National Assembly for Wales' CCERA Committee: Inquiry into environmental principles and governance

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Bibliographic background

Richard Cowell, Ludivine Petetin and Mary Dobbs are academics with expertise in environmental governance and multi-level governance. Ludivine and Mary are Law Lecturers and bring particular expertise on environmental principles and governance. Richard has expertise on the mainstreaming of sustainability into public policy. All three have undertaken extensive research on these subjects in the context of Brexit. All three are associates of the Brexit & Environment network, which brings together academics analysing how Brexit is affecting the UK and EU environments.

1.0 Overview

There is much in the Welsh Government's (WG) consultation on *Environmental Principles and Governance in Wales Post European Union Exit* that is positive. The proposals for instituting missing environmental principles in primary legislation, for granting the proposed new environmental body independence and the attention to cross-UK collaboration are to be welcomed, and avoid some weaknesses of the proposals for England. We would also support the WG's intention to resolve environmental governance gaps created by Brexit in an integrated way, fully connected to existing Welsh legislation on environment and sustainability. However, this apparent ambition also creates complexities, and a series of specific issues are under-developed:

- Among the principles, there is no clear commitment to 'high levels of environmental protection', the 'precautionary principle', the 'principle of integration' and cross-border cooperation;
- On the governance arrangements, there are the difficulties of integration with existing bodies and regulatory styles, a need for closer attention to reporting, and concerns about enforcement powers;
- On the case for consistent, cross-UK environmental governance arrangements, there are practical challenges in marrying Welsh good intentions with what is happening in England, Northern Ireland and Scotland.

The freedom of action in creating new arrangements may be constrained by international agreements, especially the Backstop in the Withdrawal Agreement.[1] This contains important obligations, including the domestic incorporation of environmental principles and the presence of (an) independent enforcement bod(y/ies)(Part 2 of Annex 4 of the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement – Nov. 2018). The WG's proposed incorporation of the core environmental principles (where it includes a high level of protection, non-regression and the precautionary principle) within Welsh primary legislation will help, although this will either need to be mirrored across the devolved administrations or undertaken on a UK-wide basis. However, it is unclear that the proposed Welsh body would suffice and consideration should be given to the commentary on DEFRA's proposals for an Office for Environmental Protection.[2] Furthermore, the Agreement would significantly affect the future application of environmental principles and the shape and operation of any new structures.

2.0 Principles

The Committee is seeking views *on gaps in ... environmental principles post-Brexit in Wales ... whether the Welsh Government's analysis (within the consultation) correctly and comprehensively identifies the deficiencies ...* (and) *... The Welsh Government's consultation proposals and questions regarding the environmental principles*.

2.1 The Welsh Government's assessment and solution

It is our view that WG has conducted a robust assessment of gaps and deficiencies in the coverage of EU environmental within its domestic legislation. We concur with them that rectification at source and the polluter pays principles are missing. We also support the proposal that the missing principles be enshrined in primary legislation: taking this step avoids weaknesses observed in DEFRA's proposals for England.[3]

However, the precise manner in which these principles (and potentially others) are going to be integrated into the legislation requires careful consideration. Having a third piece of legislation dealing with the environment alongside the Well-being of Future Generations (Wales)Act 2015 (FGA) and the Environment (Wales) Act 2016 could be excessive, leading to actors approaching environmental protection from the perspectives of different acts and their different ways of framing environmental protection and environmental principles. It could thereby negate certainty and consistency and create loopholes. Instead, the opportunity should be taken to incorporate a wide range of environmental principles and objectives within one single piece of primary environmental legislation – within Wales and preferably across the UK as a whole.[4] For Wales for the time-being, the Environment (Wales) Act 2016 could be amended accordingly to enable an enhanced level of protection and a more holistic approach towards environmental protection.

Furthermore, lessons should be learnt from the responses to DEFRA's proposals[5] and the principles should be integrated in such a manner as to impose clear obligations to act in accordance with the range of environmental objectives and principles wherever relevant. Thus, the duty cannot simply be one to 'have regard to', which is a notably weak formulation enabling the objectives and principles to be effectively bypassed.[6] Potential approaches could reflect those taken in the FGA whereby actions must be '*in accordance with* the sustainable development principle' (emphasis added).[7] However, they must also be broader in scope than the existing Welsh legislation or regulatory gaps risk appearing. The obligations should be imposed upon all Welsh public authorities and bodies undertaking actions on behalf of Wales (including WG, regulatory bodies and the courts) thereby ensuring that the objectives and principles underpin all Welsh policy and law at all stages –reflecting the current approach to EU environmental law.

