

Governance gap: a review of progress and outstanding needs

October 2020

Introduction

Soon after the 2016 referendum, environmental NGOs highlighted fears of a potential “governance gap” as the UK left the EU.

Significant progress had been made in developing and improving EU environmental laws over 40 years, with strong institutions and mechanisms created to support and enforce them. While the UK was a member of the EU, these governance functions were provided by European bodies.

With the UK set to leave the jurisdiction of these EU functions, Greener UK suggested in 2017 that the UK needed to develop governance arrangements that:

- Monitored and measured the state of the environment in a fully transparent fashion.
- Ensured proper implementation of environmental law and policy.
- Checked compliance with environmental law and policy by government, business and other actors.
- Enforced environmental law by initiating investigations into possible breaches and responding to complaints from citizens and civil society organisations. Breaches must be identified and acted on, with the application of appropriate remedies and sanctions.
- Reviewed and reported information regarding both the state of the natural world and performance against policy objectives.
- Published environmental information fully and transparently.

[Greener UK briefing on the governance gap](#) (August 2017)

Similar conclusions were reached by others, including the [Environment Committee](#) of Senedd Cymru and a [sub group](#) of the Scottish government’s roundtable on the environment and climate change. Ministers across all four UK jurisdictions – the UK government and the devolved administrations in Northern Ireland, Scotland and Wales – agreed that action was necessary.

However, with just two months until most European institutions cease to have a role in UK environmental law, many gaps in environmental governance remain across the UK. This briefing looks at how prepared we are and asks what still needs to be completed.

UK government

The UK government has sought to address the governance gap, primarily, through the [Environment Bill](#), introduced to the Westminster Parliament in January 2020. This wide ranging bill seeks to address governance issues through a policy statement to embed environmental principles in ministerial policy making and the creation of an Office for Environmental Protection (OEP). Given the nature of the UK’s devolution settlement, these aspects of the bill apply to England and to any reserved matters; two schedules to the bill also extend them to Northern Ireland, subject to commencement by the Northern Ireland Executive.

While the bill had reached its committee stage in the Commons in March 2020, progress was then halted by the pandemic. As yet no date has been announced for work to

recommence. It therefore seems highly improbable that the bill will receive Royal Assent by the end of 2020 and, even if it does, that implementation can be complete by 1 January 2021, a position [acknowledged](#) by the Secretary of State.

While Defra has begun some preparatory work on implementation (for example, [recruitment](#) of a Chair for the OEP), it is not clear what – if any – interim arrangements are planned.

Scotland

Following the sub group's advice, the Scottish government undertook a [consultation](#) on environmental principles and governance and has subsequently included legislative proposals in its [Continuity Bill](#), currently being considered by the Scottish Parliament. This bill would introduce the EU environmental principles to Scots law and create a new environmental 'watchdog' to be known as Environmental Standards Scotland (ESS).

The bill is currently being considered at stage 1, and reports from the [environment](#) and [finance](#) committees have been published. The stage 1 debate is [scheduled](#) for 29 October. The bill also refers to a non-statutory, interim body being established to act as a forerunner to ESS, and the Scottish government has begun [recruitment](#) for a Chair and members of this body.

Wales

The Welsh government has also acknowledged this issue. It undertook a [consultation](#) in 2019 and the environment committee of Senedd Cymru has [called for](#) legislation. While the Welsh government had indicated that it would bring forward environmental principles legislation, no time was made for this in the legislative programme for the period until the Senedd elections in May 2021. It is unclear whether any proposed legislation will include the creation of a separate governance body, or whether discussions are ongoing about an extension of the OEP's role to devolved matters in Wales.

Meanwhile, with no legislation planned before the end of the transition period, the Welsh government has asked its advisory Task Force for views on what, if any, interim measures should be introduced. Part of this will be that the Welsh government will establish an interim complaints system, for which the [recruitment](#) of an Interim Environmental Protection Assessor is underway. The position on environmental principles is also unclear.

Northern Ireland

For Northern Ireland, while the UK Environment Bill does contain relevant provisions, these are conditional on implementation by the Northern Ireland Executive. The first stage of this process (a [Legislative Consent Motion](#) or LCM) was [passed](#) by the Northern Ireland Assembly on 30 June 2020.

