

Environmental governance following Brexit

Research Briefing

July 2021



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Contents

Summary	1
In a nutshell.....	3
Environmental governance mechanisms	5
Monitoring and reporting function	6
Enforcement function	7
Access for citizens.....	9
Application of environmental governance.....	10
Environmental principles	11
International law	12
Ambitions to address the governance gap in Wales	13
Legislative mechanism.....	13
Environmental governance body.....	13
Environmental principles.....	14
The Welsh Government's conclusions	15
Transitional arrangements	16

UK Government developments: implications for Wales17

The UK Environment Bill 17

A UK-wide approach 18

Common frameworks 18

International obligations 19

Next steps21

Key Sources 22

Summary

Following the outcome of the EU referendum, there was widespread concern across the environment sector about gaps in environmental governance arising from the UK's departure from the EU.

EU environmental governance is enshrined in the EU's treaties, which bestow a central coordinating role on EU institutions to monitor and enforce environmental legislation across the EU. The European Commission and the Court of Justice of the EU (CJEU), have therefore played a significant role in governing the implementation of EU derived environmental laws across the UK and in resolving cross-border environmental disputes between the UK and other Member States.

This system of EU environmental governance includes monitoring and reporting on environmental law implementation, receiving citizens' complaints, and taking enforcement action. This includes the ability to levy fines on Member States that are found to be in breach of EU law.

EU environmental laws are drafted and are interpreted through the lens of the environmental principles of the Treaty of the Functioning of the EU (TFEU) which aim to ensure high environmental standards, such as 'the precautionary principle' and 'the polluter pays principle'. These environmental principles can be found elsewhere, for example in international law and in domestic legal systems. However, the EU's system is unique because of the way it monitors and enforces the principles.

The EU system of environmental governance, including the principles, fell away in the UK at the end of the Brexit transition period on 31 December 2020.

Although there has been some action by the governments of the UK to reinstate domestic regimes of environmental governance, there are currently no comprehensive systems in place post-Brexit.

Environmental groups across the UK have been calling for action to address this 'governance gap' with the fear that it could lead to environmental harm with limited ability for redress.

The governments of the UK have been developing separate environmental governance systems, which are at different stages of development (Box 1). How the different systems will coordinate remains to be seen.

Environmental stakeholders are calling for a Welsh environmental governance system, including domestic environmental principles, to be a key issue for action during the Sixth Senedd.

This briefing provides background on the EU system and the proposals for Wales going forward. For a very quick overview of the key issues see 'In a nutshell' on page 3.

Developments across the UK

- In 2018, the **previous Welsh Government** committed to “take the first proper legislative opportunity to enshrine the environmental principles into law and close the governance gap”. However, no legislation was brought forward. A **consultation was carried out in 2019** outlining the Welsh Government’s proposals. Since then, a **Stakeholder Task Group has provided further recommendations** to which the **previous Welsh Government responded**. The new Welsh Government’s Programme for Government (2021 to 2026) does not include plans for a domestic environmental governance system.
- The UK Government included provisions relating to environmental governance and principles in the **UK Environment Bill**, which mainly apply to England and Northern Ireland as currently drafted. This includes powers to establish the **Office for Environmental Protection** (OEP). As the Northern Ireland Assembly was not sitting at the time of drafting, NI officials developed a range of provisions for the Bill with the Department of Environment, Food and Rural Affairs (DEFRA). The Northern Ireland Executive **has recently consulted** on these matters (2021), which are subject to decisions by Ministers and the Assembly as to whether they are brought into operation through the Bill.
- Provisions for environmental principles and governance in Scotland are contained within the **UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021**. This includes powers to establish the corporate body ‘Environmental Standards Scotland’. It lists environmental principles to which the Scottish Ministers must, in making policies (including proposals for legislation), have due regard.

In a nutshell

1. What is the EU's system of environmental governance?

EU institutions monitor Member States' implementation of EU environmental law. They receive citizens' complaints and can take enforcement action against Member States that are found to be in breach of EU environmental law.

The core EU environmental principles of the Treaty of the Functioning of the EU (TFEU) are applied during the development and interpretation of EU law to ensure high environmental standards flow through the EU.

2. What is the issue?

The EU system of environmental governance, including the principles, no longer applies in the UK following its withdrawal from the EU.