2.2 Omissions

The Welsh Government's proposals also have omissions.

1) A key principle missing from the relevant Acts and what is proposed is the **precautionary principle**. Despite the claim that it is de facto included in the definition of 'sustainable management of natural resources', this gives a weak status to a key international and EU principle. This should not be interpreted as Wales not being precautionary in its approach. But expressly enshrining the precautionary

principle as a principle driving forward Welsh policies is paramount and ensures a precautionary approach irrespective of who the decision-makers are in future.

2) Another absence is any explicit **commitment to maintain a high level of environmental protection in the development of future policies**. Article 191 of the Treaty on the Functioning of the European Union, in setting out the principles that underpin EU environmental policy, provides that 'Union policy on the environment shall aim for a high level of protection taking into account the diversity of situations in the various regions of the Union'. In the EU context, this overarching goal sets the framework within which the other environmental principles are interpreted. This is very different from the **non-regression principle**. The latter is about not decreasing the current level of protection/standards whilst the former is about fostering a spiral to the top and placing an obligation on the legislator to increase environmental protection and relevant standards. Para 1.5 of the WG's consultation indicates that Brexit 'provides an opportunity to develop a structure, which supports not only a commitment to non-regression, but more fundamentally a commitment to enhancing the environment to meet the challenges we face' but the consultation document does not clarify whether such a commitment is actually enshrined in Welsh legislation. Such a commitment should be made stronger by maintaining this principle in Welsh environmental law and policy. To take it a step further, it would be highly desirable if Wales would also incorporate a **principle of environmental improvement**. To note, these three principles (high level of environmental protection, non-regression and environmental improvement) could act as over-arching objectives, which would strengthen the approach further and should all be incorporated expressly.

3) Incorporation of the **Aarhus principles** granting rights on individuals (and eNGOs) would be a worthwhile endeavour, especially considering the significance yet weaknesses of the existing judicial review system, as well as the loss of EU compliance mechanisms that currently work in tandem.

4) Other principles become of greater significance in a post-Brexit world – including ones addressing borders, cooperation (including within the UK) and the allocation of responsibilities across territory.[8] The **obligation to avoid transboundary environmental damage**, which is commonly recognised as a principle of international environmental law[9] should also be recognised as an environmental principle. Similarly, principles on cross-border cooperation, collaboration and participation should be encompassed, as for instance seen in the Espoo Convention. These principles will be relevant to the *internal* borders within the UK – indeed, they could be a useful driver for cross-UK collaboration on environmental governance (see below) – as well as with the EU and beyond.

5) **The principle of subsidiarity** should remain relevant after EU exit. Subsidiarity is concerned with the allocation of competences between different levels of government, from the local to the global. According to the principle, decisions should, as far as possible, be made by the lowest level of government. However, it also indicates that where circumstances indicate that coordinated decision-making or action would lead to greater efficiencies, e.g. due to the potential for transboundary effects, then some degree of centralisation might be appropriate.[10] The principle would assist in addressing both internal Welsh decision-making and also approaches to decision-making across the UK, through guiding when more localised or more centralised approaches are appropriate.[11] To play the role on a UK level it would need to be embodied within a UK common framework, but it could at least assist within Wales for the time being.

6) The **principle of integration** should become a central pillar of future Welsh legislation. The integration principle is essential to a holistic and effective system of environmental governance, rather

than increasing the potential for a silo-ed approach. This is present within the TFEU and ensures that all EU policy must integrate considerations of a high level of protection of the environment. This would lead to the principles mentioned above being fully integrated and underpinning the **formulation of all (sectoral) law and policy at all stages** wherever relevant (not simply environmental law and policy) – as under EU law.

2.3 Integration with principles of SMNR

In addition to the above, WG has proposed that the duty to pursue the sustainable management of natural resources (SMNR) arising from the Environment Act be extended in its application, as this is deemed to embody a number of EU environmental principles. In itself, there may be merits in extending SMNR principles to include all existing and future Welsh public bodies, including the National Assembly for Wales (NAW) and WG.

