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Consultation – Summary of Responses

Environmental Principles and Governance Post
European Union Exit

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

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1. Introduction

On 18 March 2019, the Minister for Environment, Energy and Rural Affairs published the **Environmental Principles and Governance Post European Union Exit** consultation. The consultation was issued electronically to a wide range of stakeholders and made available on the Welsh Government website.

The consultation sought views on how to address the gaps in environmental principles and governance in Wales arising from the UK's exit from the European Union.

The full consultation document – **Environmental Principles and Governance post European Exit** is available [here](#).

The consultation paper formed part of an ongoing open discussion with stakeholders by:

- outlining the new context of EU exit;
- considering how environmental principles were applied at European, UK and Welsh law and policy;
- outlining the current environmental governance structure within the EU and the available mechanisms in Wales
- providing an analysis of the gaps in environmental principles and governance which would occur in Wales once the UK left the European Union;
- seeking views on which principles should apply in Wales and how;
- seeking views on the key features a new governance system would require; and
- considering whether any environmental governance mechanisms may be relevant at UK level.

2. Executive Summary

The consultation ran for a period of 12 weeks, concluding on 9 June 2019. The consultation comprised a written consultation paper and 2 independently facilitated stakeholder events.

1,912 written responses were received.

1,851 responses were submitted from **2** campaigns organised by the World Wide Fund for Nature (WWF) and the Royal Society for the Protection of Birds (RSPB). The WWF campaign submitted 803 responses of which we identified 93 as duplicates, giving a total of 710 submissions. The RSPB campaign submitted 1048 responses, 164 of which were identified as duplicates giving a total of 884. In all, a total of 1,594 campaign based responses were recorded.

61 individual responses have been logged for analysis in the summary report. **12** were from individuals and **49** on behalf of organisations. These respondents are listed at Annex A.

The two campaigns were run by WWF and RSPB (see Annex C for the individual campaigns)

Both campaigns agreed with the proposals to retain at least the current level of environmental governance being a member of the European Union provides.

They also agreed the four EU environmental principles should be enshrined in Welsh law. The RSPB campaign cited the need for the four principles to apply to all Welsh public bodies.

The WWF campaign supported the extension of the SMNR duty to all public bodies

Both supported the establishment of a new independent body for environmental governance and it being able to receive and investigate complaints.

The RSPB campaign supported collaboration between Welsh Government and the rest of the UK in order to meet international commitments.

The RSPB campaign supported the introduction of statutory environmental targets.

Very few campaign respondents choose to add additional comments and where these were submitted they largely focussed on the individual's commitment to environmental protection.

Responses were received electronically, through the on-line response form and by e-mail.

Responses were received from the following geographical areas:

Country	Number of responses
Wales	37
UK	14
Unknown	10
Total	61

Responses were each assigned to a sector, the details of which are at Annex B. A breakdown of responses by sector is as follows:

Sector	No of respondents	% of total
Academic	2	3
Associations/ Institutes	10	16
Individuals	12	20
Legal	2	3
Private Sector	1	2
Public Sector	10	16
Third Sector	18	30
Unions	2	3
Utilities	4	7
Total	61	100

3. Summary of main themes

Environmental principles

Respondents were overwhelmingly in favour of having a set of environmental principles to guide the development of Welsh environmental law, and most agreed rectification at source and polluter pays should be included. However, there were a wide variety of additional suggestions provided by respondents from additional principles, to additional objectives as well as inclusion of rights.

Many respondents felt there was value in clearly stating all four EU environmental principles (polluter pays, rectification at source, precautionary and prevention) in one piece of legislation.

Key issues raised were the need to determine how the new principles would be operationalised and if guidance would be needed to assist with this.

The inclusion of additional principles was supported and there were a wide range of suggestions. The most commonly quoted were proportionality, precautionary, integration and innovation. Respondents also suggested inclusion of public participation, access to information and access to justice, commonly considered to as rights under the Aarhus Convention.

The majority of respondents supported extending a duty to pursue sustainable management of natural resources (SMNR) to additional public bodies, although there

were differences on which bodies and which definition. Some caution was expressed on the potential for adding complexity to other bodies, if the duty was extended.

Accountability, accessibility and enforcement structure

The analysis of the gaps, which would occur in environmental governance post EU exit was predominantly agreed by respondents, who were also in favour of the gaps being addressed. Respondents agreed gaps in scrutiny, enforcement and complaints handling mechanisms should be addressed but also identified other gaps in relation to reporting, access to data and loss of advice and guidance from EU institutions.

The role of existing accountability bodies in Wales was supported and respondents felt this should be retained. However, many stated none of these bodies were able to undertake these types of accountability mechanisms and as such many favoured the establishment of a new bespoke body, particularly one with enforcement powers and a wide remit. It was noted the role of a body responsible for environmental governance should not infringe on or duplicate the roles of existing bodies.

Structures guaranteeing independence, in terms of appointments, operating and funding procedures, were seen to be crucial and there were calls to ensure independence.

The role of the body was considered to be, firstly, to oversee the implementation of legislation and enforce the implementation of environmental law – additional functions such as providing advice and reporting on compliance were supported as secondary functions. A number felt the role of a body should reflect any overarching framework established in relation to the environmental principles.

In general the support was for a broad definition and the majority of respondents supported the inclusion in the scope of the definition of natural resources as provided in section 2 of the Environment (Wales) Act 2016 either as is or as the basis for a more extended definition. Most respondents felt all public bodies should come under the remit of the body, although it was acknowledged by some respondents some of these may fall under the Government of Wales Act as reserved. Caution was also expressed in needing to ensure the relevant public bodies to be subject to the governance remit did not experience regulatory conflicts or overload.

There were mixed views on what types of advisory functions should be carried out, some supported an advisory role which supported compliance of the law and delivery of objectives, as such an advisory role should be connected to its overall enforcement functions. It was felt by some respondents it should not be restricted to advising on SMNR but all environmental law.

