

RESPONSE TO DEFRA CONSULTATION ON ENVIRONMENTAL PRINCIPLES AND GOVERNANCE AFTER THE UK LEAVES THE EU

Defra's consultation, hosted on the Citizen Space Webportal (an online platform), consisted of a number of multiple choice questions with some space for open text answers. This document sets out the open text answers.

PART 1: ENVIRONMENTAL PRINCIPLES

Which environmental principles do you consider as the most important to underpin future policy-making?

- Sustainable Development
- Precautionary Principle
- Prevention Principle
- Polluter Pays Principle
- Rectification at Source Principle
- Integration Principle

We consider all the above to be highly important.

On Sustainable Development:

Defra's 25 Year Environment Plan refers to the principle of 'net environmental gain', which is an important step forward in thinking. We believe this should be explicitly embedded within this set of principles. We suggest it could be incorporated into this principle of sustainable development, though we would also be supportive of it as a separate principle.

Either way, we believe this concept is not yet adequately defined and we encourage further development here, in consultation with appropriately competent stakeholders. We would expect the final definition to be evidence-based as well as acceptable to environmental and sustainability professionals because it will need to be operationally implementable.

(Other) Public Access and Participation Principle:

We strongly believe that our exit from the EU should not result in any deterioration of the environmental protections, standards and norms we have come to expect from our decades of EU membership (and from our contribution towards the development of those protections, standards and norms). As such, we are strongly supportive of the principles of public access to environmental information, public participation in environmental decision-making and access to justice in relation to environmental matters, which have since been recognised in the EU (Withdrawal) Act 2018.

Furthermore, we support a wider principle of transparency and inclusivity whereby multi-level and multi-sector engagement, accountability and empowerment underpin environmental policy development, and local buy-in and participation guide the design of local solutions.

(Other) Best Practice Stewardship Principle:

We wish to see a principle based on the efficient and sustainable management of our natural capital included in this Bill. We believe – in the strongest terms – that our natural resources need to be protected, maintained and actually enhanced to the point of supporting our ecosystems and the environment to be as resilient as possible.

We advocate a holistic and evidence-based approach to the interpretation and application of this principle. We believe this would complement and enhance the other principles, making them easier to achieve: it is wider than the principle of sustainable development, encouraging due regard for sustainability beyond development and planning; and it should provide the legislative foundation and justification for systems-based thinking in this sector.

(Other) Innovation Principle:

We advocate an innovation principle, whereby policy or regulatory decisions and controls consider the role of innovation as a driver for jobs, growth, social and environmental improvement.

Do you agree with these proposals for a statutory policy statement on environmental principles (this applies to Options 1 and 2)?

We are strongly supportive of this policy statement (and any subsequent changes to it) being open to consultation in due course.

We recognise the necessity of change. Indeed, we encourage regular reflection in line with the annual assessment and advisory functions we envisage for the new environmental governance body, and we strongly encourage that this reflection includes scoping for any unintended consequences that may have arisen and, accordingly, making plans to mitigate and rectify those. We know, for example, that perverse incentives developed during the implementation of the EU's Common Agricultural Policy and Common Fisheries Policy, to the detriment of the environment; we now have an opportunity to ensure that such issues are recognised and rectified now – and then much more quickly in the future should new issues arise, all for the public benefit.

Again, we encourage a holistic and interdisciplinary approach, based on the best available evidence, meaning the most up-to-date, robust and conclusive evidence (vis-à-vis inconclusive results, which should be dealt with under the premise of the precautionary principle).

Ultimately, and as previously stated, any changes must not represent any deterioration of the environmental protections, standards and norms we have come to expect from our decades of EU membership. Rather, the opportunity to enhance environmental protections, standards and norms should be embraced.

Should the Environmental Principles and Governance Bill list the environmental principles that the statement must cover (Option 1), or should the principles only be set out in the policy statement (Option 2)?

We strongly believe these environmental principles should be set down in primary legislation. We strongly believe that our exit from the EU should not result in any deterioration of the environmental protections, standards and norms we have come to expect from our decades of EU membership (and

from our contribution towards the development of those protections, standards and norms). As such, we were pleased to see these principles accepted and included in the EU (Withdrawal) Act 2018 (and, therefore, do not feel the need to detail our support for each principle).

PART 2: ACCOUNTABILITY FOR THE ENVIRONMENT

Do you think there will be any environmental governance mechanisms missing as a result of leaving the EU?

We think the governance gap will be greater in some areas than that described in the consultation document.

We should not underestimate the real power of comparisons and competition between peers, which is a feature of our current governance structure through our membership of the EU. We are set to lose this, as well as the pan-European expertise that is used to develop the EU directives against which we are currently held to account. However, some of the spirit of this could be re-created with our European neighbours post-Brexit as well as internally in the UK and internationally. The new environmental body could act as a focal point for this.

Do you agree with the proposed objectives for the establishment of the new environmental body?

- Act as a strong, objective, impartial and well-evidenced voice for environmental protection and enhancement:

We absolutely agree that this should be a primary objective for the new environmental body.

In order to provide this strong, objective, impartial and well-evidenced voice, we strongly advocate that this body's leadership is made up of individuals with proven, up-to-date competence in the environmental and sustainability sector and that they are signed-up to a relevant code of conduct and ethical principles, which would provide a level of assurance for good environmental governance.

In addition to the seven standard ('Nolan') principles of public life, we believe the individuals authorised to make key decisions in this body should be able and required to demonstrate their personal and professional commitment to environmental sustainability.

