



Summary

1. The Climate Change, Environment and Infrastructure Committee is undertaking an evidence gathering session on a range of issues that includes environmental governance. There is a 'governance gap' post EU Exit for environmental principles and governance. The interim process (IEPAW, see below) that Dr Nerys Llewelyn-Jones is responsible for does not include complaints (as it is non-statutory) and recommends these are directed to existing bodies and through existing legal routes.
2. This is likely to result in an increase in complex and strategic environmental complaints for NRW over time (it is estimated that NRW is responsible for up to 75% of potential areas subject to complaint). There is also increased interest in Judicial Review as a route to challenge these concerns across the UK and in Wales. ENGOs and other stakeholders are likely to continue to highlight this issue until primary legislation (unlikely before 2023 at the earliest) establishes a permanent Welsh environmental oversight body.
3. NRW is committed to supporting Welsh Government's development of new legislation on environmental governance in Wales following EU Exit. We are working with other agencies, staff across NRW and with the Interim Environmental Protection Assessor Wales (IEPAW) on environmental governance, coordinating a comprehensive response from NRW to consultations and individual requests for advice and guidance.
4. We are working proactively with the IEPAW on ongoing concerns raised about the functioning of environmental law in Wales.

Background

5. Environmental principles enshrined in Article 191 of the EU Treaty on the Functioning of the European Union (TFEU) have underpinned 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 is overseen by the European Commission and the European Court of Justice.
6. There are four EU environmental principles provided in the Treaty of the Functioning of the European Union (TFEU). These are:
 - *precautionary principle;*
 - *principle that preventative action should be taken;*
 - *environmental damage should as a priority be rectified at source; and*
 - *polluter pays.*

7. Currently, Welsh primary legislation only includes the “precautionary principle” and “preventative action”. Welsh Government propose to include all 4 principles in primary legislation as recommended by NRW and other stakeholders, to ensure they all continue to be fully recognised in Welsh legislation.
8. These principles should support an overarching objective, which sets out environmental ambitions in Wales, including the connections between environmental policy and other policy areas to ensure integration of environmental principles in decision making.
9. Having left the EU, the previous environmental governance structures no longer apply in the UK. This has resulted in a governance gap in Wales and the UK, which is why UK Government and the Devolved Administrations are developing bespoke environmental governance frameworks for England and Northern Ireland, Scotland, and Wales. In England and Northern Ireland, this will be the Office for Environmental Protection which will be implemented as part of the UK Environmental Bill, expected to be implemented in November 2021. In Scotland, this will be Environmental Standards Scotland which has been established as part of the European Union (Continuity) (Scotland) Bill. In Wales, an Interim Environmental Protection Assessor (IEPAW) has been appointed for 2 years (currently until March 2023) whilst legislation to implement the permanent body is developed.
10. The IEPAW is limited to investigating the functioning of environmental law and does not include a mechanism to receive or handle complaints. There is currently no legislation scheduled to enable the establishment of a statutory environmental governance body in Wales. As a result of this, we anticipate a rise in Judicial Review (JR), strategic complaints and liaison and advisory work for NRW and an associated increase in public scrutiny. Long-term, a statutory body is planned that is likely to have recourse to financial penalties and legal process to enforce decisions and provide effective oversight.
11. A [recent article in ENDS](#) highlights the governance gap in Wales compared to the rest of the UK and the ongoing risks to the Welsh environment, indicating the increasing public awareness of this potentially contentious issue.

Complaints

12. As noted above, the interim process in Wales will limit its focus to the functioning of environmental law rather than breaches of environmental law, which will be directed to the relevant existing organisation or established legal process, namely Judicial Review. In many cases, these complaints are likely to fall within NRW’s remit due to the breadth of our role as a land manager, regulator, and statutory nature conservation body.
13. This is likely to result in an increase in strategic environmental complaints directed to NRW as well as a new advisory role and oversight process and associated body to liaise with in the longer-term. It is also likely to result in an increase in Judicial Review (or JR) cases. WG, NRW and other agencies across the UK are reporting an increased interest in JR from stakeholders currently on a range of issues.