It was felt there should be a free and simple complaints procedures and a body should be able to, investigate and act on complaints, but also be able to undertake its own investigations, monitoring and thematic reviews. A body should be able to act on its own discretion on which complaints it would pursue but there should be a transparent decision-making process, which included updating complainants.

In terms of enforcement powers, there was general support for an escalatory approach by addressing issues as early as possible and utilising various tools, which

would avoid or reduce the application of formal mechanisms, in particular referral to court. Judicial review was criticised by a number of respondents as not being an effective method and some proposed a preference for a role for a tribunal, such as the Environment Tribunal.

Other

Respondents clearly saw the advantages of having a shared set of environmental principles across the UK, although not to the detriment of the progressive nature of environmental law in Wales.

Similarly, the need to work closely with any other emergent governance arrangements in the UK was supported and there was support from several respondents for the establishment of a UK wide body to achieve this.

4. Analysis of responses to individual questions

Environmental Principles

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

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

55 respondents answered question 1. Of these, 46 agreed the rectification at source and polluter pays principles should be included in legislation. 1 respondent considered only rectification at source should be included. 8 respondents disagreed.

A common theme as to why respondents wanted the principles included in legislation was to reflect what is currently in place under the EU framework. A number of respondents felt it would be important for the principles to be workable in the Welsh context of the Environment (Wales) Act and the Well-being of Future Generations Act. Some respondents favoured amendment to the Environment (Wales) Act, considering a third piece of legislation dealing with environmental principles as likely to increase the risk of loopholes.

Due to increased understanding of the environment, ecosystems and natural resources since the inclusion of the four principles in the EU Treaties, one respondent also queried whether the four EU environmental principles were now fit for purpose and may not fit with the legislative framework put in place by the Environment (Wales) Act and the Wellbeing of Future Generations (Wales) Act.

Some, however, felt this legislative framework was still in its infancy in terms of implementation and adding a set of new principles may add to an already complex landscape and one respondent proposed a step change to minimise unforeseen consequences. Others felt current principles guiding environmental law within Wales were poorly understood and adding additional principles in this context could lead to

a lack of clarity. Whilst some others felt the principles of precaution and prevention were not reflected in the Environment (Wales) Act.

In terms of the importance of the principles, one respondent stated 'polluter pays' was important to tackle the damage done by some sectors to waterways, biodiversity and air quality. Whilst some others felt this principle was already well captured in legislation such as the Environmental Permitting regime. Some felt that as pollution could result from multiple activities (and therefore multiple parties) the application of the polluter pays principle needed to the diffuse and 'multi-party causation' nature of pollution.

Whilst question 1 asked about the polluter pays and rectification at source principles, a number of respondents felt the four European Union principles should be clearly enshrined in new primary legislation to ensure clarity on the Welsh Government's position and to ensure a clear overarching legal status for the four principles. One respondent stated to provide courts with an interpretative tool, there were advantages in enshrining all four EU principles within Welsh legislation.

It was also suggested clarity was needed on this principle, one respondent highlighted that the precautionary principle has proven difficult to define leading to different understandings of what it means, they added that "*Brexit presents the opportunity for Wales to adopt a different approach and improve the application of the precautionary principle through sustainable management of natural resources*". Concerns were also raised by some respondents about the application of the precautionary principle, which it was felt could be misused or misapplied and considered there was a need to balance the risk of harm against potential benefits.

There was also support from some respondents for the development of an accompanying policy statement to ensure consistency in the application of principles. Others felt it was necessary for the principles to be clearly defined.

Given the majority support for the inclusion of the two additional principles, there was little deviation in views by sector, with most sectors agreeing they should be included.

Both the WWF and the RSPB campaigns supported the inclusion of the four EU environmental principles in Welsh law.

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

49 respondents answered question 2 and, of these, 45 thought additional principles should be included, whilst 4 did not consider there were any further principles required.

In general, the majority view of respondents was for consideration of a number of other principles. Some respondents also used this question to reaffirm their support for the four EU environmental principles. A number of principles proposed could be classed as an objective or a right for example under the Aarhus Convention.

The most supported additional principles were precautionary (12 respondents), prevention (7 respondents), integration (7 respondents) and proportionality (5 respondents).

As outlined in response to Question 1, some respondents felt prevention and precaution were either not captured in existing Welsh legislation or required to be part of an overarching structure, which required explicit reference and definition in Welsh legislation. Some respondents felt the precautionary principle needed to be balanced with the introduction of an 'innovation' principle. Others felt there was an opportunity to strengthen what already existed in Wales and for the Welsh Government to continue its role as a leading environmental voice in the UK.

A number of respondents also proposed the inclusion of a principle of 'integration' and recognised that 'sustainable management of natural resources' under the Environment (Wales) Act had the potential to ensure the objective of SMNR is considered in relation to the breadth of activities undertaken by public bodies and was therefore a potential vehicle for integration.

A number of respondents proposed a 'proportionality' principle, which under EU law works in a similar way to the subsidiarity principle (as cited), which under the EU means to achieve its aims, the EU will only take the action it needs to and no more.

Some other principles proposed included 'animal sentience', 'subsidiarity', waste hierarchy, and 'progression' in order to a constant strive to achieve higher standards rather than enhance upon those standards as currently reflected in the Environment (Wales) Act.

In addition to suggestions for additional principles, there was also support expressed for legislating to ensure non-regression on environmental standards, with some respondents favouring a further step of progressive alignment to keep a pace with EU legislation as proposed in the Law Derived from the EU (Wales) Act 2018 (now revoked).

Whilst some respondents referred to 'public participation', 'access to information' and 'access to justice' as principles others classed these as procedural rights, whatever classification used, a number of respondents felt these too should be included in legislation as this would recognise the crucial role these play in a governance framework.

There was also support expressed for tying the principles to an overarching statutory objective of a high level of environmental protection as provided in the EU Treaties alongside sustainable development. Some respondents also felt there should be a right to a healthy environment with one stating this could be added to the overarching objective linked to a high level of environmental protection.

There were different opinions expressed about how the additional principles should be enshrined in Welsh legislation, with some advocating amendment to the Environment (Wales) Act and others favouring a new piece of legislation covering all four principles.