Outside the EU, the UK's environmental governance is now made up of international and domestic environmental law and processes. The UK is no longer subject to the EU's environmental monitoring and enforcement.

Environmental stakeholders fear that this creates a gap that could lead to environmental harm with limited redress for the governments across the UK.

3. What are stakeholders calling for?

Environmental stakeholders are calling for Welsh primary legislation to be brought forward in the Sixth Senedd as a priority to establish an environmental governance body or commission. Arguments include that it should be independent from government, have a simple and inexpensive mechanism for citizens to raise complaints and robust monitoring and enforcement functions. Essentially it would hold governments and public bodies to account on their implementation of environmental law.

There is general agreement that the EU's core environmental principles should be listed on the face of the Welsh Bill, with an overarching objective to secure a high level of environmental protection.

4. What progress has been made?

The countries of the UK are developing separate approaches. The previous Welsh Government issued a consultation in 2019. A Stakeholder Task Group was subsequently established to provide further recommendations. However, no legislation has been brought forward to date. No replacement system was set up in time for the end of the Brexit transition period, so the Welsh Government established interim arrangements. Stakeholders have commented that these fall short of addressing the environmental governance gap.

Environmental governance mechanisms

This section provides a background to EU environmental governance and EU environmental principles – the regime from which the UK has departed. It also explores existing domestic functions in Wales in order to determine gaps that have arisen as a result of the UK's withdrawal from the EU.

The Welsh Government carried out a **public consultation in 2019** seeking views on:

- gaps in environmental principles and governance in Wales arising from the UK's withdrawal from the EU; and
- how best to provide a governance framework that aligns with the *Well-being of Future Generations (Wales) Act 2015* and *Environment (Wales) Act 2016*.

The Fifth Senedd's Climate Change Environment and Rural Affairs (CCERA) Committee explored these matters over two inquiries, **in 2018** and **in 2019 in 2019** (following the Welsh Government's consultation).

During the CCERA Committee's inquiries the majority of stakeholders advocated for Welsh primary legislation to establish a replacement domestic environmental governance body. It would be independent from government, have a simple and inexpensive mechanism for citizens to raise complaints and robust monitoring and enforcement functions. Stakeholders also advocated for the EU's core environmental principles to be explicitly listed on the face of the Bill.

Since the 1970s, **environmental governance** of Member States has been gradually incorporated into the EU. Subsequent EU treaties have contained new commitments intended to further the EU's aim of creating a common environmental policy. Its current aims are now:

- preserving, protecting and improving the quality of the environment;
- protecting human health;
- ensuring the prudent and rational use of natural resources; and
- promoting measures internationally to combat regional or worldwide problems, including combatting climate change.

The EU's institutions have an oversight role in ensuring Member State compliance with EU environmental law. These functions include monitoring and reporting on environmental law implementation, receiving citizens' complaints, and taking enforcement action, such as infringement proceedings.

The EU also carries out different types of reviews of environmental policy and legislation such as:

- a rolling review process to ensure that environmental legislation is fit for purpose (known as **REFIT or the 'Regulatory Fitness and Performance' programme**); and
- the 2017 **Environmental Implementation Review**, which detailed the main challenges and opportunities for implementation of environmental legislation for each Member State.

Monitoring and reporting function

The European Commission monitors the implementation of EU environmental law. It uses national indicators and implementation reports submitted to it to do this. For example, every six years Member States are required to report on the conservation status of the habitats and species identified within the **Habitats Directive** in order to evidence implementation of the Directive. European Commission reporting on progress provides data and a basis for holding Member State governments to account in terms of implementation of environmental legislation.

There are domestic monitoring and reporting requirements in Wales under the *Well-being of Future Generations (Wales) Act 2015* and the *Environment (Wales) Act 2016*. These include, for example, national indicators (authored by the Welsh Ministers), the well-being objectives and statement (by Welsh public bodies), well-being of Wales annual report (by Welsh Ministers) and State of Natural Resources Report (SoNaRR) (by Natural Resources Wales). A more exhaustive list is provided on page 25-26 of the **Welsh Government's 2019 consultation**.

The CCERA Committee **concluded in 2019** that the monitoring and reporting requirements under existing Welsh law are designed for a different purpose than that of the European Commission. It stated that while these complement the existing EU requirements, "they do not provide an adequate substitute".

