timeliness of reporting. Sufficient capacity and expertise to scrutinise the effectiveness of existing legislation within the existing UK/Wales framework.</p>

Function	After leaving EU	Existing Mechanisms	Gap
<p>Scrutinising of reports, preparation of independent assessments and reports, examining environmental compliance and progress</p>	<p>The UK will no longer be subject to EU mechanisms scrutinising the transposition and proper implementation of EU law.</p>	<p>Existing scrutiny mechanisms include: National Assembly and its committees FG Commissioner Auditor General PSOW civil society</p> <p>Assembly Committees and Auditor General publish reports.</p> <p><u>FG Framework</u> The FG prepares and publishes a Future Generations Report every five years, which presents an assessment of the improvements that public bodies have made and should make in relation to setting and meeting well-being objectives in line with the SD principle.</p> <p>Auditor General for Wales can carry out examinations of public bodies for the purposes of assessing the extent to which a body has acted in accordance with the sustainable development principle when:</p> <ul style="list-style-type: none"> • setting well-being objectives, and • taking steps to meet those objectives. <p>But must report at least once in every five-year electoral cycle and lay reports before the Assembly.</p>	<p>EU mechanisms provide a strong external check on a Member State's performance in fulfilling environmental obligations. Existing bodies in Wales lack of expertise and knowledge in relation to environmental issues.</p>

Function	After leaving EU	Existing Mechanisms	Gap
<p>Initiation of investigations, cross cutting studies and reports</p>	<p>UK no longer subject to investigations by the EU Commission on proper implementation of EU law. No longer subject to the systematic process provided by EU institutions. EU institutions provide EU Commission with evidence and data such as the EEA.</p>	<p>The Assembly and bodies such as AOW have powers to conduct inquiries into performance. PSO has powers to investigate and obtain evidence. The Assembly can conduct inquiries on its own initiative. Many bodies have powers and capacity to conduct studies and investigations as part of their wider functions in presenting and analysing information on performance and which can be used in calling the public sector to account.</p> <p><u>WFG Framework</u> FG Commissioner can conduct reviews into how public bodies are taking account of the long-term impact of decisions, and make recommendations based on the findings. FGC can carry out research to include the well-being goals, the national indicators and milestones, and the SD principle and how public bodies apply it.</p>	<p>Domestic approach is not as systematic as that provided by the EU. Generally no specific duty on Government to respond to reports or to take action. Domestic bodies generally do not have the relevant expertise or knowledge and would need to call upon other experts.</p> <p><u>WFG Framework</u> Body, including WMs must take all reasonable steps to follow the recommendations of the FG Commissioner.</p>

Function	After leaving EU	Existing Mechanisms	Gap
Mechanisms for individuals or organisations to make complaints regarding the application of (non-criminal) environmental law.	UK citizens no longer able to utilise the on-line citizens' complaint system provided by the EU.	Public bodies will continue to be required to have established complaints procedures which also include commitments to fully investigate and respond to complaints about their performance. Citizens' can still petition elected representatives including the Assembly. Individuals and organisations can complain about the delivery of environmental authorities to the Public Services Ombudsman for Wales. Individuals can raise issues with the FG Commissioner	Elected representatives may require expert and independent advice in order to reach conclusions on environmental matters and in order to pursue complaints with Government. PSOW is not specifically focused on environmental issues and may not have the technical expertise for complex environmental issues. Existing mechanisms (e.g. PSOW) tend to be focused on assessing whether proper and legal process has been followed rather than on the merits of any complaint.
Formal and informal mechanisms to seek solutions to concerns about the implementation of environmental law, through interaction with Government	The UK will no longer be subject to the enforcement procedures operated by the EU including the informal mechanisms to achieve solutions which are backed by the more stringent powers to escalate to the CJEU and the potential imposition of infraction fines.	PSOW generally does not usually seek a solution through negotiation, although it will recommend changes to procedure and practice. <u>WFG Framework</u> FG Commissioner has powers to work with public bodies to assist them comply with their obligations under the WFG Act. In addition, Commissioner can provide advice to Public Services Boards about the preparation of their Local Well-being Plan.	There is no current body charged explicitly with seeking to resolve issues of compliance and to pursue remedies in the way the European Commission currently does.

Function	After leaving EU	Existing Mechanisms	Gap
		This advice and assistance does not operate within a formal enforcement regime.	
Powers to refer a public body to a court for alleged failure to implement environmental law in order to seek a remedy	The UK will no longer be subject to referrals by the EU Commission to the CJEU for failure to implement environmental law.	There are a number of public and private law actions that individuals can take where public bodies are not complying with the law – this would apply to retained EU law as part of domestic legislation. The main current mechanism is judicial review which is based only on a challenge to the legality or reasonableness of an action by a public body.	There is no body specifically charged with referring a public body to court where there is evidence that the body has failed to fulfil its duties on the environment or failed to deliver an outcome commitment. Existing rules on standing and costs may deter private parties and NGOs from pursuing judicial review. Remedies do not have the same scope as those provided by EU law.
Powers to order interim measures to prevent irreversible damage before judgment is handed down	On leaving the EU, the existing interim orders powers will no longer apply. The EU powers sit within an overarching framework, which is supported by more stringent infraction fines, which will no longer apply.	Courts and public bodies have a range of interim powers to stop activities that breach environmental laws, normally subject to appeal.	The loss of the overarching EU enforcement architecture.
Powers to require Government to take such action as is necessary to bring it into compliance and to	On leaving the EU, no equivalent to the role exercised by the CJEU will apply.	Courts can quash decisions in certain circumstances and grant financial compensation where there is an identifiable loss to a private interest. Political and policy accountability through Assembly or legal	The powers of courts in England & Wales are more limited than those of CJEU.

Function	After leaving EU	Existing Mechanisms	Gap
impose sanctions if action is not taken (including fines)		accountability through the courts would remain the main routes to sanction government.	

Annex 7: Sources of Further Information

Well-being of Future Generations (Wales) Act

- Essentials Guide - <https://gov.wales/docs/ds/jlg/publications/150623-guide-to-the-fg-act-en.pdf>
- A Guide to the Wellbeing of Future Generations Act: Easy Read - <https://gov.wales/docs/ds/jlg/publications/160401-wfg-easy-read-en.pdf>
- National Indicators - <https://gov.wales/docs/desh/publications/160316-national-indicators-to-be-laid-before-nafw-en.pdf>
- Statutory guidance on the Well-being of Future Generations (Wales) Act 2015 - <https://gov.wales/docs/desh/publications/160915-spsf-1-core-guidance-en.PDF>

Environment (Wales) Act

- Fact Sheet – Sustainable Management of Natural Resources - <https://gov.wales/docs/desh/publications/160321-sustainable-management-of-natural-resources-en.pdf>
- Fact Sheet – Sustainable Management of Natural Resources Delivery Framework - <https://gov.wales/docs/desh/publications/160321-delivery-framework-en.pdf>
- Natural Resources Policy - <https://gov.wales/docs/desh/publications/170821-natural-resources-policy-en.PDF>
- State of Natural Resources Report - <https://naturalresources.wales/sonarr?lang=en>