ENVIRONMENTAL GOVERNANCE APPLICATION OF PRINCIPLES IN WALES

STAKEHOLDER POLICY GROUP – 14 JULY 2020 1-2.30 PM VIA TEAMS

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Welsh Government

CURRENT POSITION - PRINCIPLES

EU

- EU TEU:
  - the internal market is to work for the sustainable development of the Union, which is based on economic growth, social progress and a high level of protection and improvement of the quality of the environment
- EU TFEU:
  - promoting sustainable development
  - contribute to preserving, protecting and improving the quality of the environment, protecting human health as well as prudent and rational utilisation of natural resources
- 4 environmental principles in TFEU –
  - Precautionary – allowing for regulatory action to be taken even where a risk of damage has not been established with full certainty;
  - Preventive – prevention of environmental damage;
  - Rectification at source – remedying the pollution or damage at its source; and
  - Polluter-pays principle – ensuring the polluter bares the cost of their actions.

Wales

- Sustainable Development at core of decision-making supported by 5 Ways of Working (integration, long-term, prevention, involvement and collaboration) - Well-being of Future Generations (Wales) Act
- Sustainable Management of Natural Resources : how we manage our natural resources should be to maintain and enhance the resilience of ecosystems and the benefits they provide for both current and future generations and contribute to 7 well-being goals in Environment (Wales)
- 9 principles act to support Sustainable Management of Natural Resources:
  - Prevention
  - Public participation
  - Collaboration
  - Scale
  - Long-term
  - Resilience
  - Evidence
  - Adaptive
  - Value

GAPS

- Gaps are different in Wales to those in other parts of the UK
- Sustainable development already at the core of decision-making across all policy areas
- Some principles not reflected
  - polluter-pays;
  - Rectification at source
- Polluter Pays – need to consider modernisation to reflect Payment for Ecosystem Services

THE PRINCIPLES – RECOMMENDATIONS FROM TASK GROUP REPORT

Principles:

- 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);
- 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;
- 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.

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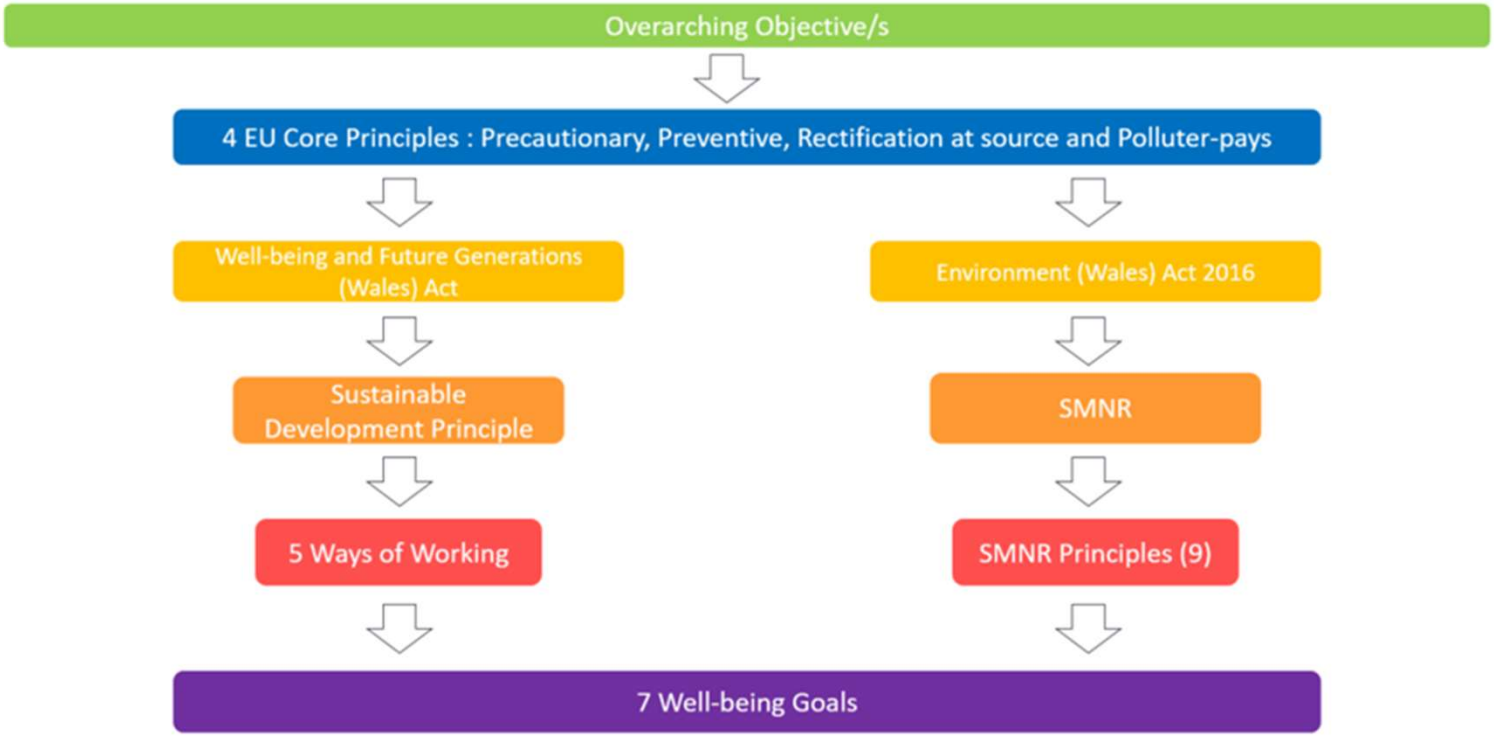
THE PRINCIPLES – RECOMMENDATIONS FROM TASK GROUP REPORT



