



Professor Robert Lee
Chair
Environmental Governance Stakeholder Task Group

19 November 2020

Dear Robert

Thank you for providing the report from the Environmental Governance Stakeholder Task Group on Environmental Governance in Wales post exit from the European Union.

My officials have now completed the options appraisal exercise and I have had an opportunity to review the merits of a number of approaches.

The options appraisal considered four options.

Option 1 – Do nothing

Under this option no new measures would be put in place to replace the EU Commission role in environmental governance, instead relying on existing Welsh oversight and regulatory bodies.

I have discounted this option as it fails to meet the Welsh Government commitment there would be no reduction in citizens' rights as a result of leaving the EU. It also leaves Wales without a specific system for the oversight of compliance with environmental law.

Option 2 - Use of an existing body or bodies

Under this option, enhancing the functions of existing bodies was considered. The Public Services Ombudsman for Wales (PSOW), the Auditor General for Wales (AGW), the Future Generations Commissioner (FGC) and Planning Inspectorate Wales (PINS) were considered.

I have discounted this option as no one body, as currently constituted, could undertake all of the required functions, and adding the environmental governance function would be anomalous to or distort their core role.

A hybrid option of using the bodies to cover different required functions was also considered but discarded as overly complex and lacking clarity.

Option 3 – Establishing a new environmental governance body for Wales

This was the option 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 favoured Task Group commission model but also a commissioner model, a tribunal and a Welsh Government Sponsored Body. I consider 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. Further work would be required on the specific constitution and design.

I am supportive of this option, in principle, as it provides the best fit in terms of meeting the Welsh Government commitments and policy delivery. However, delivery will be subject to availability of a legislative slot to take forward the necessary primary legislation and budget identification.

As you will be aware due to the pressures EU exit and responding to the COVID-19 emergency have placed on the legislative programme, it has not been possible to bring forward legislation for environmental principles and governance in this term. However, in the debate following his legislative statement in July, the First Minister reiterated his commitment to do so.

Option 4 - Use of the Office for Environmental Protection (OEP)

This option would require amendment to the UK Environment Bill to extend the remit of the OEP to Wales.

I have discounted this option as I do not believe the OEP provides a suitable model for Wales. It was designed only to address the gaps as they applied in England, and, as such, is not appropriate for the different legislative framework and accountability mechanisms we already have in Wales, such as the Future Generations Commissioner. I also consider the constitution of the OEP as a Government Sponsored Body to lack the required independence.

I have provided my response to each of the Task Group recommendations at Annex A.

May I once again thank the Task Group for their advice and consideration in developing the recommendations and look forward to your continuing support as we move to the next phase of detailed policy development.

This letter will be copied to members of the Task Group and published on the Welsh Government website as my formal response.

Regards



Lesley Griffiths AS/MS

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Task Group Recommendations and Welsh Government Response

Recommendation	Response
<p>1. The Welsh Government should address the governance gaps in both environmental principles and oversight through the introduction of primary legislation. A Welsh response to environmental governance should address the gaps as they arise from the end of the transition period (1 January 2021).</p>	<p>Accept in principle – implementation date cannot be met</p>
<p>2. Principles:</p> <p>a. The four EU environmental principles (rectification at source, polluter-pays, prevention and precaution) should be provided for in Welsh legislation. These principles should support an overarching objective, which sets out environmental ambitions in Wales, including the connections between environmental policy and other policy areas (integration);</p> <p>b. There should be a duty on the Welsh Ministers to apply the principles in the development of policy and legislation rather than the publication of a policy statement on principles;</p>	<p>Accept</p> <p>Accept</p>
<p>3. The Sustainable Management of Natural Resources duty, which applies on Natural Resources Wales, to be extended to a wider group of public bodies, including the Welsh Ministers. Further work is required to determine the scope of the definition of public bodies, with consideration of the definition provided in the Well-being of Future Generations Act, where bodies discharge functions relating to the environment.</p>	<p>Accept in principle – further exploratory work required</p>
<p>4. The Aarhus Convention rights (access to information, public participation and access to justice) should be articulated in any forthcoming legislation for environmental governance.</p>	<p>Accept</p>
<p>5. Governance:</p> <p>a) A Commission for the environment, independent from the Welsh Government, should be established to oversee the implementation of environmental law in Wales.</p> <p>b) The Commission should be provided with certainty of finance and be audited by the Auditor General and report on its activities.</p> <p>c) Acknowledging the size of Wales, the Commission to be constituted in a manner which is appropriate for Wales with permanent staffing but with the ability to draw upon an Expert Panel to add to its functionality allowing for</p>	<p>Accept</p> <p>Accept in principle – subject to budget consideration in the next Senedd.</p> <p>Accept</p>

<p>a flexible approach and allowing the body to draw on a wide range of expertise. The Commission should be provided with appropriate functions to not only receive and respond to complaints from citizens in Wales but also to carry out inquiries where systemic issues have been identified through investigations and scrutiny. It should have powers to escalate matters where necessary to stop or prevent environmental damage.</p>	<p>Accept</p>
<p>d) 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</p>	<p>Accept</p>
<p>e) The Commission should be able to work cooperatively with other bodies</p>	