14. These strategic environmental complaints are complex and can require significant time and resource to respond. The new process also includes all environmental law, rather than only EU derived environmental law so includes England and Wales legislation such as the Forestry Act and the Wildlife and Countryside Act.
15. NRW deals with a range of formal and informal complaints, letters of concern and related issues. Policy and operational teams regularly have to respond to letters, emails, and phone calls on a range of issues that can be complex and difficult to resolve. We also have a formal complaints process that aims to effectively address concerns or complaints we receive about our service by any member of the public or business. The complaints process is overseen by the Public Service Ombudsman for Wales.
16. NRW also manages access to information requests under the Freedom of Information Act (FOI) and Environmental Information Regulations (EIR) that give members of public the right to request access to unpublished information held by Natural Resources Wales, unless a specified exemption applies. These are handled by NRW's access to information team.
17. To date, 4 concerns (all on topics related to NRW's remit) have been raised through the Welsh interim process and NRW has responded to a request for evidence from the Interim Environmental Protection Assessor on the first concern raised.
18. In England, 19 complaints (as of the latest update in July) have been received by the interim Office of Environmental Protection (10 on nature conservation, 9 on environmental regulation matters). It is likely that any concerns raised in England or Scotland will be raised in Wales as well.

Key messages

19. NRW is supportive of the Interim Environmental Protection Assessor (Wales) and her role to investigate the functioning of environmental law in Wales. We are proactively working with the Interim Assessor and support this interim, non-statutory process.
20. Post EU exit, environmental law and policy derived from the EU, is no longer subject to the oversight of EU Commission and the European Court of Justice. There is currently no statutory body with responsibility for holding government and other public bodies to account for the implementation of environmental law in the UK, resulting in a governance gap. A permanent environmental oversight body is required to have oversight of environmental governance and principles in Wales. It should be independently accountable, there should be a simple and inexpensive mechanism to raise complaints and the body should have appropriate enforcement mechanisms.
21. It is essential that legislation is brought forward to establish a permanent environmental oversight body as soon as is practicable. Environmental Standards Scotland is already established and fully vested, and the Office for Environmental Protection is expected to be established in November 2021.

22. It is essential that any permanent oversight body proactively engages with all relevant public sector bodies in Wales and its equivalent oversight bodies elsewhere in the UK. Good environmental governance is an essential part of environmental law and must recognise the potential for transboundary issues and the need for cooperation across national borders.
23. A broad consultation on environmental governance proposals has been conducted in 2019 with a substantial majority of stakeholder responses in agreement on key issues. This was also supported by a CCERA Committee Inquiry on the same topic. Further consultation may be required on additional elements to any proposed Bill, such as the inclusion of statutory nature targets, however it is essential that legislation is brought forward as soon as is practicable.
24. We can learn valuable lessons from the approaches developed in England and Scotland though there are also important distinctions too. NRW is supportive of the recommendations set out in the Environmental Principles and Governance Stakeholder Task and Finish Group Report, produced in March 2020, as accepted by the Minister. This report emphasises key elements for the establishment of a Welsh environmental oversight body and the supporting legislation, such as the need for independence, the functions that it should undertake and a model for how the body may operate.
25. Currently Welsh primary legislation only includes the “precautionary principle” and “preventative action”. Welsh Government currently propose to include all 4 principles in primary legislation as recommended by NRW and other stakeholders, to ensure they all continue to be recognised in Welsh legislation.
26. These principles should support an overarching objective, which sets out environmental ambitions in Wales, including the connections between environmental policy and other policy areas to ensure integration of environmental principles in decision making.
27. In the interim, in the absence of additional primary legislation, it is important these principles should continue to underpin law and policy in Wales. The stakeholder task and finish group report recommended that it is not necessary to produce a statement of these principles. There is an existing body of jurisprudence in international and EU law on the meaning of these principles and they are already articulated in part in Welsh, and England and Wales legislation.
28. It remains important that the different administrations in the UK continue to work together to develop a common approach to the application of these principles as well as recognising the potential for transboundary issues and the need for cooperation across national borders.