In the previous consultation, concerns were raised about potential conflicts between these existing principles and the proposed principles if incorporated[12] – there are indeed some challenges. However, firstly, it needs to be borne in mind that legal principles, whilst binding, are malleable and do not demand specific outcomes unlike rules. Secondly, it would need to be clear which were the overarching objectives (e.g. non-regression, a high level of environmental protection, and environmental improvement) that all the principles were to be interpreted in light of, thereby facilitating coherence. Placing environmental protection principles subordinate to duties to carry out sustainable development, say, raises familiar concerns that environmental obligations become weakened within an approach more concerned with balance.[13]

Our understanding of the proposals is that WG is seeking to make these extensions in order to address the environmental governance challenges of Brexit in a holistic fashion: not simply seeking to plug gaps with new measures, but to think through how strategies for dealing with post-Brexit governance gaps might be integrated with existing Welsh approaches as enshrined in the FGA, the Environment Act and the Planning (Wales) Act 2015. This in itself is laudable, not least because the consultation document seems to recognise that this process of integration pushes two ways: adjusting 'new' measures to align with the Welsh context but also being prepared to adjust existing Welsh arrangements to adopt the best features of EU approaches. However, the net result is rather complex and, moreover some of the consultation questions are too reductionist for the issues at hand. This is all more apparent with the second main topic of interest to the CCERA – the proposed governance body.

3.0 A new environmental governance body?

The Committee is seeking views on *gaps in environmental governance structures ...post-Brexit in Wales and whether the Welsh Government's analysis (within the consultation) correctly and comprehensively identifies the deficiencies; The Welsh Government's consultation proposals and questions regarding the ...function/constitution/scope of the proposed governance body*.

3.1 Overarching issues - integration

Creating an entity in and for Wales, to replace the salient environmental tasks previously conducted by EU institutions – i.e. oversight and scrutiny, receiving complaints, enforcement – is very important. We support WG's ambitions in pursuing this task with a view to creating new institutions that are holistic in scope (in their treatment of the environment) and integrated with existing Welsh machinery. This raises complex questions with potentially far-reaching implications for that existing machinery. Thus, we support WG's expressed intentions to encourage a 'wide conversation'.[14] In its consultation, WG also seeks to direct respondents' attention to the qualities (status, functions, powers) that any new environment body should have, rather than any specific model. We offer specific responses to these qualities below, but we also believe that the way that the issue has been reduced to a series of fairly narrow questions, framed as 'deficiencies' may have obscured key issues.

One key point that makes considering new governance arrangements complex is that thinking through how it fits with existing arrangements, and potential deficiencies, has **multiple dimensions**. The new proposals need to address issues of *scope* (i.e. what issues, which aspects of the environment, what range of functions) need to be covered by any new or revised governance mechanisms and are there any gaps, overlaps or conflicts? They also need to address the dimension of *power* that any governance mechanisms should have i.e. how is goal-setting to be done and how is implementation and compliance to be driven? In the consultation, it looks like WG is interested in both dimensions. Through gap analysis, they are seeking to assess how to replace governance mechanisms pertaining especially to EU environmental legislation and how far existing bodies might do the job (scope). But, in the name of integration and coherence, they are also interested in how far EU-style governance mechanisms (for complaints, enforcement etc) could be instituted to apply across existing Welsh environmental governance systems. We think these are the right questions, but it raises a number of challenges.

1) **Information asymmetry.** Forming a view is made difficult by the fact there is reasonable research evidence about the efficacy of EU-style environmental governance mechanisms (and their problems). However, the innovative Welsh legislation on the environment and its associated governance mechanisms are still new and there is little research as to how well it works.[15] This makes it difficult to judge how far existing mechanisms should be adjusted to acquire more EU-style qualities, or whether the implementation of EU environmental legislation can be adequately addressed by embracing it within existing Welsh approaches.