The Committee argued that unless robust, appropriate reporting requirements are put in place post-Brexit, it could limit effective oversight and scrutiny of the implementation of environmental law in Wales.

In terms of data collection the Committee also concluded that there are extensive benefits associated with the UK's membership of the **European Environment Agency (EEA)**. The UK is no longer a member of the EEA. The Committee had concerns about capacity and expertise within Wales, and across the UK, to replicate the technical expertise of the EU institutions.

Enforcement function

Where a Member State has not complied with EU law, the European Commission can take enforcement action. This process can lead to the matter being referred **to the CJEU**. Only a small number of cases are heard by the CJEU since recourse to the courts should be a final method of enforcement, only where other methods have failed. Cases can be taken to the CJEU in a number of ways (**as outlined by the Welsh Government**):

- Referral by a Member States' national courts on the interpretation of EU law;
- By the EU Commission taking a case against an EU state regarding any breach of its obligations to the EU;
- By an EU state taking another Member State to court; or
- 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.

Where a Member State is found to be in breach, the **CJEU may require** it to take measures necessary to comply with the judgment, including putting an immediate end to its infringement. It may also impose fines if the Member State has not complied with its initial judgment, the amount of which is determined on the basis of a proposal from the Commission.

For example, in 2016, **the CJEU ruled** that the UK had failed to limit emissions from Aberthaw power station, located in the Vale of Glamorgan, and ordered the UK to pay the associated legal costs. The breach came to light following the Commission's enquiries as part of its monitoring of large combustion plants. The coal-fired station, which closed in 2020, was **found to be emitting** illegal amounts of nitrogen oxides between 2008-2011.

The CJEU can also rule on cross-border transboundary environmental disputes between Member States, such as in 2006 when it ruled on the **MOX Plant dispute** between the UK and Ireland. The case concerned marine pollution in the Irish Sea by means of radioactive discharge from the plant, located at the UK's Sellafield nuclear site.

The Court can also take action against an EU institution, body, office or agency for annulment of a measure that is contrary to EU law or for their failure to act.

Judicial review is currently the key UK mechanism for redress against public bodies and is available to the public. Courts may review the lawfulness of a public body's actions. The main concern in such cases is not whether the conclusion reached by a public body is right, only whether the correct procedure was followed. The following remedies are available:

- mandatory orders require the body under review to do something;
- prohibitory orders restrain or prevent the body from doing something; and
- quashing orders set aside the decision of a body on the basis that it is invalid.

There are several **tribunals** in the justice system of the UK in a two-tiered tribunal structure; a First-tier Tribunal and an Upper Tribunal. Both are split into Chambers. Each Chamber comprises similar jurisdictions or bring together similar types of experts to hear appeals. The First-tier Tribunal hears appeals from citizens against decisions made by government departments or agencies. The Upper Tribunal primarily, but not exclusively, reviews and decides appeals arising from the First-tier Tribunal.

In evidence to the CCERA Committee, stakeholders reported weaknesses within domestic enforcement structures and lack of remedy and sanction for non-compliance with legislation. There was widespread support among stakeholders for an informal enforcement mechanism for any new environmental governance body to enable issues to be resolved via co-operation. However, they asserted that a robust, formal mechanism, including enforcement proceedings and credible sanctions for continued non-compliance was essential.

The Committee heard strong support among stakeholders for cases investigated by a new governance body to be referred to an appropriate judicial forum for review. They highlighted the weakness of judicial review and argued it was not

an appropriate or effective replacement for the infraction procedures available to the CJEU. A number of stakeholders called for the establishment of a bespoke environmental court or tribunal with technical experts from across a range of environmental policy areas.

The majority of stakeholders asserted that financial penalties were an essential enforcement tool, and that the threat of infraction fines was key to the success of the EU system. Some suggested that revenue from fines could be used for environmental purposes. Some acknowledged the practical challenges of replicating a fining system within the domestic context. The Committee recommended the Welsh Government should explore how a fining system for continued non-compliance with environmental law could operate in Wales.

