



Association of Directors of
Environment, Economy, Planning & Transport

Environmental Governance Consultation
Environmental Regulations EU Exit Team
Department for Environment, Food and Rural Affairs
Ground Floor, Seacole Block
2 Marsham Street
London SW1P 4DF

Submitted electronically to:

EnvironmentalP&GConsultation@defra.gsi.gov.uk

1st August 2018

Dear Environmental Regulations EU Exit Team,

Consultation on environmental principles and accountability for the environment - ADEPT response.

About ADEPT

The Association of Directors of Environment, Economy, Planning and Transport (ADEPT) represents Place Directors from county, unitary and metropolitan authorities, along with Directors of Local Enterprise Partnerships and corporate partners drawn from key service sectors. ADEPT members are at the very heart of maximising sustainable growth in communities throughout the UK. We deliver the projects that are key to unlocking broader economic success and creating more resilient communities, economies and infrastructure.

General comments

ADEPT welcomes and supports the Government's ambition set out in the 25 Year Environment Plan for this to be the first generation that leaves the environment in a better state than that in which we inherited it. We also welcome and support the ambition for the Environmental Principles & Governance Bill to create a new, world-leading, statutory and independent environmental watchdog to hold government to account on our environmental ambitions and obligations. The challenge is to translate these bold ambitions into effective outcomes, this will require strong political and professional leadership to achieve.

We were pleased to welcome a member of the DEFRA EU Exit team to a recent meeting of our Environment Board. His presentation stimulated a lively debate and I hope that some of that is reflected in our response below. We would be very keen to continue this dialogue with you beyond the timescale of this consultation and to contribute to the thinking around the emerging draft legislation.

We strongly believe that membership of the EU has been a benefit for the UK in terms of significant environmental protection and improvements across a broad range of issues. It is therefore positive that the EU White Paper published on 12th July restates the intention that the UK will maintain high environmental standards once it has left the EU, and that the UK is committed to upholding its international obligations under various agreements after it leaves the EU. The White Paper states that:

“In the context of a deep economic partnership, the UK proposes reflecting its domestic choice to maintain high regulatory standards for the environment. To that effect, the UK and the EU should commit to the non-regression of environmental standards. There should also be a reciprocal commitment to ongoing environmental cooperation, including in international fora, to solve shared global environmental challenges.”

We believe that the principles of international co-operation and non-regression should be added to the list included in the EU (Withdrawal) Act. This and other specific points are included in our responses to the individual questions below.

We look forward to the outcome of the consultation and to our continued dialogue with you.

Yours sincerely

A handwritten signature in black ink that reads "Paula R. Hewitt". The signature is written in a cursive, flowing style.

Paula Hewitt
Vice-President and Chair of the Environment Board
ADEPT

Environmental principles

Question 1: Which environmental principles do you consider as the most important to underpin future policy-making?

1.1 It is vitally important to develop a comprehensive statement of environmental principles in one place.

1.2 We support all the six principles listed in Annex A of the consultation document in May and the additional three in section 16 of the EU (Withdrawal) Act in June – access to information, participation on decision-making, and access to justice. It is difficult to prioritise any of these, but sustainable development is perhaps the most fundamental and underpins the others. However, this can be a very broad principle and open to differing interpretations so it is important that the statutory policy statement gives greater definition and clarity here.

1.3 With some of the other principles there is perhaps a logical running order – rather like the waste hierarchy – where some precede others: for example, it is preferable to prevent environmental damage in the first place, so prevention comes before rectification and polluter pays in the running order.

1.4 The list of principles is not comprehensive as it stands. Three further principles should be considered:

- International co-operation, working constructively with other nations to tackle cross-border environmental issues and support international agreements
- Non-regression, maintaining current standards and matching or bettering future EU standards
- Delivery of the targets for reducing greenhouse gas emissions, as required under the Climate Change Act 2008.

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

2.1 Yes, subject to our comments above, and with the commitment to consult on a draft version of the policy statement and for Parliamentary scrutiny before it is adopted.

2.2 The consultation document states that the scope of the policy statement would have restrictions:

“The application of the policy statement would exclude certain areas, such as national security and fiscal processes including Finance Acts. As is the case with the EU principles, it would not extend to individual regulatory decisions or administrative actions by government or its delivery bodies.” (para 41).

2.3 While the national security exclusion is clear enough, we are not sure that there should be a fiscal processes exclusion and would wish to understand the thinking behind this. We are also unclear about the meaning of the second sentence above – does “it” refer to the environmental principles or to the policy statement? We would expect individual decisions and actions to be consistent with both.

Question 3: 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)?

3.1 We understand that Option 1 has now already been set in the EU (Withdrawal) Act, so the principles will be included in the Environment Bill. This is a positive approach, it will give the principles greater weight and permanence but arguably less flexibility as any future changes will require further legislation. To give effect to the environmental principles and policy statement, Government (and potentially other public agencies) should be required to act in accordance with them.

3.2 The Bill will need to specify which public agencies the principles apply to. While the new environmental body will focus at the strategic and national level, holding Government to account, it should have the power to require Government to take action to address failures by other agencies.

Accountability for the environment

Question 4: Do you think there will be any environmental governance mechanisms missing as a result of leaving the EU?

4.1 Please see our comments below (question 12) in relation to climate change.

4.2 It is helpful to have current UK and EU oversight, scrutiny and enforcement mechanisms set out in one place (table 1). We support the Government's intentions to add something for overall scrutiny of implementing the 25 Year Environment Plan and a clearer complaints mechanism.