2) **Regulatory culture.** A major cross-cutting challenge for the UK as a whole in seeking to resolve the environmental governance gap created by the EU is how far UK legal norms, based on common law and an emphasis on procedural compliance can evolve to give greater emphasis on substantive compliance, to hold governments and other public bodies to account for the delivery of environmental goals, standards and targets. Wales is perhaps slightly better placed in this regard than other parts of the UK, in that the FGA is already making public bodies accountable for delivering a wider range of goals. However, many of the principles within Welsh legislation are procedural in nature rather than substantive,[16] making them more slippery objects on which to hold people to account and drive implementation, and where goals exist they lack the precision associated with EU legislation, which facilitate effective monitoring, oversight and enforcement. It would be glib therefore to suggest that EU-style governance mechanisms for driving implementation could be simply stretched to embrace Welsh legislation. Equally, the governance approaches of Welsh legislation (in terms of power) often adopt a very different approach compared to EU environmental governance i.e. the processes are designed to be more consensual and about encouragement, and the objectives are often expressed in less 'hard-edged' ways against which implementation can be assessed, being more

concerned about balancing economic, social and environmental concerns. Bringing former EU environmental legislation within existing Welsh approaches might therefore amount to weakening them, compared to how they operate currently.

Arguably the challenges of institutional integration are the thorniest in respect of the Future Generations Commissioner (FGC), in that the environmental issues addressed by EU legislation could be considered as just a subset of its remit with respect to well-being (i.e. the FGC's scope is wider), but the powers of the FGC to drive implementation are arguably weaker than provided by EU institutions at present. If the FGC remains separate from the proposed environment body there must be an expectation that the two will closely collaborate. Such functions would promote holistic approaches, collaboration and joined up thinking when formulating future environmental policies to achieve sustainable development.[17] In the longer term, the small size of Wales might raise questions about having separate 'watchdogs' for environmental protection and sustainable development, but any consideration of merger would require informed discussion, including about whether the performance of the FGA and Environment Acts should themselves be subject to the more robust scrutiny, complaints and enforcement mechanisms characterised by EU environmental governance.

3.2 Specific concerns

There are aspects of WG's proposals that are very positive, notably the aim to make any new body accountable to the NAW and to give independence over appointments and setting of budgets. However, we have a series of more specific concerns about the proposal and the qualities that any new arrangements should have:

1) **Reporting on the application of environmental laws.** The consultation document provides significant details on present environment and sustainability-related reporting arrangements required under Welsh legislation, but it is not clear on how far these would fill the potential vacuum left by EU obligations in terms of: (i) focus on the implementation of environmental legislation and the level of detail associated with that, and (ii) arrangements for publication and accountability. It would be helpful if WG could present further assessment of how far existing environment and sustainability-related reporting arrangements in Wales would fill the potential vacuum left by EU obligations. We recommend that the legislation establishing the new body should provide it with a statutory duty to report regularly on government progress towards achieving its environmental policy goals. As a matter of transparency, each report should be made publically available. The public should also receive regular, authoritative and independent reports on progress towards the government's environmental policy goals by the proposed body. There may also be merits in transposing current obligations on actors or public bodies to report to the EU over to any new body. This would facilitate its reporting capacity and provide the information to conduct closer investigations of particular implementation problems.

2) **Integration with existing bodies.** WG asks 'what role should existing accountability bodies provide in a new environmental governance structure for Wales?' (Question 6).This consultation question is an awkward way of structuring debate around the complex issues entailed and, as we have suggested above, the issue of how existing organisational roles fit within any new environmental governance structure raises dilemmas. While one can understand why WG warns respondents against advocating specific organisational models, it is often only once one thinks about particular organisational forms that the tensions become clear.

Assuming that existing bodies retain environment-related parts of their role creates the risk of fragmented treatment of environmental issues, with any new body addressing only those bits of environment governed by EU legislation not caught in existing Welsh legislation. It also for instance assumes that extant Welsh legislation like the FGA and Environment Act are the examples to follow in a post-Brexit situation, when they were drafted in the context of EU membership i.e. without robust enforcement mechanisms in the event of implementation failure on key environmental issues.

3) **Scope.** The WG is to be commended for pushing for an 'all-encompassing scope' for the new governance arrangements with respect to the environment, and for embracing climate change (*contra* England). The concept of 'natural resources' likely to underpin the ambit of any new body is broad but also explicitly flexible (consultation document para 3.29). One can observe environmental issues that are not specifically listed, though might be encompassed e.g. noise, light pollution, landscape. However, it is also important that the new governance arrangements can engage with the strong environmental dimensions of agricultural and food policy, human and environmental health and with planning.[18] With the latter, there is scope to align planning more firmly to the delivery of environmental goals, a step with evident support among many planning practitioners,[19] as is already underway with alignment to the FGA.