Access for citizens

EU citizens may **report to the European Commission** in instances of non-compliance with EU legislation. The European Commission has discretion to act upon the information received, which can lead to infringement proceedings before the CJEU as described above. The **Welsh Government's 2019 consultation** states that this is “via a free and simple efficient service”. The environmental charity **ClientEarth** has taken **legal action against the UK Government** over its failure to comply with the **EU Ambient Air Quality Directive** and tackle illegal levels of **nitrogen dioxide** (NO₂) pollution.

In Wales at a domestic level:

- The Public Services Ombudsman can receive complaints from citizens about the delivery of functions by public bodies.
- Individuals may also raise issues with the Future Generations Commissioner. Citizens can introduce petitions into the Senedd.
- Public bodies are required to have established complaints procedures including commitments to fully investigate and respond to complaints about their performance.

The CCERA Committee heard strong support among stakeholders for any new governance body to have a complaints function to fill the gap arising from the loss of the EU citizens' complaints system. Stakeholders highlighted the limitations of existing domestic mechanisms as a means of access to justice on environmental matters. There was broad consensus that any new complaints mechanism should be simple to access, cost free, and liability-free, in line with the EU system.

The UK's withdrawal from the EU will not affect its international obligations in this area, including those contained in the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the "**Aarhus Convention**"), to which the UK is a party in its own right. The **Convention provides** several rights to individuals and organisations with regard to the environment, such as the right:

- of citizens to receive environmental information that is held by public authorities;
- to participate in preparing plans, programmes, policies, and legislation that may affect the environment; and
- to have access to review procedures when their rights with respect to access to information or public participation have been violated.

Application of environmental governance

The EU system of environmental governance applies to EU Member State governments in terms of liability and accountability.

The Welsh Government proposed in its 2019 consultation that the remit of a new domestic body could extend to:

- The Welsh Ministers;
- Natural Resources Wales;
- Welsh local authorities; and
- Ministers of the Crown (e.g. consistent with their responsibilities under the *Environment (Wales) Act 2016*).

The CCERA Committee heard evidence from several stakeholders that all public bodies should fall under the scope of any domestic environmental governance body in terms of accountability (and that this should mirror the bodies that will apply the environmental principles). An alternative view was that the primary role of the new body should be to only hold the Welsh Government to account for non-compliance with EU derived environmental law.

The CCERA Committee concluded that the scope of the new governance body should extend to all Welsh public bodies who would be required to apply the environmental principles. The Committee said the Welsh Government should use, as its starting point, the public bodies listed in the *Well-being of Future Generations (Wales) Act 2015*.

Environmental principles

EU environment policy is grounded in its environmental principles which aim to ensure high environmental standards.

Article 191(2) of the Treaty on the Functioning of the European Union (TFEU) lists the four core EU environmental principles as:

- The prevention principle;
- The principle that environmental damage should as a priority be rectified at source;
- The polluter pays principle; and
- The precautionary principle.

The European Commission and the CJEU apply these principles in the development and interpretation of EU legislation. Rather than applying directly to Member States, the EU environmental principles instead flow through the EU's policies and laws.

Whilst the principles are undefined in the TFEU, the European Commission has **issued guidance** on the application of the precautionary principle. The principles are also defined elsewhere, including in international law and case law. Post-Brexit, EU law and the EU Treaties (including the TFEU) no longer apply in the UK (although some EU environmental legislation continues to apply in Northern Ireland by virtue of the Withdrawal Agreement's **Ireland-Northern Ireland Protocol**).

Therefore the relevant Articles of the TFEU including the principles no longer apply to the UK. The UK has converted EU environmental legislation into domestic law via the **EU (Withdrawal) Act 2018**. This legislation is now referred to as 'retained EU law' and was originally developed in the context of the environmental principles whilst the UK was a Member State.

The EU environmental principles therefore apply indirectly through the retained EU law but have not been directly carried over into domestic law from the TFEU. This foundation of retained EU law could also be altered going forward since withdrawal from the EU means the UK is able to depart from retained EU law (insofar as this does not breach its international obligations).

The principles could also take effect where they have been referenced in **retained EU case law**.

International law

Outside the EU, the UK's environmental protection is made up of international and domestic environmental law.

In the absence of EU legislation, international law has become the main external source of environmental legislation in the UK. International law is separate to, and pre-dates, EU law and applies to the UK regardless of its EU membership. The environmental principles discussed here do exist in international environmental law. However, the international legal system differs significantly from the EU's and lacks the same degree of monitoring and enforcement.