Little or no preparatory work appears to have been done to set up the OEP in Northern Ireland. Despite the LCM, that supports the principle of its establishment, the legislation will need Royal Assent and commencement before any practicalities can be undertaken (such as recruiting a nominated Northern Ireland member or appointing specialist staff). Unlike for Scotland or for the England/reserved part of the OEP, no provisions have been made for interim arrangements in Northern Ireland. There is also no clear timetable for the development of a policy statement on environmental principles.

The relevant Northern Ireland department (DAERA) has indicated that it is to issue a discussion document on if and how it should implement governance provisions (or alternatives). However, this is yet to be published and there is no known timetable for its

publication, although it is understood that the Assembly's environment committee has asked for an update. The need for progress on environmental governance in Northern Ireland is underlined by the fact that many of the environmental aspects of the NI protocol require a 'competent authority' to be in place.

Cross-UK and international working

In addition to these developments in each jurisdiction in the UK, it has long been appreciated that environmental issues do not recognise political and legal boundaries and collaborative working is necessary across both geographic and jurisdictional boundaries. Issues related to the environment form a large proportion of the proposed [common frameworks](#) being developed by the UK government and the devolved administrations. Progress on finalising these frameworks has been slow and further delayed by the pandemic. In addition, work on common frameworks has been affected by both the impact of, and political controversy about, the UK Internal Market Bill, which may affect intergovernmental working after the end of the transition period.

Of course, our environment does not only face intra-UK boundaries. Notwithstanding Brexit, the UK is still biographically part of Europe, it has a land border with the Republic of Ireland and marine borders with the EU and Norway, all of which divide shared habitats. The UK government also seeks to play a role in international environmental efforts – for instance, it will host [COP26](#) on climate change and the Prime Minister recently signed the UN [Leaders' Pledge](#) for Nature. This international work requires effective intra-UK co-operation, so that all administrations are engaged and deliver on commitments, but also means that international governance lost by Brexit needs to be replaced (for example, membership of the [European Environment Agency](#)).

Analysis

While it is encouraging that all governments, across the UK, have recognised the challenges raised by the governance gap, progress in addressing them has been slow. Of course, it must be acknowledged that, more recently, progress has been hindered by issues arising as a result of the pandemic but it cannot be denied that much time was lost in 2018 and 2019. Nevertheless, **it remains important that the UK Environment Bill and the Scottish Continuity Bill complete their parliamentary passage as soon as possible and that ideas for improvements are considered.** In addition, the **Welsh government should urgently clarify its intentions for legislation and the Northern Ireland Executive must determine if/how to implement the provisions in the UK bill.**

No matter how quickly the above issues are addressed, however, it is now likely that – without some urgent action – **there will be many outstanding governance gaps as of 1 January 2021.** Although the bills for the UK/England and Scotland are in train, they are unlikely to be passed by the end of year and, even if so (as is likely for Scotland), full implementation will be impossible by that date. For Wales, there are no plans for legislation this year, and in Northern Ireland, no work has been commenced on implementing the provisions in the UK bill. It is essential, therefore, that **all administrations must urgently address the issue of what interim measures they propose to introduce.** While these will need to be non-statutory measures, some of which are already in preparation, the UK government and the devolved administrations must, from 1 January 2021, ensure:

- the application of the environmental principles to decision making; and
- the availability of some form of oversight or 'watchdog' function in advance of the establishment of formal governance bodies.

In addition, there is a clear need for further and faster progress with the programme of common frameworks – **the administrations must commit to publishing and engaging stakeholders on the planned common frameworks before the end of 2020.**

The planned common frameworks are, however, primarily technical, and essentially procedural – there is a clear need for these to be expanded to address common and agreed environmental ambitions. **The UK government and the devolved administrations should commit, jointly, to a policy statement of high level environmental objectives.**

To better inform policy making in the UK, good sharing of data and knowledge with neighbouring countries is essential. The UK administrations should also consider how to maintain relationships with the European Environment Agency, ideally through the UK retaining membership or, at the very least, some form of participatory status. This should draw on experience of the agency's [good relationships](#) with many non-EU/EEA countries, including in the Balkans, eastern Europe and North Africa.

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