In line with the integration principle, the actions of all public bodies (including WG) should be overseen by the proposed body when they are acting as competent authorities, that is when their decision-making functions and actions impact on the environment (either directly or indirectly).

4) **Powers.** Any new body should have the following powers:

a. Act in an independent advisory capacity.
It would highlight issues of its own choosing as part of its scrutiny and compliance functions, as well as responding to advice requests and **proposals for legislative change**.

A matter of great concern is the gap in institutional support, capacity and evidence gathering created by leaving the EU. Sharing information, knowledge and expertise was a key aspect of the EU, especially with bodies such as the European Environmental Agency (EEA) or the European Food Safety Authority (EFSA). The lack of participation in such entities could be felt when formulating new policies and legislation. We recommend that Wales/the UK remain a member of the EEA to remedy to this issue, ensure evidence gathering and access to a larger pool of scientific expertise in environmental matters. It would also save on the costs of having to generate 'national' data that would simply replicate what is already available.

b. Able to oversee and scrutinise.
The new body should exercise scrutiny functions in order to identify weaknesses and potential improvements within the present legislative framework, covering actions and potential actions across all public bodies, where they pertain to environmental protection. Both formal and informal mechanisms should be created to investigate concerns about government and other public bodies' implementation of environmental law, and hold them to account.

c. Investigating complaints from members of the public and guaranteeing citizens' rights.
Mechanisms for individuals or organisations to make an official complaint and free of charge about alleged failings in relation to environmental law and governance must be maintained. The fact that individuals can write to their AM, the Assembly or the Public Services Ombudsman is not an adequate

substitute. None combine the expertise in environmental law, the independence and the powers of the European Commission.

Similarly to the Commission, the new body should have discretion to decide whether to accept individual complaints. Where complaints are accepted the new body must have effective powers to investigate them, to require competent authorities to co-operate with those investigations and to compel timely compliance where failings are identified.

d. Enforcement actions.

Powers to refer a government and other public bodies to court for alleged failings in implementing environmental law is vital. Again, it is clear that withdrawal from the EU will create a lacuna in this area. Currently, in the UK no public authority has power to bring proceedings against government in relation to environmental issues. Moreover, as noted above, there is a need to enable enforcement in the context of non-achievement of targets and standards rather than just procedural compliance.[20]

Similarly, there is much concern that the loss of the powers to fine governments for non-compliance with CJEU judgements represents the loss of a significant lever for driving enforcement. The power for courts to impose fines on the government and other public bodies should be seriously considered. It is a positive feature of WG's consultation that they entertain alternative enforcement mechanisms such as 'stop notice' type actions (where problems are urgent) and restorative justice. Fines collected could be utilised for environmental benefits, i.e. fund projects that would enhance environmental protection.

e. Links to the environmental principles.

The proposed body should have oversight over all environmental obligations, both national and international. If environmental principles are to have practical meaning, the new body should be able to call the government to account for failing to meet all environmental obligations – including through failure to act adequately in accordance with the environmental principles. It should be borne in mind that principles by their nature guide rather than typically mandating specific outcomes, thereby still leaving considerable discretion to the government as to how they implement such principles.

f. Relationship with judicial review.

The proposed body should have the power to intervene in judicial review applications concerning the implementation and application of environmental law by competent authorities.

Furthermore, whilst judicial review (in conjunction with the Aarhus principles) by eNGOs in particular is an important tool, despite the suggestions in DEFRA's proposals, it is not an adequate substitute for the European Commission's current powers due its focus on process rather than merits, its high costs and short timeframe to bring a case (UKELA, 2018, Jack and Petetin 2018).[21] There is a risk that if the Commission's role is lost and not replaced by an effective domestic body, then the eNGOs would find themselves playing the supervisory role by default – impacting negatively on the eNGOs' other roles and environmental governance.