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ENVIRONMENTAL PRINCIPLES IN ENGLAND (OEP)

Policy statement:

- Prepared by the SoS and to be laid before Parliament, explaining how the principles are interpreted and applied when creating policy.
- Set out how the principles are proportionately applied by ministers to deliver the "improvement of environment protection" and "sustainable development"

Four Core Principles (deriving from TFEU 191)

- Precautionary, Prevention, Polluter Pays, Rectification at source

Additional principle - Integration

- Ensuring that environmental protection and sustainable development are incorporated into policy making.
- Accounted for in Welsh legislation by the Wellbeing of Future Generations Act and the Environment (Wales) Act.

Duties on Ministers:

- Ministers are legally obliged to consider the principles in all policy development where it impacts the environment.

Enforcement

- When conducting an environmental review, the Upper Tribunal must use the principles to determine whether an authority has failed to comply with environmental law.

ENVIRONMENTAL PRINCIPLES IN SCOTLAND (ESS)

Policy statement:

- No

Four Core Principles:

- All four are included, the same as in England and Wales.

Duties on Ministers:

- Scottish Ministers (SM) are to consider the principles when developing policy.
- SMs are to have regard to the interpretation of those equivalent principles by the European Court from time to time.
- SMs may, by regulations, add, remove, or amend principles to the equivalent principle in accordance with EU law.
- Ministers will ensure that principles reflect their equivalent as it has effect in EU law from time to time.
- SMs must publish guidance on the principles and the duties in section 10 (Ministers' duties) and 11 (responsible authorities)
- SM guidance may include provision about: a) the interpretation of the principles; b) how the principles relate to each other; c) how the duties relate to other duties relating to the environment, including those in the Environmental Assessment (Scotland) Act, 2005; d) complying with the duties; e) how those who are subject to the duties should demonstrate that they have and are complying.

In action:

- "Responsible authorities" (any person, body or office-holder exercising functions of a public character) must have regard for the principles when making an environmental assessment.

APPLICATION IN WALES

- Two stage process
  - Interim Guidelines
  - Statutory Guidelines

Operational guidance, at least to public bodies operating within these principles, might be necessary and that much might need to be done to allow a better understanding of the role of environmental principles.