The four responses which did not agree additional principles were required were drawn from the public sector and the association sectors. They considered the Wellbeing of Future Generations Act and the Environment Act already provided sufficient additional principles.

One respondent stated it was difficult to understand why Wales should seek to implement principles, which had been designed within a specific context and place into a legal system which does not operate in the same way. Another felt environmental principles needed to be considered alongside other principles (not stated) and wider social and economic considerations.

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

51 respondents answered question 3. 47 agreed the duty to pursue SMNR should be extended and 4 did not agree with the proposal.

The majority of respondents to this question felt the duty to pursue sustainable management of natural resources should be extended and applied to all public bodies in Wales. The responses to this question often crossed with responses to question 4.

However, whilst there was support most of the responses did have some form of qualification, some of which are outlined below. In contrast, some respondents did not provide any rationale for supporting the extension of the duty, some others did state there was a need for stronger oversight of natural resources, with some others feeling there needed to be a clearer articulation of how restoring and valuing higher environmental quality delivered environmental well-being.

Some respondents reiterated their responses to question 2, for example by adding 'a high level of environmental protection' to the overarching objective. A number of respondents, in various ways, highlighted there was a need to make any extension coherent with existing Welsh legislation and with any proposals to legislate to enshrine the remaining EU principles in Welsh law.

Some respondents raised some concerns about the difficulties for certain parties to understand SMNR, which needed to be addressed before extending the duty on other bodies. Other respondents also highlighted the implementation of SMNR was at an early stage and better understanding was needed of the practical and financial implications of extending the duty and another stated as a result of this early implementation, extending the duty may need to be done in a simplified way in order to achieve better engagement.

One respondent felt to extend the duty would add an additional and unnecessary layer of complexity and the existing legislative framework provided by the Well-being of Future Generations and Environment Acts was sufficient. Another supported this view by stating to change the duty before its original purpose is understood and embedded would be confusing for all and could lead to a situation where neither the original purpose, nor the new requirements are being met.

Reference was made to one of the existing SMNR duty in the Environment (Wales) Act - the duty to apply the core principles as being stronger than a 'have regard to duty' as in other legislation, which should apply in the extension of the SMNR duty. Some considered the section 6 (biodiversity and ecosystem resilience duty) in the

Environment (Wales) Act provided a model for application over a wide section of public bodies.

In some instances, it was stated extending the duty should be on an evidence based process to ensure a clear link between identified gaps in delivery and the application of the extended duty to specific bodies and their remits and the relationship with sustainable development, as provided in the Well-being of Future Generations Act.

Other examples provided included the importance of an overarching environmental duty to actively support improvement of the environment.

The WWF campaign supported the extension of SMNR to public bodies and the RSPB campaign supported for the application of the four EU principles across all public bodies.

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

48 respondents answered Q4. 45 respondents provided views on, which public bodies they felt a duty to pursue the Sustainable Management of Natural Resources (SMNR) should apply. 3 did not agree with the duty to pursue the Sustainable Management of Natural Resources (SMNR) being extended and as such did not include any examples. There was no significant difference in response across the sectors.

Respondents varied in the scope of public bodies to be captured by the proposed duty, this included:

- the definition in S6 of the Wellbeing of Future Generations Act;
- the definition of 'public authority' in s6(9) of the Environment (Wales) Act extending the duty to a wide group of bodies performing public functions.
- all public bodies performing functions in Wales;
- all Welsh public bodies; and
- Welsh Ministers, NRW, local authorities and Ministers of the Crown.

Some provided qualifications such as public bodies with an authority over environmental matters and a role in implementing environmental legislation or those who received funding from the Welsh Ministers. Some respondents stated even if some of the bodies did not fall under the competence of the National Assembly for Wales, consent should be sought from the UK Government to legislate for these bodies in Welsh legislation and provide an opportunity for the administrations to cooperate. Some felt the duty should only be limited to those involved in the development of policy and legislation.

Some respondents stated the list should not be finite but should enable inclusion of any new public bodies.

There was also limited support for public/ private partnerships to be considered for inclusion, such as City Deals, and in very few cases, the wider private sector.

Those who did not favour the extension restated their responses provided under question 3 for example stating to do so could add an additional and unnecessary layer of complexity and should be considered with caution or in an incremental and simplified way.

The WWF campaign supported the extension of SMNR to public bodies.

Accountability

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

The consultation paper provided an explanation of the EU environmental governance system and a gap analysis of what would be lost on EU exit.

52 respondents answered question 5, 50 agreed the gaps identified, of these 50, 24 also identified additional gaps. 2 disagreed.

In the main, respondents from all sectors were in agreement with the gaps identified. A number of respondents provided some additional gaps, which they considered need to be captured:

- protection for complainants from liability for costs incurred in investigating a complaint and protection against action from those who were the subject of complaints;
- loss of monitoring and data collection functions undertaken by the EU institutions and the aggregation of data;
- loss of access to advice and guidance for example the advice provided by European Environment Agency (EEA);
- review and setting of standards and scrutiny of performance against these standards;
- Powers to seek rectification of damage caused by an offence;

It was raised by one respondent that any system should provide anonymity to the complainant.

Another respondent acknowledged that there will remain monitoring and reporting mechanisms under the Well-being of Future Generations Act and the Environment Act, whilst other respondents highlighted that while Wales does have some national data collection and analysis it is not as expansive.

Some respondents provided comments on what they considered may be required, which included:

- continued access to institutions such as the EEA was raised or if not a domestic solution may be required;
- access to sufficient resourcing, skills, knowledge and expertise

One respondent considered the gap analysis went beyond the scope of the gaps deriving from the UK exiting the EU by considering the gaps within existing domestic accountability mechanisms.