4.0 A UK joined approach

The Committee is seeking views on *the value and practicality of a UK joined approach given the UK Government's Department of Environment Food and Rural Affairs' (DEFRA) proposal that new governance structures in England could exercise functions more widely across the UK.*

4.1 The value of cross-UK mechanisms

There is much value in the new post-Brexit environmental governance arrangements for the UK operating on a cross-UK basis, and it is very positive that WG's consultation proposals recognise this. It has been recommended by the NAWCCERA in its previous reports, and we have argued for it previously as have other organisations.[22] Creating machinery for environmental governance that operates across the UK would have benefits for:

- Dealing with cross-UK environmental issues in a coherent way, whether that be environmental issues that straddle borders between the UK's constituent nations; issues that have an international dimension, such as complying with international conventions; or issues linked to trade.
- The power and efficacy of the governance arrangements themselves, because cross-UK mechanisms would be independent from any one government or legislature, and provide a framework in which constituent nations could hold eachother to account for delivery.
- It would also be fit for the new challenges of Brexit, such as offering scrutiny and oversight for Common Frameworks and dealing with risks such as UK nations – outwith the legislative frameworks of the EU - backsliding on environmental protections to attract jobs.
- One can envisage wider staffing and streamlining benefits, as well as enhanced scope for cross-UK learning. UK-level ring-fencing of funding would also reduce competition for resources with other priorities.

Creating effective cross-UK environmental governance arrangements is also required by the EU Withdrawal Agreement and the Irish backstop provisions.

4.2 Practical issues

In considering what those cross-national arrangements could be, we do not consider that the main contender should be that the new arrangements being proposed by DEFRA for England could exercise functions across the UK. This is under consideration for Northern Ireland, but as a *force majeure* solution given the ongoing collapse of devolved government and with significant concerns raised even so.[23] Doing the same for Wales would amount to a significant reverse of devolution – the environment being a highly devolved issue – and proposals emanating from and designed for an England/Westminster setting would fit poorly with the democratic and legislative arrangements that have developed in Wales.

If cross-UK arrangements are to emerge, then they would need to be designed collaboratively in a way that enables them to embrace shared concerns about environmental principles, standards and processes of enforcement, without unduly constraining the ability of the devolved governments to pursue approaches to environmental protection appropriate to local circumstances.[24] **Subsidiarity** and **proportionality** are important here. However, pursuing cross-UK environmental governance arrangements also raises broader issues. Designing effective, cross-UK environmental governance issues raises potential trade-offs between accountability (e.g. to Wales) and environmental efficacy (for those aspects served by a cross-UK approach), in that it may entail some pooling of sovereignty on environmental issues across the UK.

Nevertheless, there is cross-UK recognition of the merits of cross-UK environmental governance arrangements, caveated by concerns for the devolution settlement and the process by which shared arrangements are created.[25] The problems are practical, and fall into two categories.

1) Time

The need to avoid environmental governance gaps created by Brexit in the short term has driven DEFRA to act; the devolved governments, for various reasons, have moved more slowly. As a result, the timeframes at which London, Edinburgh and Cardiff are moving are mismatched, and this – and the ticking of the Brexit clock – makes effective collaboration difficult. The time dimension is especially important given that thinking carefully about shared UK arrangements for environmental governance requires more time and bandwidth than is likely to be available.

A key question for cross-UK collaboration is how to manage short-term uncertainties in such a way that better, more integrated, cross-UK approaches are not 'locked out' in future. Professor Colin Reid at Dundee University makes useful suggestions:[26]

- *Any new arrangement should not needlessly impede collaboration*, e.g. they should enable the sharing of data between bodies exercising similar functions in other parts of the UK.
- *The different administrations should agree to review the position in a few years' time to see if there is scope for improvement*, such as streamlining or closer integration. It is a widely shared view that the intra-UK governance architecture will need reinforcement, post-Brexit, to address various new demands placed upon it;[27] the scope for more collaborative environmental governance arrangements, with cross-UK reach, may co-evolve with these wider developments.

2) Substance

The second problem is envisaging the substantive form of any shared arrangements, given the time frame and the different national circumstances and institutional design principles that need to be balanced. One might envisage this in terms of creating some portmanteau cross-UK arrangements in which the various bodies serving the UK nations would sit, and then within that portmanteau there being layers of collaboration which could be built up over time. Perhaps the first 'layer' for cross-UK collaborative governance could focus on monitoring and reporting protocols and external compliance, and be performed by an institution similar to the JNCC. A second layer might apply the format of the Climate Change Commission – its monitoring, scrutiny and reporting function - for other dimensions of environment on a cross-UK basis.