Question 5: Do you agree with the proposed objectives for the establishment of the new environmental body?

5.1 We agree with the objectives for the new body as set out in para 79 that it should:

- Act as a strong, objective, impartial and well-evidenced voice for environmental protection and enhancement.
- Be independent of government and capable of holding it to account.
- Be established on a durable, statutory basis.
- Have a clear remit, avoiding overlap with other bodies.
- Have the powers, functions and resources required to deliver that remit.
- Operate in a clear, proportionate and transparent way in the public interest, recognising that it is necessary to balance environmental protection against other priorities.

5.2 These objectives are sound, it is important that they are translated into effective delivery as the details of independence, remit and resources are developed.

5.3 In his foreword to the consultation document the Secretary of State says that new body will be “world-leading” and we believe that this should be an additional objective to give it force. We have suggested an additional principle of international co-operation (question 1 above), this should be reflected in an additional objective for the new body so that it works with its international peers to maximum effect.

Question 6: Should the new body have functions to scrutinise and advise the government in relation to extant environmental law?

6.1 Yes, and to suggest where new law might be needed.

Question 7: Should the new body be able to scrutinise, advise and report on the delivery of key environmental policies, such as the 25 Year Environment Plan?

7.1 Yes. We would support the body monitoring and reporting on the delivery of the 25 Year Environment Plan. We are keen to work with DEFRA and its delivery agencies to help develop and test performance measures for environmental outcomes.

7.2 It is also important that the new body has the power to scrutinise, advise and report on the extent that other strategic Government policies and actions are consistent with its environmental principles and policy statement, so that significant national decisions about transport infrastructure, nuclear power stations, renewable energy generation and waste management, etc. are informed by the advice of the environment body.

Question 8: Should the new body have a remit and powers to respond to and investigate complaints from members of the public about the alleged failure of government to implement environmental law?

8.1 It is right that members of the public should be able to complain about the Government’s action or inaction in relation to environmental law, and that there should be no diminution of this right after we have left the EU. However, we are not sure that complaints investigation should be within the remit of the new body, this feels rather more operational than the other strategic, national-level functions proposed. We would like to see further consultation specifically on this, with information about the scope and nature of complaints that might be investigated, and options for who might do so and how it interfaces with the remit of other bodies.

Question 9: 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?

9.1 Yes. The additional ones suggested – binding notices, intervention in legal proceedings, environmental undertakings – are all appropriate but do not go far enough. The new body must be able to issue stop notices to prevent further environmental damage whilst an investigation is underway. We would also want to add the powers to impose fines and to institute legal proceedings. Substantial fines are an ultimate sanction under the current EU regime, they are an effective deterrent

and arguably focus the minds of Ministers and civil servants in a way that other mechanisms do not.

Question 10: 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?

10.1 Not directly. Para 117a of the consultation document sets out the Government's preferred approach:

Firstly, the new body's possible functions of investigating and taking steps to require compliance could be directed only at national government, while covering the actions of other bodies indirectly (by requiring action by central government departments when needed). This is equivalent to current arrangements within the EU which are intended to ensure that the right outcome is achieved through the actions of central government. For instance, if the watchdog believes that an ALB or a local authority is failing to implement its functions, it could ask the national government to take the necessary steps to address the failing.

10.2 We agree that this is the best approach, keeping the new body focussed at the strategic and national level, while giving it the power to require Government to take action to address failures by other agencies.

Question 11: 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?

11.1 Yes. The new body should cover all UK law, not just that currently set by the EU. Where international agreements have their own scrutiny and enforcement mechanisms it would not make sense for the new body to duplicate that, but there may be a role for the new body to whistleblow i.e. draw to the attention of the relevant international authority any perceived breach or issue.

Question 12: Do you agree with our assessment of the nature of the body's role in the areas outlined above (climate change, agriculture, fisheries/marine environment)?

12.1 The consultation document proposes to exclude climate change because it is covered by the Climate Change Committee and the Adaptation Sub Committee, but to include agriculture and fisheries/marine environment. We agree that agriculture and fisheries/marine environment should be included.

12.2 We do not agree that climate change should be excluded. This is a more complex but fundamental issue: although there are international agreements, domestic legislation and compliance mechanisms, the CCC and ASC do not have the same legal status and sanctions as the new environment body hopefully will have. Climate change obviously impacts on environmental issues. It is difficult to see how the new body can operate effectively if it is outside the core objective of the Climate Change Act 2008. We have said above (question 1) that delivery of the legally-binding target for reducing greenhouse gas emissions by 2050 should be reflected as an additional environmental principle.

Question 13: Should the body be able to advise on planning policy?

13.1 Yes. The examples given – being consulted on the NPPF, and the implementation of planning law – are strategic issues that the new body will have an interest in. The new body should be able to suggest changes to the environmental aspects of planning law and policy.

Overall environmental governance

Question 14: Do you have any other comments or wish to provide any further information relating to the issues addressed in this consultation document?

14.1 Just to reiterate some of the key points above:

- We welcome and support the ambition for the Environmental Principles & Governance Bill.
- We would be very keen to continue this dialogue beyond the timescale of this consultation and to contribute to the thinking around the emerging draft legislation.
- There should be additional principles of international co-operation, non-regression, and meeting climate change targets (question 1).
- One of the objectives for the new body is that it should be world-leading (question 5).
- We would like to see further consultation about complaints investigation (question 8).
- The new body should have additional mechanisms including issuing stop notices, imposing fines, and instituting legal proceedings (question 9).
- We do not agree that climate change should be outside the scope of the new body, there should be further consultation on this (question 12).