- Be independent of government and capable of holding it to account:

We absolutely agree that this new environmental body should be independent of government, especially in terms of its leadership and resourcing, which will enable it to perform its role of holding the government to account. It must be accountable to, budgeted/resourced by and only to be adapted or changed by Parliament (and in fact, the devolved administrations, preferably).

- Be established on a durable, statutory basis:

To ensure its durability, we believe this body should ultimately require an Act of Parliament to be passed in the event of its dissolution being proposed, thereby enabling this decision to be adequately scrutinised by the usual parliamentary procedures.

- Have a clear remit, avoiding overlap with other bodies:

We fully support clarity of role and remit for this new environmental body. We expect it to be an efficient addition to the wider structure of environmental governance in the UK, rather than an enhanced replacement of any existing body, thus we support the idea that overlap should be avoided. However, we believe that it is preferable to tolerate partial overlaps rather than allow any potential for gaps in governance.

- Operate in a clear, proportionate and transparent way in the public interest, recognising that it is necessary to balance environmental protection against other priorities:

We fully support clarity and transparency; transparency is particularly important for the new body to be judged to operate in a proportionate manner.

However, we do not recognise the necessity for environmental protection to be balanced against other priorities. Indeed, we believe it is the central role of this new body to prioritise – exclusively – the environment, its protection and enhancement, and balancing the whole matter of sustainability across disciplines and the many pressures in a way that no other body currently does or can. That should not compromise its ability to be objective and impartial, as set out in objective (a); but the caveat of objective (f) seemingly contradicts the spirit of objective (a). As such, we strongly object to the latter part of this proposed objective.

Should the body be able to scrutinise, advise and report on the delivery of key environmental policies, such as the 25 Year Environment Plan?

- Annual assessment of national progress against the delivery of the ambition, goals and actions of the 25 Year Environment Plan:

Yes. In addition, there should be full 5-year strategic reviews.

- Provide advice when commissioned by government on policies set out in government strategies and other published documents and how they are being implemented:

We believe the new environmental body should be able to offer advice as and when it deems necessary and not solely when commissioned by government to do so.

This is particularly important with regards to unintended consequences, which may arise as and when from hitherto ‘unknown unknowns’. In order to meet its objective of acting as a strong, objective, impartial and well-evidenced voice for environmental protection and enhancement, this new environmental body should be able to alert and advise the government as it sees fit.

Should the new body have a remit and powers to respond to and investigate complaints from member of the public about the alleged failure of government to implement environmental law?

This aligns to the principle of public access and participation detailed in the previous section and included in the EU (Withdrawal) Act 2018 (as access to justice in relation to environmental matters).

As previously stated, we strongly believe that our exit from the EU should not result in any deterioration of the environmental protections, standards and norms we have come to expect from our decades of EU membership. As such, we believe this mechanism must be made available to members of the public and we believe that it is appropriate for the new environmental body to take on this role and to work with the judiciary, for example by escalating any issue(s) for judicial review, when necessary.

Do you think any other mechanisms should be included in the framework for the new body to enforce government delivery of environmental law beyond advisory notices?

We believe that the enforcement function of this new environmental body is paramount. Therefore, the body should be given automatic standing to initiate judicial review proceedings when resolution cannot be reached through a conciliatory approach.

The new environmental body should also be able to initiate direct legal proceedings based on merit, including powers to issue quashing orders (which quashes a decision), prohibiting orders (which will prevent a public body from acting outside the law again), mandatory orders (which will impose an obligation upon a public body to perform its legal obligations) and compensation orders (where injury, loss or damage has resulted).

We also believe that sanctions for non-compliance should include financial penalties where appropriate, the funds from which should be ring-fenced for environmental restoration, remediation and enhancement (above and beyond the government's pre-existing commitments and duties).

The new body will hold national government directly to account. Should any other authorities be directly or indirectly in the scope of the new body?

We believe that the new environmental body should provide the accountability structure of all public bodies with decision-making authority over environmental matters in a way that complements and enhances the current structure of environmental governance, by which we mean this body should not replace existing bodies or replicate the governance functions already being undertaken but provide

an added layer of enforcement where there are gaps, for example in holding local authorities to account in environmental matters.

Such public bodies, however, can only and must only be held to account indirectly; enforcement sanctions such as financial penalties must be laid at central government, which is directly and ultimately accountable.

Do you agree that the new body should include oversight of domestic environmental law, including that derived from the EU, but not of international environmental agreements to which the UK is party?

We believe that this new environmental body should have oversight of international environmental agreements where there are gaps in the governance of these agreements at government level. The new body should advise the government on current and future international agreements, as well as monitor and assess the government's compliance with these and delivery against concomitant milestones, standards and targets.

Including such agreements would enable the new body to provide a level of coherence and co-ordination that is currently lacking and, therefore, meet the Government's ambition of this being a truly world-leading body.

PART 3: OVERALL ENVIRONMENTAL GOVERNANCE

Do you have any other comments or wish to provide any further information relating to the issues addressed in this consultation document?

We strongly advocate for the new body's remit to extend over all four countries of the United Kingdom. It should be co-created with the devolved administrations, enabling environmental protections and standards to be set jointly. These should be considered the minimum, baseline framework, which should not hinder any government in setting and enforcing higher standards if they wish to do so. The new body should be accountable to all four Parliaments/Assemblies.

We appreciate the difficulties in achieving agreement here, but we must insist that efforts are redoubled as the protection of cross-boundary environmental assets is at risk and a secondary governance gap will undoubtedly emerge.

Society for the Environment
IC1.14a Technology Centre,
Coventry Technology Park, Puma Way,
Coventry, West Midlands CV1 2TT
United Kingdom
T: +44 (0)345 337 2951
E: enquires@socenv.org.uk

www.socenv.org.uk

SocEnv
Society for the Environment