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

37 responses were received to question 6. Respondents had varied views in response to this question, with responses falling into different types of categories:

1. Existing accountability bodies did have a contributing and valuable role in a governance framework but not as the dedicated mechanism for environmental governance - the bodies most commonly referenced in responses were the Future Generations Commissioner, Natural Resources Wales (NRW), the Public Services Ombudsman for Wales, the National Assembly for Wales and the Auditor General,
2. Existing accountability bodies could not provide the solution to address the gaps (considered under question 5), due to the gaps provided in the consultation, including a lack of independence from government, insufficient experience and the inability to enforce decisions;
3. Need for a new bespoke body, which could exercise all of the functions currently undertaken by the EU institutions and as a means of providing clarity on who had responsibility for environmental governance

Some respondents felt there was a need for an 'environmental champion', whilst other suggestions put forward by respondents included:

1. Creation of a Natural Resources Commissioner supported by a Sustainable Management of Natural Resources Advisory Panel;
2. Establishment of a Citizens Assembly as a mechanism through, which civil society could have a more formal involvement in oversight – this was supported by the potential for oversight to include more public representation within for example they scrutiny committees of the National Assembly for Wales;
3. Judicial system comes the closest to providing individual justice but that judicial review is not without its own issues;
4. NRW and Future Generations Commissioner to take on additional reporting functions currently undertaken by EU institutions;
5. Collaboration between existing bodies and the new body for example the Future Generations Commissioner and any new body working to promote a holistic approach.

It was recognised by some respondents, if existing bodies were to have a role in environmental governance their functions would need to be significantly amended and some others raised concerns about the possibility of confusion arising if the role of existing bodies was extended to incorporate functions relating to oversight of the implementation of environmental law. Another respondent felt the role of some existing bodies could be extended and improved to fill some gaps, whilst other respondents stated it was important the role of existing bodies was not diluted, weakened or undermined in any way.

It was also stated that any new body would need to align to (complement and be compatible) the work of existing public bodies with an existing governance role. Included in this was a recognition that it was necessary to ensure there was no

duplication of any existing complaint systems or create confusion for citizens. Key to these responses was the need for clarity of roles.

One respondent proposed existing bodies should report to any new oversight body and abide by its guidance.

Some respondents felt there was a need for any new body to come under the remit of the Auditor General for audit purposes.

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

48 respondents provided an answer to question 7. The proposed role and objective for the body was broadly supported, with 36 respondents agreeing, 11 disagreeing with 1 respondent unsure.

Although the majority of respondents agreed with the role and objectives outlined in the consultation document at pages 28 & 29 some qualifications and additions were provided. It was stated by some respondents the objective should be clear to ensure no duplication or conflict with other public bodies.

Some respondents reiterated their views on the overarching objective as provided in question 2 and 3 should apply in relation to the body and its objectives which should reflect such high level of environmental protection. This included the development of an overarching framework in which objectives and principles operated and which formed a core element of the framework in which a body operated.

It was stated in some responses the body should operate in a clear, proportionate and transparent manner, which is in the public interest and made linkages to the 'proportionality' principle (question 2).

One area raised by a number of respondents related to the advisory role of any such body, with some respondents concerned it could conflict with enforcement functions. Some respondents felt clarity should be provided on the type of advisory role (for example on the implementation of environmental law) to ensure there was no conflict on the role of NRW in relation to SMNR. Some others recognised an advisory role within a scrutiny role and for a body to produce recommendations on how best to comply with the law.

Some respondents felt enforcement should be included as a specific objective. Enforcement was seen as an important role for some but others considered this should be a last resort. One respondent stated the measure of success of a new body (and indeed that of government) in its oversight function, should not be measured by an increasing level of investigation and fines but rather by a low level of the same which would indicate successful 'on the ground' management of delivery and compliance with environmental objectives.

A small number of respondents felt a body should not be provided with powers to investigate complaints or to undertake legal proceedings. Others felt it needed to be clear the body would have no role in policy development.

Some respondents also included objectives which would require collaborative working with other public bodies.

A small number of respondents reiterate responses to question 9 that oversight should be limited to central government and not extended to other public bodies.

There was recognition across the sectors for a new body to be independent and adequately funded and not to overlap with the role of existing bodies. Some respondents stated it should be comprised of individuals from a broad range of backgrounds.

The WWF campaign responses addressed this question directly, indicating a strong, independent, watchdog would need to be put in place to investigate the delivery of environmental law and make sure action is taken to put matters right, and wrongdoing punished.

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

44 respondents answered question 8. 25 respondents agreed with the policy areas listed in the consultation paper. 14 respondents agreed with the policy areas listed but also suggested additional areas, 5 respondents suggested additional policy areas but did not explicitly state if they agreed or disagreed with the policy areas listed in the consultation paper.

In general the support was for a broad definition and the majority of respondents supported the inclusion in the scope of the definition of natural resources as provided in section 2 of the Environment (Wales) Act 2016 either as is or as the basis for a more extended definition.

A number of respondents sought, whilst perhaps using different terminology, for the scope to cover all measures, which affect or are likely to affect the environment. Some respondents provided examples of those areas which may have an impact on or intersect with the environment such as chemicals, agriculture, food, noise, radiation, emissions, discharges and other releases into the environment.

Other respondents provided specific examples of areas for inclusion such as planning, forestry, transport, housing and health and also climate change as well as biodiversity.

Others proposed a definition for 'environment' adapting a definition in line with the definitional of environmental law in the Environmental Information Regulations 2004).

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

43 responses were received to question 9. Of these 16 agreed with the proposed list, 26 disagreed and 1 was unsure. Of those who disagreed, the majority were based on the scope of the list, which they considered should be wider.

Responses to the proposed list of bodies to fall under the remit of the new governance arrangements were varied, although they were very similar to responses to question 4 of the consultation document as to which bodies the SMNR duty should extend (if respondents agreed it should under question 3).

The majority view was for the bodies falling under the remit to be a wide range of public bodies but as outlined under question 4, there were various definitions of what this meant from all Welsh public bodies or public authorities (see summary of responses to question 4) to all public bodies with some respondents recognising some of these bodies may be classed as reserved bodies under the Government of Wales Act 2006¹. Ministers of the Crown were specifically mentioned to be included within the remit of any Welsh oversight body with some recognising there could be a mechanism for transferring to a UK body if this was appropriate or vice versa if submitted to a UK body.