Ambitions to address the governance gap in Wales

An Environmental Governance Stakeholder Task Group ('the Task Group') was established following the Welsh Government's 2019 consultation to provide further recommendations. This section outlines its **key recommendations and the Welsh Government's response** including transitional arrangements.

Legislative mechanism

The Task Group recommended the introduction of primary legislation to address the gaps in environmental governance and principles. It recommended a Welsh response should address the gaps that would arise at the end of the Brexit transition period (1 January 2021). Although the previous Welsh Government **expressed its intention** to legislate, legislation was not brought forward in time to address the gaps.

Environmental governance body

The Task Group recommended a 'commission for the environment', independent from the Welsh Government, to oversee the implementation of environmental law in Wales. It recommended it should be provided with certainty of finance and be audited by the Auditor General. It recommended the commission should produce an Annual Report to the Senedd.

It recommended that the commission should have permanent staffing but with the ability to draw upon an Expert Panel where needed. It stated that the commission should be provided with appropriate functions to receive and respond to citizens' complaints and to carry out inquiries where systemic issues are identified through investigations and scrutiny. It recommended that the commission have powers to escalate matters where necessary to stop or prevent environmental damage. The Task Group said the commission should be able to address issues in an appropriate manner from advising public bodies in Wales through to enforcement and employing mechanisms of environmental review before the Upper Tribunal (see 'enforcement function' section above). It highlighted that the commission should be able to work cooperatively with other bodies.

A major focus of the Task Group's discussions were on the sanctions necessary to drive a matter to a binding resolution and to robustly ensure compliance with environmental legislation. The majority of the group agreed that in practice public

bodies comply with court determinations. Therefore it felt that it ought to be sufficient to extend the ordinary remedies attached to judicial review without the need for fines, which it said would be handed to the Treasury in any case.

The Task Group's report states that remedies for judicial review include the award of damages in appropriate cases as well as orders that would quash decisions or mandate actions. The Upper Tribunal would have ordinary powers of contempt of court where a decision was not respected, so that enforcement could be backed by financial penalties. Some members of the Task Group did not agree with this approach, and expressed concern about powers available to the Upper Tribunal.

It was accepted by the Task Group as a whole that the sanctions proposed in its report are not at the same level as those previously available under the EU regime.

The Welsh Government **accepted these recommendations**, subject to budget consideration in the Sixth Senedd.

Though not a formal recommendation of the Task Group, it considered how the commission's powers would apply to relevant bodies. It was noted that the UK Environment Bill, which would establish the governance system for England, uses the term 'public authorities'. Some members considered this to be an extremely broad list of bodies, which could include authorities with little day-to-day involvement in environmental matters. The group suggested that the problem may be overcome by appropriate wording referring to authorities that discharge functions relating to the environment.

Environmental principles

The Task Group recommended that the four EU environmental principles (rectification at source, polluter-pays, prevention and precaution) should be explicitly provided for in Welsh legislation. It emphasised that these principles should support an overarching objective, including the connections between environmental policy and other policy areas. In terms of applying the principles it recommended this should be a duty on the Welsh Ministers in the development of policy and legislation.

It recommended the existing sustainable management of natural resources (SMNR) duty, which applies to Natural Resources Wales, should be extended to a wider group of public bodies, including the Welsh Ministers. It said further work

is required to determine the definition of public bodies. It suggested using the definition provided in the *Well-being of Future Generations (Wales) Act 2015*, of bodies which discharge functions relating to the environment.

The Task Group highlighted that the **Aarhus Convention rights** (access to information, public participation and access to justice) should be articulated in any forthcoming legislation for environmental governance, alongside the principles and the new governance framework.

The Welsh Government accepted these recommendations subject to further exploratory work on the application of the SMNR principle.

More detail on the Task Group's discussions **can be found in its report**.

The Welsh Government's conclusions

The Welsh Government carried out an **options appraisal**, which was published in November 2020 following consideration of the Task Group's recommendations and the 2019 consultation.

The options included:

- do nothing;
- use of an existing body/bodies;
- establish a new environmental governance body for Wales or;
- use the UK Government's Office for Environmental Protection (OEP - detailed below).