Importantly, the ability of EU institutions to drive environmental policy implementation across the EU is built on principles and legislation that are themselves shared across the Member States. Similarly, the scope for 'deep' cross-UK collaboration in environmental governance would depend on how far environmental legislation across the UK exhibits common features. WG is right in its consultation to raise the prospect of instituting a set of shared environmental principles for the UK as a whole. Doing this would facilitate cross-UK governance of environmental issues. Effective cross-UK action would also depend on the extent to which the constituent UK governments support Common Frameworks in the environmental field.[28]

[1] E.g. https://www.parliament.scot/S5_Environment/Meeting%20Papers/ECCLR_2018.04.30_Meeting_papers_(public).pdf .dated 30th April – p.41 (aka 13); also C. Reid, submission to the Scottish Government Consultation (19th May 2019).

[2] E.g. M. Lee, 'The New Office for Environmental Protection: Scrutinising and Enforcing Environmental Law after Brexit', 18 January 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3312296; and Environmental Audit Committee, *Report on the Scrutiny of the Draft Environment (Principles and Governance) Bill*, 25 April 2019, https://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news-parliament-2017/draft-environment-bill-report-publication-17-19/.

[3] E.g. M. Lee and E. Scotford, 'Environmental Principles After Brexit: The Draft Environment (Principles and Governance) Bill', 30 January 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3322341; M. Dobbs, 'Environmental Principles in the Environment Bill', 30th January 2019, https://www.brexitenvironment.co.uk/2019/01/30/environmental-principles-environment-bill/; and M. Dobbs and L. Petetin, Written Evidence to the EFRA Scrutiny of the draft Environment (Governance and Principles) Bill, (January 2019) http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environment-food-and-rural-affairs-committee/prelegislative-scrutiny-of-the-draft-environment-principles-and-governance-bill/written/95916.html.

[4] E.g. C. Brennan, M. Dobbs & V. Gravey, 'Out of the Frying Pan, Intro the Fire? Environmental Governance Vulnerabilities in Post-Brexit Northern Ireland', (2019) Environmental Law Review (forthcoming), pre-proof version available at: https://eprint.ncl.ac.uk/file_store/production/256535/D066ED55-7546-446C-875D-7A4590826805.pdf.

[5] E.g. ibid; Environmental Audit Committee, *Report on the Scrutiny of the Draft Environment (Principles and Governance) Bill*, 25 April 2019, https://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news-parliament-2017/draft-environment-bill-report-publication-17-19/ and Dobbs & Petetin, op cit. n3.

[6] E.g. Environmental Audit Committee, *The Government's 25 Year Plan for the Environment,* HC 803, 24 July 2018, https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/803/803.pdf; Select Committee on the Natural Environment and Rural Communities Act 2006, *The countryside at a crossroads: Is the Natural Environment and Rural Communities Act 2006 still fit for purpose?,* HL 99, 22 March 2018, https://publications.parliament.uk/pa/ld201719/ldselect/ldnerc/99/99.pdf; and http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environmental-audit-committee/environmental-principles-and-governance-consultation/oral/85180.html.

[7]Similarly, express, mandatory obligations are imposed within the Environment Act (Wales) 2016.

[8] See a range of proposed objectives and principles in Brennan, Dobbs & Gravey, op cit. n4.

[9] R. Bratspies and R. Miller (eds), *Transboundary Harm in International Law: Lessons from the Trail Smelter Arbitration,* (CUP, 2006); and B. Jack and L. Petetin, *Environmental principles and governance after EU exit,*(2018) available at: http://orca.cf.ac.uk/114856/.

[10] M. Dobbs, 'Attaining Subsidiarity Based Multilevel Governance of Genetically Modifies Cultivation?' (2016) 28(2) *Journal of Environmental Law* 245-273. Author accepted version available at: https://pure.qub.ac.uk/portal/files/17421201/Dobbs_Attaining_SBMLG_of_GM_Cultivation_accepted_version.pdf. See also, L. Petetin, 'Managing Novel Food Technologies and Member States' Interests: Shifting more Powers towards the Member States?' in M. Varju (eds), *Between Compliance and Particularism: Member State Interests and European Union Law* (Springer, 2019) 233-253.

[11] A. Engel and L. Petetin, 'International Obligations and Devolved Powers – Ploughing through Competences and GM Crops', (2018) 20 (1) *Environmental Law Review*, 16 http://journals.sagepub.com/doi/abs/10.1177/1461452918759639.