- **Challenges**
  - Operationalise the principles and give them traction - how might be operationalised and what guidance might accompany these.
  - We should not be overhasty in an attempt to cover any perceived gap. It was thought to be more important to take time to ensure that effective application of environmental principles is embedded in workable structures

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EXTENSION OF THE SMNR DUTY

- SMNR principles were not well understood within the wider public sector so that any extension would need to have buy-in and engagement from an informed public sector. It was suggested that the role of different public bodies in delivering SMNR might have to be clearly articulated. Broadly, however, there was no great opposition to the extension which was seen by some as creating degree of symmetry between duties under the WFG and Environment Wales Acts.

RECTIFICATION AT SOURCE PRINCIPLE

Environmental damage should, as a priority, be addressed at its origin to avoid remedying its effects at a later date.

In practice this means:

- Understanding what the environmental damage (or its potential) is.
- Understanding where the damage originates from (it does not have to be physical source e.g. it could be source within a supply chain).
- Considering how feasible it is to rectify at source and the costs and benefits of doing so.

PREVENTION PRINCIPLE

The prevention principle requires action to be taken to avert environmental damage before it occurs.

In practice, this means:

- Understanding **what** the potential environmental harm of the policy is.
- Considering the **extent to which damage can be prevented** taking into account whether the damage is temporary or permanent and how widespread the damage is likely to be.
- Factoring in the costs and benefits of preventing or not preventing damage.

POLLUTER PAYS PRINCIPLE

The principle means that, where possible, the costs of pollution should be borne by those causing it rather than the community at large.

It can be used in the design of a policy (before the damage has occurred) to prevent or deter environmental damage. It may also be used after the damage has occurred to restore or redistribute costs of environmental damage.

In practice, this means:

- Identifying the harm or potential harm to the environment.
- Identifying who is responsible (the polluter).
- Considering whether it is proportionate to make the polluter pay and if so, calculate how much they should pay and how they should pay for the pollution.

PRECAUTIONARY PRINCIPLE

Where there are threats of **serious** or **irreversible** environmental damage, a **lack of full scientific certainty** shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

In practice this mean:

- Identifying potential **environmental harm** and its implications.
- **Assessing** scientific data to determine **risk** and understand the **likelihood** and **severity** of the environmental harm. Data must be reliable and current.
- Considering **what action is appropriate** given the level of uncertainty. Action taken will reflect the "acceptable" level of risk, based on the assessment of the **likelihood** of environmental harm and **magnitude of impact** on the environment.
- Any action taken must be proportionate.

APPLICATION IN WALES - 1

ERA Teams	Examples of the application of the principles
Agriculture & Sustainable Development	**Precautionary principle** 1. Used to deal with diffuse pollution in agriculture and the issues it poses in the application of polluter pays. **Polluter pays** 1. NRW Action Programme to implement the Nitrates Directive **Follow up** Two ongoing infraction cases: 1. Nitrates 2. Water framework
Air Quality, Noise & Chemicals	**Polluter Pays** 1. Rada di Augusta 2. Milford Haven waterway 3. German emission values 4. Air Quality and Noise Legislation
Decarbonisation & Energy	**Polluter Pays** 1. Erika oil spill (presumably decarbonisation) 2. Emission Trading System
Land, Nature & Forestry	**Follow up** 1. PES 2. PINS

APPLICATION IN WALES - 2

ERA Teams	Examples of the application of the principles
Biodiversity	**Precautionary principle** 1. Pfizer Animal Health v. Council of the European Union
Fisheries	**Precautionary** 1. MSY recommends a zero stock yield of cod this year. **Follow up** 1. Salmon netting on the lower reaches of the Severn 2. Management of whelk fisheries
Marine	**Follow up** Hinkley Point and sensitivity of licensing issues.
Waste & Resource Efficiency	**Polluter pays** 1. UK-wide waste scheme 2. Circular Economy deposit return scheme 3. Germany's Green Dot System 4. Waste Directive, Packaging Directive, Batteries Directive 5. Welsh Single Use Carrier Bag charge 6. Freiburg Cup deposit system **Rectification at source** 1. Commission v. Belgium – Failure to fulfil obligations – Prohibition of tipping waste originating in another Member State.

CURRENT CONSIDERATIONS

- How Principles should apply? – in law and policy
- When – environmental impact
- Which principles are relevant to policy?