

Cynulliad Cenedlaethol Cymru | National Assembly for Wales
Y Pwyllgor Newid Hinsawdd, Amgylchedd a Materion Gwledig | Climate Change,
Environment and Rural Affairs Committee

Fframweithiau cyffredin y DU ar amaethyddiaeth a'r amgylchedd | UK common
frameworks on agriculture and environment

UK 10

Ymateb gan : CLA Cymru (Cymdeithas Tir a Busnesau Cefn Gwlad Cyfyngedig)
Evidence from : CLA Cymru (Country Land and Business Association Limited)

CLA Cymru: The voice of the Rural Economy

1. The CLA (Country Land & Business Association) is the representative organisation for rural businesses across England and Wales. We work closely with both the UK and the Welsh Government as a consultee-of-choice on issues concerning the rural economy; the land-based businesses it supports, and the wider enabling policies that support sustainable development.
2. With around 3,000 members in Wales and 30,000 in total, our members own and manage more than 10 million acres across the UK and engage in a wide range of business activities from agriculture and food to forestry and the gamut of businesses that support the land-based industry.
3. Our membership relies on us to ensure that the voice of the rural economy is heard in the development of policy as the needs of rural communities and businesses are often overlooked and under-represented in UK politics.

Introduction

4. Membership of the European Union brought with it participation in established frameworks which included distinct structures, ways of working, financial planning procedures and processes of accountability. These have, by extension, shaped our ways of working in Wales and the UK for several decades. Leaving the European Union does not, however, mean that the UK can return to pre-EU domestic structures. The UK has changed beyond recognition during this time and establishing *post Brexit* replacements will require facing up to the fact that devolution is now an established part of the UK constitution and new ways of working will be required to respond to this.
5. Because of this fundamental change, leaving the EU demands a discussion about how the UK will work together to deliver the policy areas currently under the control of the EU. Immediately following the Referendum, the CLA recognised the impact that Brexit would have on the changing face of the UK and advocated the need for framework(s) between all nations of the UK to replace the void that would be created. While there was initially political resistance to the idea, as the reality of Brexit has unfolded, it has become a widely recognised necessity.
6. However, 'frameworks' need to be more than a process of returning law from the EU to these shores. While the European Union (Withdrawal) Bill will 'repatriate' the laws in a holding pattern. It does not deal with the practical wider questions of how the UK will function in a *post Brexit* world.
7. Now that the UK and Welsh Governments have reached a workable compromise on how Clause 11 of the Bill should operate, it is essential to turn to the practical side of Brexit. There are big questions to be asked and answered:

- What collaborative structures are needed?
 - What should appropriate governance structures look like?
 - How do we ensure ministerial accountability on a UK and Devolved Administration level?
 - Do we want to keep the same policies as the EU and structure frameworks around them or do we want to create new policies and collaborate on them?
8. Now is the time to be bold in our thinking. Over recent years, the Welsh Government has led the way implementing ground-breaking legislation like the Well-Being of Future Generations (Wales) Act, embedding sustainability into our ways of working and creating a foundation for the sustainable management of our natural resources through the Environment Act. Retreating from these principles now would be to undermine the momentum built up in Wales.
9. Most importantly, Wales cannot afford to be isolationist in its thinking. Devolution does not equate to independence. There are practical and pragmatic reasons why Wales must contribute and participate in delivering wider UK objectives:
- To avoid the creation of a UK internal market.
 - To ensure that the UK can continue compliance with international obligations.
 - To ensure that the UK can negotiate, enter into and implement new trade agreements and international treaties.
 - To enable the management of common resources: air, water, carbon.
 - The environment and our natural resources do not respect political barriers. Disease control, airborne pests do not stop at the borders and collective working is essential for a swift response.
 - The border between England and Wales is porous and there are over 500 farm businesses that straddle the political border.
 - Safeguard the security of the UK.
10. The CLA has been developing proposals for *post Brexit* policy to support farming and rural businesses beyond the CAP. In doing so, we have been developing delivery models that are bespoke for England and Wales respectively, taking account of the different political, social, legal and cultural demands of each nation, but we have done this with the presumption that there needs to be an over-arching framework to ensure the farming and land-use system continues to ‘work.’¹

In which policy areas are legislative and non-legislative common frameworks needed?