The Welsh Government concluded that establishing a new environmental governance body for Wales was the preferred option. It said it was supported by the majority of respondents to the consultation and formed the basis of the recommendations from the Task Group.

The options appraisal considered a number of models including the Task Group's favoured 'commission' model, but also a 'commissioner' model, a 'tribunal' and a 'Welsh Government Sponsored Body'. The then Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, considered the commission or commissioner model to be the most appropriate approach as it could "undertake the required range of functions with the necessary degree of independence". She went on to say that delivery will be subject to availability of a legislative slot to take forward the necessary primary legislation and budget identification.

Transitional arrangements

Ahead of the establishment of an environmental governance body and principles, interim measures have been adopted.

At the end of 2020, the Welsh Government set out to **recruit an Interim Environmental Protection Assessor**. The role of interim assessor (as originally advertised) included receiving and logging complaints during the post-transition period; redirecting complaints to other bodies where necessary and escalating complaints deemed 'serious' or urgent.

However, on 31 December 2020, the Welsh Government **published new arrangements** for an interim assessor. This guidance suggested that the role of the interim assessor had changed from the original responsibilities. The focus has moved from receiving and escalating complaints regarding breaches of environmental law, to the "functioning of environmental law".

To bring a challenge in relation to compliance with environmental law the previous Welsh Government therefore advised citizens to pursue existing means of domestic redress (e.g. judicial review) in the absence of the European Commission.

On 24 February 2021, the **Welsh Government announced** the appointment of the Interim Environmental Protection Assessor.

The environment sector has **raised concern** that the divergence of the Assessor's role is a significant step backwards and has called for a Welsh Bill to establish a fully functioning governance body as a matter of priority. Wales Environment Link (WEL) concluded:

It is clear that the interim arrangements do not constitute a route to environmental justice nor do they provide a substitute for the oversight and enforcement role required to replace that provided by EU institutions, as recommended by the Task Group and accepted by the Minister.

In advance of legislation, the **previous Welsh Government committed** to continue to apply the 4 EU environmental principles.

UK Government developments: implications for Wales

The UK Environment Bill is currently progressing through Westminster. It includes provisions for a domestic environmental governance body - the Office of Environmental Protection - and environmental principles. Although the provisions mainly apply in England and Northern Ireland there is some application to Wales. The developing UK common frameworks and international obligations will be important when considering environmental governance at a UK level.

The UK Environment Bill

Part 1 of the Environment Bill aims to provide a new framework for environmental governance, mainly in England and Northern Ireland. It is based, in part, on the **UK Government's draft Environment (Principles and Governance) Bill**, which was published in December 2018, to meet an obligation in the *European Union (Withdrawal) Act 2018*.

The Environment Bill makes provision for a new environmental governance body, known as the Office for Environmental Protection ('OEP'). The OEP would have scrutiny, advice and enforcement functions in relation to environmental protection. The OEP would only have jurisdiction in Wales in relation to non-devolved environmental law. The OEP would mainly have application in England and Northern Ireland as the Bill is drafted.

The Bill provides that the OEP must consult a "devolved environmental governance body" if the work it is undertaking would be of relevance to such a body. According to the Bill's **Explanatory Notes**, this could include instances where the OEP becomes aware of a transboundary issue which involved a breach of devolved legislation outside of its remit, but within the remit of the devolved environmental governance body.

The Bill introduces a duty on the UK Secretary of State to prepare a policy statement on environmental principles, with the objective of contributing to environmental protection and sustainable development. This policy statement **applies to England only** (Annex A). Ministers of the Crown must have due regard to the policy statement when developing policy. The environmental principles listed in the Bill are:

- the principle that environmental protection should be integrated into the making of policies;
- the principle of preventative action to avert environmental damage;
- the precautionary principle, so far as relating to the environment;
- the principle that environmental damage should as a priority be rectified at source; and
- the polluter pays principle.

Given that the Bill was not enacted, nor the OEP established by the end of the Brexit transition period, DEFRA has set up transitional arrangements for England. A new system for registering complaints against public bodies suspected of failing to meet environmental law **was launched at the start of 2021**.

A UK-wide approach

The UK Government's **draft Environment (Principles and Governance) Bill (2018) Explanatory Notes** (page 39) state that the OEP could exercise functions more widely across the UK "subject to the ongoing framework discussions with the devolved administrations". DEFRA also acknowledged that it would be beneficial to work with the devolved administrations to co-design the proposals.