Some respondents felt if it was a limited list of public bodies, the list should include national park authorities and Transport for Wales in contrast a limited number did consider that only the Welsh Ministers should fall under the remit of an oversight body. Others considered that through the Welsh Ministers all 'armed length' bodies could be captured more appropriately through the Welsh Ministers as first point of contact.

Some other respondents did not consider local authorities should be included, whilst a limited number of respondents also considered the remit should extend to public – body/private sector coalitions.

One respondent reflected the need for clarity for citizens to ensure access to justice, including in reserved areas.

It was also proposed that there was a power to amend the list to add any newly created public body.

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

37 responses were received to question 10. 32 made suggestions for additional bodies and the other 5 respondents agreed with the list in the consultation paper.

Many respondents referred to question 10 in their responses to question 9 and as such the summary provided in question 9 also covers in the main the responses to this question. Like question 9, there was also reference to responses to question 4 of the consultation document on to which bodies the SMNR duty should extend.

In addition, to the responses to question 9, there were some additional responses in relation to the role of the private sector, connections to the Future Generations Commissioner (FGC) and some reiterated the remit should also extend to bodies, which may be classed as reserved under the Government of Wales Act 2006.

In contrast to question 9, inclusion of the private sector was raised by more respondents including by some within public/private partnerships. In addition, there

¹ As amended by the Wales Act 2017

was also support from some respondents for the inclusion of utilities, although one respondent considered existing regulatory arrangements to be sufficient for such companies.

Some respondents felt there was an opportunity for close ties with the FGC's Office proposing this could be achieved by the FGC being brought within the remit of an oversight body, with a representative of the new body sitting on the FGC's advisory panel. It was also felt this was necessary to prevent any overlap of roles.

A review of the bodies falling under the remit of the body was also proposed by one of the respondents.

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

48 responses were received to this question, which provided various comments and views on what the status form and constitution of an oversight body should take and those listed in the consultation paper were predominantly supported.

Particular aspects considered important were for the body to be independent from Welsh Government, to be transparent in its appointment processes (potentially a non-partisan appointment) and operation and to have an independently determined budget, with some respondents stating it would need stable and sufficient funding. There was also support for the body to be accountable to the National Assembly and subject to audit, which links to responses to question 6 on the body falling under the remit of the Auditor General for Wales.

In general terms many of the responses were reflected in the following statement from one respondent:

"...it is crucial that a new environmental body is sufficiently independent from Government. This independence can be assisted through a combination of various structural features including through an appropriate funding source and process; a robust and transparent procedure for the appointment of key members of staff; and accountability to the Welsh Assembly rather than Government."

Some respondents included further comments on other aspects, which they also considered were important in terms of its status, form and constitution, these included:

- Operate in a clear and transparent manner;
- access to relevant expertise and skills;
- be citizen centred and easily accessed; and
- have enforcement powers

However, a body is constituted, it should be able to undertake its functions and deliver on its remit. A number of respondents commented on the expertise required to undertake the functions – from legal to technical. One respondent felt it should be able to co-opt specialist advice from other organisations such as the UK Committee on Climate Change, whilst one respondent felt it may be necessary for a body to be

able to compel cooperation and requisition information. One respondent highlighted the pool of expertise across the UK may be limited.

Some respondents reiterated their responses to question 5 in terms of access to data and evidence.

Some respondents suggested models which could be emulated, which included:

- a Royal Charter for example the Royal Commission for Environmental Protection;
- drawing on existing domestic models such as the National Audit Office, the Information Commissioner or the Equalities Commissioner; or
- drawing on international models such as the Parliamentary Commissioner for the Environment as in place in Canada or New Zealand.

A small number of respondents also stated it would be important to ensure there was connectivity with any other oversight entity/entities in other administrations across the UK. One respondent stated this was important for collaborative approaches to cross-border issues such as transboundary environmental damage where, for example, the point of origin and the location where impacts were observed could be in different administrations.

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

48 responses were received to question 12. 36 of these agreed the oversight body should be able to act in an advisory capacity, although a number of these also caveated their responses as described below. 5 did not agree and 7 did not express a clear view or were undecided.

A number of the responses to this question echoed responses in question 7, which referred to the advisory role of a body. Some respondents stated there should be no duplication of the advisory role undertaken by other bodies such as NRW.

There were mixed views on what types of advisory functions should be carried out, some supported an advisory role which supported compliance of the law and delivery of objectives, as such an advisory role should be connected to its overall enforcement functions. It was felt by some respondents it should not be restricted to advising on SMNR but all environmental law.

Of those who did not agree, this was primarily on the basis of the concurrent responsibilities of advisory and enforcement roles created tensions and could compromise the integrity of an oversight body. Other respondents commented, whilst this could be a risk, a body could develop protocols to address any such issues. However, it was also stated an oversight body should not be first and foremost an advisory body.

A small number of respondents felt a body should be able to advise government on the content of policy and legislation as well as the setting of standards.

A small number of respondents were concerned there was a contradiction in expecting a body to both advise on and enforce environmental law. Others felt there

was a need to ensure the regulatory and enforcement roles took precedence, particularly if resource and expertise was limited.

Broadly, respondents felt the use of such a function would assist in ensuring implementation of environmental law. Acting in an advisory capacity, would allow the body to act strategically, disseminating best practice. There was also support from some respondents on the sharing of best practice and the learning from investigations or court determinations.

Some respondents stated an advisory function would be consistent with the preventative principle by helping to minimise any issues before they arise.

Some respondents cautioned against too great a burden on the body from requests for advice, which may be better addressed by other bodies, such as NRW. Another respondent highlighted the resourcing requirements needed for a body with multiple functions.

One respondent considered both the need to ensure the body could initiate inquiries of its own accord to consider systemic issues (as identified in the consultation document) as well as act on complaints from individuals/civil society. and for its recommendations to have legal status, with public bodies required to normally follow them, unless there was a legitimate and compelling reason of public interest for them not to do so. It was also stated, recommendations could vary in the level of detail provided, depending on the nature of the issue at hand and the body/bodies to which the advice is directed.