11. The list produced by the UK Government the 64 areas where the EU law interacts with the devolutionary settlement in Wales must be the starting point for discussion. The number of headings relevant to the CCERA committee portfolio illustrates the extent that our sector has been influenced and shaped by our membership of European Union and that the environment, farming and land use are on the front line of dealing with the impact of Brexit. What the list fails to do however, is begin to describe the complexity and depth of impact each of these issues covers. Two simple words like ‘*Agricultural Support*’ do no justice to the complexities of support systems that our farmers have benefited from for the last 40 years and they do not begin to describe the social, economic, cultural and environmental impacts that any reform of the system will undoubtedly bring.

¹ <https://www.cla.org.uk/newopportunities>

12. Although we do not necessarily disagree with the list, we are concerned that we are looking at the issue the wrong way. The process is ‘top-down’ which is the best way politically to split the policy areas returning from the EU. More focus needs to be given to what level it makes sense for business/society to establish workable relationships and what is the best basis for these relationships?
13. The decisions which are taken over the next few months will fundamentally re-shape the environment and land-use sector for at least a generation, so appropriate thought needs to be given to getting it right. Time is undoubtedly against us, but the risk of starting from the list derived from the EU is that we bind ourselves to think in similar terms for the foreseeable future. The opportunity that Brexit delivers is the chance to redefine how we use our natural resources and how we farm and use these resources for delivering public goods and producing high quality food. Failure to take this leap is an opportunity lost.
14. Achieving this will require us all to reassess our understanding and look at the role of a framework through a different lens:
 - How do we want to use our natural resources in the future?
 - What strategic objectives do we wish to deliver from the countryside?
 - How do we create the conditions for new models based on payment for public goods?
 - How do Wales and/or the UK deliver on their international obligations on climate change, biodiversity, water quality?
 - What trade deals will the UK enter and what does this mean for the requirement to produce food for domestic consumption/export?

15. It is the answer to these, and similar questions that should shape our understanding of what frameworks are needed between the UK and Devolved Administrations, not a retrospective list of what we have had in the past.

Does the provisional assessment published by the UK Government set out an appropriate approach and is it complete? Do you have any specific concerns about the proposed categorization?

16. CLA Cymru acknowledges the contribution that the Secretary of State for Wales has made via his Expert Implementation Group in influencing the recently published UK Government provisional assessment. The Group’s systematic review of all the policy areas enabled a swift identification process and an insight into the scope of the legal challenge ahead. However, it was a top level analysis, and each individual area generated more questions than it resolved.
17. Broadly speaking, the conversations around ‘type’ of framework have focused on three categorizations:
 - i. Policy areas that require no further action as the matters are clearly devolved and there are no over-arching reasons why commonality would be beneficial.
 - ii. Policies where non legislative common frameworks may be required.
 - iii. Policies that need legislative basis for the framework.
18. While this may offer a useful starting point, it again illustrates our concerns that the whole process is about scoring political points and ensuring legal ease. It offers no examination of what is best for business when working in a multi-tiered government structure. There is little analysis or understanding of what the practical difference would be between legal and non-

legal frameworks and what impact this would have on the ground and what process needs to be in order to implement either approach.