[12] L. Walker and K. Orford, *Environmental goverance post-Brexit: closing the 'governance gap',* 27 June 2018, https://seneddresearch.blog/2018/06/27/environmental-governance-post-brexit-closing-the-governance-gap/; V. Jenkins, Evidence to the CCERA on *European Union Environmental Governance and Principles,* 10th May 2018, http://senedd.assembly.wales/documents/s74961/Evidence%20paper%20from%20Dr%20Victoria%20Jenkins.pdf

[13] V. Jenkins, 'Sustainable Management of Natural Resources: lessons from Wales', (2018) 30:3 *Journal of Environmental Law*, 399-423, https://academic.oup.com/jel/article-abstract/30/3/399/5032465.

[14]WG, Consultation on *Environmental Principles and Governance in Wales Post European Union Exit,* 18th March 2019, WG35189, https://gov.wales/sites/default/files/consultations/2019-03/eu-exit-consultation-document.pdf, section 3.24, p.27.

[15] Jenkins, op cit. n13.

[16] See the table in the consultation document, page 17.

[17]L. Petetin and M. Dobbs, 'Collaborating for Agricultural Sustainability', 13 June 2018, http://blogs.cardiff.ac.uk/environmental-justice-research-unit/2018/06/13/collaborating-agricultural-sustainability/.

[18] L. Petetin, M. Dobbs and V. Gravey, Written Evidence to WG 'Brexit and Our Land' Consultation, October 2018, available https://pure.qub.ac.uk/portal/en/publications/written-evidence-submitted-to-the-welsh-government-on-brexit-and-our-land-consultation(cffc26d7-37bf-4023-be22-59de5e7a7635).html.

[19] RTPI, 'Environmental Planning After Brexit', January 2019, https://www.rtpi.org.uk/media/3186871/environmental_planning_after_brexit.pdf.

[20] Reference HoC EAC Report para 1.22.

[21] Brennan, Dobbs and Gravey, op cit. n4.

[22] E.g., Petetin and Dobbs, op cit. n3. For a more exhaustive account of the benefits, see the report by the Broadway Initiative https://www.iema.net/assets/newbuild/Broadway/Governing%20the%20environment%20-%20is%20there%20a%20case%20for%20UK%20nations%20sharing%20architecture.pdf

[23]V. Gravey and M. Dobbs, Supplementary evidence to the EFRA Scrutiny of the draft Environment (Governance and Principles) Bill, (March

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[24]Brennan, Dobbs and Gravey, op cit. n4. section 4.1; and Dobbs, op cit. n10.

[25] E.g. Explanatory Notes to the Draft Environment (Principles and Governance Bill), p.40, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766849/draft-environment-bill-governance-principles.pdf; Welsh Government consultation, page 35; Interim Scottish Government response to the 4th Report on Common Frameworks, 25 April 2019, https://www.parliament.scot/S5_Finance/General%20Documents/scot_gov_response.pdf; and Cabinet Office, The European Union (Wthdrawal) Act and Common Frameworks, 2018 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/788764/CCS207_EUWithdrawalActAndCommonFrameworks.pdf.

[26]Reid, op cit. n1. These have been supported by the House of Commons Environment, Food and Rural Affairs Select Committee in its *Pre-legislative scrutiny of the Draft Environment (Principles and Governance) Bill* (2017-19 HC 1893, para.139).

[27] For example, Welsh Government Brexit and Devolution – Securing Wales' Future; and C., Burns, N. Carter, R. Cowell, P. Eckersley, F. Farstad, V. Gravey, A. Jordan, B. Moore, and C. Reid, (2018) *Environmental policy in a devolved United Kingdom: Challenges and opportunities after Brexit*, https://www.brexitenvironment.co.uk/wp-content/uploads/2018/10/BrexitEnvUKReport.pdf.

[28] For further on common frameworks see for instance, V. Gravey, Evidence to the CCERA on *Common Frameworks on Agriculture and Environment,* 2018, http://senedd.assembly.wales/documents/s75638/UK%2001%20Dr%20Viviane%20Gravey%20-%20Queens%20University%20Belfast.pdf; or Brennan, Dobbs and Gravey, op cit. n4, section 4.1.