This question was also used to reiterate the need for a body to draw upon other expertise both within and outside of Wales.

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

49 responses were received to question 13. There was clear support for an oversight body being able to scrutinise the implementation of environmental legislation. Of those who responded only 1 did not agree.

It was acknowledged by a number of respondents, this was a function which no other body undertakes other than the EU Commission and so would be a key function lost as the UK leaves the European Union.

Whilst there was general support for a scrutiny function, similar responses in other questions were echoed in terms of clarity of role and a need to ensure no duplication with the functions of other bodies.

Some respondents suggested a scrutiny role should be linked to a body being able to make recommendations on how the impacts of non-environmental legislation on the environment are positive. In addition, there was support for the inclusion of a power to undertake thematic reviews.

One respondent questioned the need for other governance levels with the additional cost as the scrutiny by the National Assembly of Welsh Ministers and access to judicial review provide adequate mechanisms.

Some respondents reiterated responses to question 5 in terms of the connection to monitoring and reporting. One respondent called for clarity on future reporting routes as currently, reports are aggregated at an EU level. There were also comments raised on the need for further clarity on how reporting and aggregating of environmental monitoring data for Wales and the UK against international requirements is undertaken and delivered was considered essential.

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

36 responses were received to question 14. Due to the connections with question 13 many of the respondents elected to respond to just one of these two questions or to reiterate responses to the previous question. This question should therefore be read in conjunction with question 13. Some responses also mirrored answers given to questions 11 and 12.

Similar statements were made by a number of respondents on the need for clarity of roles as well as ensuring no duplication of roles with other public bodies, in particular NRW. The responses below reflect where additional information had been provided, which had not been covered in question 13.

In relation to a body being able to undertake thematic reviews, it was felt by some this should cover all environmental law and be clearly defined to enable the setting and enforcement of environmental standards. The thematic review process should be conducted in an open, deliberative and iterative manner. Care was expressed that such a power was not too wide, meaning it could overlap with the functions of the Future Generations Commissioner.

Additional areas included:

- advise courses of action, where a body considers for example Welsh Ministers have not acted;
- any power to request data from public bodies would need to consider the resource and budgetary constraints on those bodies;
- publish information;
- improve compliance with environmental law and resolve issues via collaborative means where possible before relying on harder edged legal processes;
- play a role in overseeing compliance with international environmental agreements;
- extend further than environmental legislation and to all legislation which could have an impact on the environment
- scrutiny of extant legislation with a small number also proposing scrutinising draft legislation

One respondent raised a query over how a body would prioritise its scrutiny function and whether there would be a public interest consideration in how it would determine prioritisation. Another respondent stated the approach may need to be modest at first but subject to review.

Finally, some respondents expressed the view the oversight body should be limited to just replacing the roles provided by the EU Commission and the European Court of Justice. As such, it was the view an oversight body should not be able to issue fines as this should fall solely to the courts.

Question 15: What powers should the body have in order to investigate complaints from members of the public about the alleged failure to implement environmental law?

46 responses were received to question 15, the majority of respondents provided details of what they considered a complaints procedure required, however there were a number of responses, which considered existing systems were sufficient and there was no need for a complaints process.

Most respondents agreed there should be a complaints procedure with the relevant powers to undertake investigation arising from complaints as well as under its own volition.

A free of charge and simple complaints procedure was generally widely supported. For some respondents transparency and openness were important elements for the design of any complaints process.

There was general support for a body to have discretion on whether a complaint had merit (with some noting there should be a clear set of criteria to be adhered to) and whether it warranted further investigation and escalation. One respondent noted it was important for the role of an oversight body in this area to be clearly defined to enable members of the public to understand its remit.

A number of respondents provided some key criteria, which they considered important in addition to a free and simple process, including: anonymity for complainants; provision of regular updates; advising the complainant on the reasons why a complaint would not be pursued; timeous responses; and outcome focused.

Other suggestions made were the body should have the ability to pass on complaints to other bodies in the UK responsible for environmental governance. Another view expressed was an oversight body should not provide a further route for re-examination of a decision unless there had been manifest process failure.

A power to request and compel access to information and witnesses was cited by some respondents. Whilst, one respondent felt there was value in including on-going involvement of the complainant throughout the process, including considering their views in the decision-making process through to identifying remedies.

There were references by one respondent to the types of enforcement options in this question including a power for a body to compel rectification of any damage caused to the environment, if found responsible for the cause.

Some other respondents felt the existing complaint mechanisms to public bodies already provided an appropriate process, which was supported by further mechanism either to Ombudsmen, the Assembly or finally through the judicial review procedure.

Another felt exhausting existing processes should be undertaken before a complaint was raised to an oversight body.

One respondent felt if a complaints procedure was introduced, it should only apply to complaints against a limited number of bodies and not extend to complaints against private individuals.

Both the WWF and RSPB campaigns were in favour of a body able to receive, investigate and resolve complaints. The WWF campaign stressed the need for citizens to be able to freely make complaints.

Question 16: What informal and formal methods of enforcement do you consider an oversight body should operate in order to deliver on its role and objectives?

41 responses were received to question 16 providing a variety of views on potential powers in relation to enforcement powers.

There was strong support for the approach in 3.52 of the consultation document, outlining both informal and formal enforcement methods, including formal notices, notices of opinion, recommendations and referrals to court.

A number of respondents recognised the value of an escalatory approach by addressing issues as early as possible and utilising various tools, which would avoid or reduce the application of formal mechanisms, in particular referral to court. Whilst some considered the role of informal mechanisms was on the proviso these led to improved outcomes, others considered the priority of an oversight body should be to assist in compliance, rather than adopting a punitive approach and a more robust approach could be adopted at a later stage in cases where there was no corrective action. One respondent felt there should be no requirement on a body to seek a collaborative approach before it could escalate to formal procedures.

It was noted the process and application of informal enforcement methods would need to be transparent and it was emphasised by some respondents that the speed of informal methods should be improved from the current EU system, which they considered to not be sufficient.