19. Instead of an area by area framework, more consideration needs to be given to the principles that need to underpin the desired outcomes from any framework. One of the key areas that requires resolving is how the general and specific principles that currently underpin EU law apply in the UK *post Brexit*. These will not fall into any individual policy area, but ensuring that the ability exists to rely on these principles has become an important foundation of our legal system. It may be argued that these principles have been enshrined into Welsh law through our recent legislation, but it is less clear the extent to which these apply in England. Without consistency in how the principles are applied, it is unclear how any framework, be it legislative or not, can seek to achieve the same outcomes across England and Wales. This issue is even more acutely relevant to the CCERA committee in the context that the Principles of Environmental Law that derive from the Treaties such as the precautionary principle, sustainable development and the ‘polluter pays’ principle have been significant in their impact on the development of how we manage our natural resources.
20. The recently launched Defra consultation on the ‘Environmental Principles and Governance Bill’ confirmed that the UK Government is actively considering this issue and proposing its intention to require UK Ministers to produce and have regard to a statutory and comprehensive policy statement setting out how they will apply core environmental principles as they develop policy and discharge their responsibilities. While billed as an ‘English’ consultation, the outcome and next steps to this could be fundamental to how the discussion of frameworks progress. It does not feel appropriate that this should be an England-only consultation as the ideas around the underpinning principles need to be on a UK basis. It is not acceptable or appropriate for the consultation to deal with devolution in the way it does. We would urge that politicians in Cardiff and Westminster come together urgently and issue a joint statement as to how they envisage the principles working to form the basis of common frameworks and how they will interact with our current legal framework in Wales. Not doing that makes responding to the consultation in any meaningful way difficult for stakeholders, and indeed could lead to perverse outcomes.
21. The other part of the jigsaw not yet considered is how frameworks will function practically in the new world. Again, the recently announced Defra consultation and its proposition to establish a new environmental body could be integral to understanding this.
22. It is understood from the consultation that the proposed new body will have the function of ensuring environmental regulations are met, be able to respond to complaints and publicly hold government to account. It is also suggested that it will hold government to account with regards to the delivery of environmental law.
23. We await with interest to see the intentions of this new body with regard to interaction with Wales and the devolutionary settlement. Again, an early statement from the Welsh Government could lead to much more meaningful responses from Welsh Stakeholders. Some of the immediate questions we would consider relevant include:
 - i. Is the new proposed body for England only? Is there a need for a parallel in Wales? Would it be better if the body was to have a UK remit, thus able to act in a similar manner as the EU Commission?
 - ii. Who will pay for the new body and how?
 - iii. Who is responsible for appointing the Chair/Chief Executive of the new body?

- iv. What is the appointment process – assuming that the body will have remit in Wales, what role will the Devolved Administrations have in this?
- v. What will the relationship be between the new body and existing organizations – the Environment Agency in England, NRW in Wales and SEPA in Scotland?
- vi. What will the lines of accountability to Welsh and UK Ministers be?
- vii. Will the new body have the ability to issue sanctions for England and Wales? What happens to the fines collected?

How should both the legislative and non-legislative frameworks be developed and implemented?

24. The term ‘framework’ has been over-used and over-simplified. It has come to refer to all arrangements in all circumstances where EU-derived law is intended to return to Westminster control through the provisions of the European Union (Withdrawal) Bill in areas which have been devolved, but takes no account of the sensitivities of how they are created and where the balance of power lies. This ignores some fundamental questions:

- i. Is the highest level agreement based on principle or legislation – ie does Westminster legislation mean it is a ‘better’ framework or does the fact that there is political conscience and agreement to legislate in each of the devolved nations make it a stronger basis for agreement?
- ii. Why do legislative frameworks need to be Westminster-led?
- iii. How are frameworks viewed outside the UK - particularly when considering the expectations of third-party countries who may wish to enter trade agreements with us?
- iv. What happens if there is no cross-governmental agreement? What machinery is needed to resolve, arbitrate, decide and potentially sanction one government which is not willing to ‘sign up’ or indeed breaks a previously agreed framework?

How prescriptive should the common frameworks be and how much discretion should each administration have within the frameworks?

25. There can be no one single answer to this and the issue must be considered on a case-by-case basis. It will also depend on if, how, and where the underpinning principles are enshrined across the UK and where the new environmental body will sit in the architecture of governance.