The previous Welsh Government made clear that the proposed governance model for England was not a workable approach for Wales, and that it was incompatible with the devolution settlement and Wales's existing legislation. Despite this, the Welsh Government maintained it was willing to discuss UK-wide approaches and work to co-design arrangements with other governments in the UK. The Welsh Government also alluded to discussions on agreeing "a consistent set of UK principles, rather than a common set applying across the UK".

Common frameworks

Planning for UK-wide collaboration/coordination in some environmental areas is underway in the form of the '**common frameworks programme**'.

The UK and devolved governments have committed to maintaining UK-wide approaches in more than 20 policy areas post-Brexit. Common framework agreements will generally set out how and when governments will decide to take the same approaches to policy and regulation, and when to diverge. Some frameworks will be underpinned by legislation.

In 2017, the **UK and devolved governments agreed** that common frameworks would be established where they were needed to:

- enable the functioning of the UK internal market, while acknowledging policy divergence;
- ensure compliance with international obligations;
- ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;
- enable the management of common resources;
- administer and provide access to justice in cases with a cross-border element; and
- safeguard the security of the UK.

Between 2018 and 2020, the UK Government published three **analysis documents** on where common frameworks would be needed. The latest analysis indicates that common frameworks will be established in several areas of environmental policy, including Hazardous Substances (Planning), chemicals and pesticides and air quality. Of these, only a draft of the **Hazardous Substances (Planning)** framework has been published. Others are expected to be published during 2021 and will be subject to a **dedicated scrutiny process** in the UK's four legislatures.

A common set of overarching UK environmental principles to replace the EU principles has not been proposed as part of the common framework programme.

International obligations

The extent to which the UK has a free hand in setting its future environmental governance is limited by its international obligations.

In the absence of the EU's system of environmental governance, international environmental law has become the UK's main external source of environmental legislation. For example, the UK is a party to many large multilateral environmental agreements, such as the UN's Paris Agreement. A number of new agreements are expected during the Sixth Senedd, including on biodiversity, plastic pollution and ocean governance.

In addition, the UK has entered into bilateral agreements with other states which include environmental obligations, such as the new UK-EU Trade and Cooperation Agreement (TCA). The TCA commits the UK and EU to respecting some

environmental principles and refers to multiple international instruments. It also commits the UK and EU's supervisory bodies to meet regularly and to cooperate on the monitoring and enforcement of environment and climate law as it relates to non-regression. Such obligations mean that the UK does not have an entirely free hand in setting its future environmental policy.

The Welsh Government and Senedd are responsible for implementing international obligations in devolved areas of competence and Wales' devolution settlement requires adherence to international obligations in many ways. For example, Senedd legislation must be compatible with international obligations (section 114(1)(d) of the *Government of Wales Act 2006*) and the Secretary of State has powers to intervene to ensure compliance (section 82 of the *Government of Wales Act 2006*). Furthermore, the Welsh Government's **Ministerial Code** places a duty on the Welsh Ministers to comply with the law, which explicitly includes international law and treaty obligations.

Common frameworks may offer routes for the Welsh Government to influence the UK Government's position in international matters, including obligations entered into. For example, the draft **Hazardous Substances (Planning) framework** commits the UK Government to consulting the devolved governments before ratifying new international agreements. However, **in other areas** the governments acknowledge continued disagreement over how far the devolved governments should be involved in influencing international negotiations.

Next steps

The absence of a replacement environmental governance regime has prompted **stakeholders to suggest** that Wales now has “the weakest environmental governance structures in western Europe”.

The CCERA Committee **highlighted these matters** as a key area of scrutiny for its successor in the Sixth Senedd.

Welsh primary legislation would be required to bring about ambitions for a new Welsh environmental governance structure and to put the environmental principles in statute.

However, questions have arisen in terms of when a Bill will come forward. Will the interim arrangements be sufficient to give the new Welsh Government breathing space? The Welsh Government’s **Programme for Government** (2021 to 2026) does not include plans for an environmental governance body or domestic principles. Until legislation comes forward, eyes will be on the effectiveness of the interim assessor’s role, and matters arising from its work.

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