Respondents identified a sliding scale of informal and formal approaches from dialogue, consultation, arbitration or mediation to advisory notices, legally binding enforcement notices (for example stop order, remediation notices and directions to carry out certain actions), fines, independent judiciary panel and judicial inquiry and finally referral to court.

A number of respondents expressed escalation from informal to formal should be determined by the seriousness of the issue or the success of the informal mechanisms.

A number of respondents supported the use of fines but there were mixed views on application, with some favouring fines as a proven remedy used by the EU, some considered these should be used as part of an escalatory approach with others urging caution, given that they would ultimately be met from the public purse.

However, other respondents in response to question 14 were not in agreement with this type of power and fines should be limited to the remit of the courts.

Many respondents raised concerns about the appropriateness of judicial review, these concerns focused on its limits in considering process rather than merit and its accessibility. In contrast another respondent felt current judicial processes were sufficient to hold the Welsh Government to account and questioned the benefit of the body having an enforcement role.

There were some views if a body was required to work collaboratively with other bodies, it should not be done in such a way, which would limit its flexibility to determine its enforcement approach.

This question was not directly answered by the campaigns but the need for strong enforcement powers was cited by the RSPB campaign.

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

There were 42 responses to question 17 suggesting the types of enforcement actions, which should be available, however, many of these referred to the responses given at question 16 or jointly addressed the two questions. The responses outlined here focus on those which were in addition to any comments referred to in question 16.

There was strong support for the power to undertake court proceedings, provision for fines or financial penalties within an escalating framework so each issue can be dealt with proportionally. Other respondents had proposed referral to court if there was no compliance with any of the other mechanisms such as binding notices. Another respondent proposed fines should be utilised to fund environmental protection projects, whilst another stated fines should be substantive, in contrast other respondents felt they should be proportionate.

Following on from the views on the judicial review process provided in question 16, some respondents advocated improvements were necessary to this process, including improved rules on standing, costs, intensity of review and remedies and the ability to incorporate elements of the tribunal system (such as access to technical advisers). In general, some respondents felt the court process should be able to undertake a procedural and substantive review.

There was support from some respondents for a body to be able to join or intervene in judicial review applications.

One respondent posed whether there was a possibility of referring cases to the existing Environmental Tribunal rather than the High Court, which could provide a suitable forum for tailored rules and procedures. This was preferred as a more investigatory process focussed on providing solutions. One respondent felt there may be a need for a specifically designed environment court, which may need to be complimented with bespoke enforcement powers.

One respondent felt enforcement mechanisms may not always be the most appropriate in contrast to a holistic and integrated approach, which would be more

appropriate for addressing environmental issues, which cut across several government departments. It was felt an oversight body should first try to assist in resolving issues rather than seeking to adopt punitive measures.

In contrast, another respondent favoured an approach akin to infraction proceedings, with the oversight body having the power to require all bodies to deliver their specified services.

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

46 responses were received to question 18 and there was overwhelming support (40 respondents) for a shared set of common environmental principles across the UK with only 1 individual respondent disagreeing; and 5 providing a more cautious response as they felt it was unlikely to be obtainable or could see both advantages and disadvantages.

Where concerns were raised, some of these focussed on the progressive approach taken in Wales and not wishing to dilute the current standard in Welsh legislation in favour of a UK wide agreement.

Points were raised suggesting the adoption of a core set of common environmental principles would help prevent:

- A regulatory race ‘to the bottom’ as a shared set of principles would prevent deregulation of environmental standards post European Union exit;
- Any potential confusion among businesses who work across the UK’s internal territorial borders;

Broadly, the benefits of such a joined-up approach were said to be:

- Allow collaboration between the four administrations;
- Ensure a ‘level playing field’ both in the context of business and the potential for future economic partnerships;
- Provide businesses and the wider public with a clearer picture, ensuring a common approach in maintaining environmental standards.

It was noted by one respondent that the application of the principles would also require a common approach.

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

46 responses were received to question 19 providing a wide variety of potential governance structures.

Some respondents had raised the value of a UK-wide response in earlier questions, which have been brought into this response. In particular, some of these respondents

felt a UK-wide approach would lessen the vulnerabilities of a body being weakened or disbanded by a single legislature.

Whilst some preferred a UK-wide approach, the time constraints due to the timetable for the UK Environment Bill were recognised as a potential issue in achieving any UK-wide interface. However, most respondents stated there was a need for cross administration governance structures and collaborative working, a number of respondents highlighted the need to address cross-border issues. Other reasons provided by some respondents was the benefit of access to a wider pool of resources and expertise as well as the sharing of best practice and more generally economies of scale.

Many respondents also stated the need for collaboration mechanisms to ensure a complaint made in one administration could be considered by the appropriate governance body.

A number of respondents stated the importance of co-designing any UK-wide approach, whether it be a UK-wide body or a collaborative approach between administrations.

A number of existing organisations were cited as possible models for consideration including, the UK Committee on Climate Change (UKCCC), Joint Nature Conservation Committee (JNCC), Information Commissioner, the Equalities and Human Rights Commission or technical panels such as UK Technical Advisory Group (UKTAG) on the Water Framework Directive.

Respondents also proposed potential vehicles could be protocols or Memorandum of Understanding or a statutory duty for environmental governance bodies across the UK to collaborate and cooperate, with common principles and a shared high level objective.

There were also a small number of respondents who advocated a review of governance structures across the UK in 5 years to assess if they were proving effective.

This question was not directly answered within the campaign responses but the RSPB responses referred to the need to secure ongoing collaboration between the Welsh Government and the other countries of the UK to make sure our international commitments to nature and the environment are delivered.

5. Consultation events

Two independently facilitated consultation workshops were held, one in Aberystwyth and one in Cardiff.

Attendance at the events was as follows:

Aberystwyth University 26/04/19	11
Cardiff City Hall 10/05/19	21

Attendees were drawn from the following sectors:

- Academics
- Third Sector
- Utilities
- Public Sector
- Industry
- Individuals

A summary report from the consultation events will be published alongside this report.

