



RTPI Cymru

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e-mail response sent to: Environmental.Governance@gov.wales

Dear Sir/Madam,

Response to: Environmental principles and governance in Wales post European Union exit

The Royal Town Planning Institute (RTPI) is the largest professional institute for planners in Europe, representing some 25,000 spatial planners. RTPI Cymru represents the RTPI in Wales, with 1,100 members. The Institute seeks to advance the science and art of spatial planning for the benefit of the public. As well as promoting spatial planning, the RTPI develops and shapes policy affecting the built environment, works to raise professional standards and supports members through continuous education, training and development.

The response has been formed drawing on the expertise of the RTPI Cymru Policy and Research Forum which includes a cross section of planning practitioners from the private and public sectors and academia from across Wales.

We welcome the opportunity to provide a submission in response to the above consultation. RTPI Cymru has closely followed the development of the environmental policies of the Welsh Government and taken every opportunity to input into consultations on policy changes. These policies are set out in planning legislation, policy and technical advice as well as other related material such as the Well-being of Future Generations Act and sustainable transport and drainage initiatives. This body of policies and procedures has been developed in conformity with European Union (EU) legislation. While RTPI Cymru will always be ready to suggest detailed adaptations, we do broadly support this existing body of environmental policies and procedures and would wish to see it provide the basis for moving forward after the UK's departure from the EU.

We recognise that a wide range of important existing environmental protections and standards are set at EU level and we urge that existing standards should not be weakened. Therefore there should be an initial presumption that all existing standards and protections

should be incorporated into UK legislation, either at the UK or devolved level as appropriate. We regard it as essential that replacement regulatory and enforcement agencies have powers and resources which are equivalent to those currently available at EU level.

We anticipate that initially some of this legislation could be incorporated at the UK or devolved level. However we urge that there should be devolution of appropriate responsibilities, repatriated from the EU to the Welsh Government at the earliest possible opportunity. This will then enable the preparation of future Wales' initiatives for fine tuning of protections, standards and procedures to meet the distinctive needs of Wales.

While we can see opportunities for detailed and innovative environmental management in Wales from the repatriation of powers from the European level we also believe that there will remain a need for close co-operation on cross boundary matters with other parts of the UK and the wider international community. There will be situations where common standards and procedures, although in a distinctive Wales' format, will be essential. We note and agree with the statement at 3.56 of the consultation document, "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."

We also note the consultation recognises the need for UK-wide governance mechanisms for when there is an interface. We welcome this but there needs to be a mechanism to ensure collaboration is taking place and progress is being made.

RTPI Cymru welcomes this open discussion across the nations and would be pleased to participate in any further discussions or consultations. Of course, further information and clarity on the possible future relationship between Wales and UK-wide governance is required.

The consultation sets out some fundamental strategic questions relating to structures and functions. We assume that this consultation is only the start of the process and that more detailed and informed discussions take these matters further before a conclusion is reached. RTPI Cymru will be very willing to take an active role in responding to consultations or in contributing to research and working groups at all stages of adapting and developing environmental policy in Wales.

The RTPI is a member of Greener UK and has recently commissioned research on the best way to achieve high environmental outcomes after Brexit. The first phase of this research was a [briefing paper](#) which considers the impacts of Brexit on the UK's implementation of key EU directives and legislation related to land use. The [final report](#) summarises the findings from this research and presents two heuristic tools designed to inform the debate moving forward.

More detailed comments in relation to the consultation questions are set out below. If you require further assistance, please contact RTPI Cymru at walespolicy@rtpi.org.uk

Yours sincerely,



Dr Roisin Willmott OBE FRTPI
Director
RTPI Cymru

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

- Rectification at Source;
- Polluter-pays

Yes. As stated above, we recognise that a wide range of important existing environmental protections and standards are set at the EU level and we urge that existing standards should not be weakened. Therefore there should be an initial presumption that all existing standards and protections should be incorporated into UK legislation, either at the UK or devolved level as appropriate.

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

In addition to our comments at Q1, if a consensus agreement cannot be achieved across governments in the UK, cross-border principles may also have to be introduced. This would include, for example, a principle of non-transboundary harm and a principle of enabling engagement in environmental decision-making in cross border scenarios.

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

Public Bodies in Wales already have a sustainable development duty required by the Well-being of Future Generations Act 2015.

Further information and understanding is required on how the proposed extended duty would work in practice, including frameworks, processes, procedures and resources.

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

See above. Further information and clarification is required not only in relation to the proposed extension of the duty, but also in relation to the public bodies with devolved competence. In some cases little is known about these 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 gaps identified in the consultation document are critical and need to be addressed. RTPI Cymru has not identified any gaps other than those identified in the consultation.

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

RTPI Cymru would support a UK-wide independent watchdog with the ability to enforce appropriate sanctions. With this in place it is considered that existing accountability bodies such as Natural Resources Wales, etc could provide the necessary new environmental governance structure for Wales. However, in the absence of an acceptable UK-wide watchdog, a specific oversight body for Wales would be required to provide the governance structure.

The risks associated with different approaches being adopted in the different UK administrations, and the risk of greater divergence of legislation within the UK, as well as between the UK and the EU, will be important considerations in practice.

Environmental matters transcend national boundaries within the UK and indeed beyond the UK. Structures which are set by individual national parliaments/assemblies would be much easier to alter with changes of government in any of those forums and may be weakened; a single body which is set up to operate across the UK is likely to endure much longer, as those agreed across the EU have. Therefore the RTPI believe there should be an overarching framework on environmental matters which applies across all jurisdictions of the UK and should be supervised by a single body, with the ability to engage with each of the devolved administrations, and to enforce appropriate sanctions, arising from agreement between the four jurisdictions.

The appropriate resourcing of either existing bodies or a new oversight body would be vital to the success of the future governance of environmental matters in the UK and Wales.

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

For effective scrutiny of government performance a newly established UK wide watchdog should be independent, clear in its remit, durable and statutory. The body needs to be able to survive a change in Secretary of State, or Government, and needs to have its own chair independent of government.

In order to ensure the principle of durability is maintained in operation, the establishment of a UK-wide body would be beneficial, but with appropriate representation in its governance from each of the devolved nations. A set of formal and ambitious environmental goals, targets and standards should be pursued, linked to clear time frames, against which implementation could be monitored and, if required, enforced.

In spatial planning, a new environmental watchdog should be able to hold the devolved governments to account in the design of the planning system. The European Commission did so in 2005, ruling that the UK Government had failed to apply the Habitats Directive to plan making (in all UK jurisdictions). It could furthermore advise on new planning policy, retaining and reinforcing the status of environmental goals in the making of development plans and development decisions.

A UK watchdog must be able to impose penalties, including fines. This has proved, during the UK's membership of the EU, one of the powerful levers to secure action from governments.

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

No comment

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

No comment

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

No comment

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

See comments at Q7.

To be fully independent, members of the oversight body must be independent of any public environmental organisations that it could potentially scrutinise and enforce against, to have any public credibility.

There is a perception that as the pool of suitably competent resources in Wales is quite small, the same people could move from serving one environmental organisation/public body to another. As a result impartiality could become an issue and possibly difficult to demonstrate. Issues such as this should be fully considered at the outset.

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

See comments at Q7.

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

See comments at Q7.

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

No comment

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?

No comment

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?

No comment

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

No comment

Other

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

While we support a single body working across the devolved nations, we recognise that it is likely to be a challenge to get the agreement of all four administrations, which doesn't result in significant compromise. It is important to ensure that all four of the devolved administrations have equal influence.

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

No comment