Annex A

List of respondents

Chris Higgings

CIWEM

Hilary Evans

City and County Council of Swansea

Marlin Industries

Vicky Moller

Sustainable Food Trust

Hybu Cig Cymru - Meat Promotion Wales

Auditor General for Wales / Wales Audit Office

Information Commissioners' Office

Countryside Alliance

National Farmers Union Cymru

RSPB

Cytun

Public Service Ombudsman for Wales

Scottish Power

Future Generation Commissioner

National Parks Wales

WWF

Client Earth

CLA Cymru

PLANED

Minerial Products Association

Wyeside Consulting

National Trust

Social Farms and Gardens

IBERS

Cardiff University and Queens University Belfast

Friends of Pembrokeshire Coast National Park and the Alliance for Designated Welsh Landscapes

Organic Growers Alliance and the Landworkers Alliance Cymru

Farmers Union of Wales

Len Wyatt

Wildlife Trusts Wales

Natural Resources Wales

Royal Town Planning Institute

Bat Conservation Trust
Public Health Wales
Oil and Gas UK
Energy UK
Welsh Water
Wales Environment Link
WLGA
Chemical Industries Association
LARAC
Landscape Institute
CIEEM
Confor
Agricultural Law Association
Ifan Stoddart
Gareth Wardell
Afonydd Cymru Cyfyngedig
Permaculture Wales
Clwydian Range and Dee Valley Area of Outstanding Natural Beauty
M Parker
Coed Cadw Woodland Trust
UKELA

Annex B

Sector allocation

Sector	UK / Other
Academic	IBERS
	Cardiff Uni / Belfast Queens
Association / Institutes	CIWEM (Chartered Institute of Water and Environmental Management)
	Hybu Cig Cymru
	CLA Cymru
	Mineral Products Assoc
	Royal Town Planning Institute
	Chemical Industries Assoc
	LARAC
	Landscape Institute
	CIEEM
	Confor
	Anon
	Individual
Hilary Evans	
Anon	
Huw Morgan	
Vicky Moller	
Anon	
Len Wyatt	
Anon	
Anon	
Ifan Stoddart	
Gareth Wardell	
M Parker	
Legal	Wyeside Consulting
	Agricultural Law Association
Private Sector	Marlin Industries
Public Sector	Public Services Ombudsman
	Clwydian Range and Dee Valley AONB
	Auditor General
	Information Commissioner Wales
	Future Generations Commissioner
	Natural Resources Wales
	Public Health Wales
	WLGA
	National Parks Wales

Third Sector	RSPB Wales
	WWF Wales
	Client Earth
	PLANED
	National Trust Cymru
	Social Farms and Gardens
	Friends of Pembrokeshire Coast NP + Alliance for Designated Welsh Landscapes
	Sustainable Food Trust
	Countryside Alliance
	Organic Growers Alliance and Landworkers Alliance Cymru
	Wildlife Trusts Wales
	Bat Conservation Trust
	Wales Environment Link
	Afonydd Cymru Cyfyngedig
	Permaculture Wales
	Coed Cadw Woodland Trust
	UKELA - Wales branch
Cytun Wales	
Utilities	Welsh Water
	Scottish Power
	Oil and Gas UK
	Energy UK
Union	NFU Cymru
	Farmers Union Wales

Annex C

RSPB Cymru Campaign Response

Dear Environmental Governance Team,

I welcome the Welsh Government's commitment to ensuring that there is no drop in environmental standards following the UK's departure from the European Union. I also agree that reversing nature's decline and acting on climate change are essential to secure our future.

I therefore welcome your consultation on Environmental Principles and Governance in Wales Post European Union Exit and call for new laws to:

- Require all Welsh public bodies to apply the EU environmental principles across all their functions
- Create a new body to oversee the development and delivery of environmental law and policy in Wales. A new body needs to be independent, accountable to the National Assembly for Wales, and have powers to receive and investigate complaints, along with strong enforcement powers
- Strengthen our existing laws by creating legal targets for nature's recovery, against which this and future governments can be held to account
- Secure ongoing collaboration between the Welsh Government and the other countries of the UK to make sure our international commitments to nature and the environment are delivered

We depend on nature, and nature's recovery depends on strong Government leadership and action.

Yours sincerely,

WWF Campaign Response

Dear Minister for the Environment, Energy and Rural Affairs,

Please consider this email as my response to your Environmental Principles and Governance Post European Union Exit consultation.

The clock is ticking on biodiversity loss, hundreds of species in Wales are at risk of extinction. The air we breathe, water we drink and the health of our rivers, seas and ecosystems all depend on a healthy environment. Without them we cannot have the sustainable society and economy we all crave.

As we leave the European Union, I want the Welsh Government to take this opportunity to retain and strengthen the protections we have within the EU and build upon them to better safeguard our natural heritage for future generations. I do not want to see our environmental protection weakened, and Welsh nature paying the price.

As a result of this consultation I want to see the Welsh Government lay out a clear set of proposals and timeline to deliver on their commitments before the next National Assembly for Wales elections in 2021. I want the Welsh Government to ensure:

- We retain and strengthen all EU environmental principles in Welsh law so that they continue to guide the development of new laws, policies and decisions. They must be clearly defined in Welsh law and be working towards an overarching objective to improve the environment.
- The Sustainable Management of Natural Resources duty is extended to all Welsh public bodies.
- A strong, independent, watchdog is put in place to investigate the delivery of environmental law and make sure action is taken to put matters right, and wrongdoing punished. This way mistakes can be put right, and bad practice discouraged.

I also want to be sure that I, as a citizen, will continue to be able to make a complaint freely which will be investigated and taken forward on my behalf. This must be able to result in action which puts the matter right. To achieve this, I want a new body to be established, as there is no body currently operating in Wales with the power, remit, expertise, independence and resources to undertake this role.

It is of great importance to me that the system which has helped improve our environment over the last 40 years continues, and that it is strengthened to actively restore Welsh nature. Wales must build on its existing ground-breaking environmental legislation and set an example of how to protect our precious environment to the rest of the world.

Yours sincerely,