

ENVIRONMENTAL INDUSTRIES COMMISSION RESPONSE - CONSULTATION ON 'ENVIRONMENTAL PRINCIPLES AND GOVERNANCE AFTER EU EXIT'

Introduction

The Environmental Industries Commission is the main UK trade association for the environmental technology and services sector, which contributes £62.5bn to the economy, employs 335,000 people and has significant export potential. Our members include environmental consultancies, firms developing and manufacturing environmental technology, waste management and resources companies, environmental laboratories and many others. Our members are at the frontline of almost all environmental challenges.

The ability of the environmental business sector to deliver innovative, cost-effective technologies and services that will enable the UK to improve its natural environment depend on an environmental policy and regulatory framework which is coherent, predictable, incorporates ambitious standards and is properly enforced. The Government's intention to pass a new Environment Act and to create a new body are therefore very welcome.

Key points

- The Government through Parliament should set the scale of the nation's environmental ambition, with the consequent targets and milestones enshrined in law.
- The proposed environmental body is a welcome development, but requires further strengthening in terms of its enforcement powers. In addition to its advisory and analytical role, it should have the ability to initiate legal action against government where legal targets have been missed.
- The body should, as the Government intends, cover domestically-derived (for example contaminated land regulation) as well as EU-derived legislation,
- The body should if possible be a UK-wide body, co-owned by the four nations of the UK.
- It should work closely with the Climate Change Committee to identify and come to a common view on links and trade-offs between climate change policy and broader environmental policy.



- It's scope should encompass all public sector bodies, not just central government. In particular it should hold public bodies to account for enforcement of environmental policy.
- The body provides an opportunity to supplement the highly technical reporting of environmental compliance data that the Government currently provides to the EU, with clearer summary reports intelligible to interested citizens.
- Environmental principles should be included in the Act itself.

Responses to the specific questions

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

- (a) the precautionary principle so far as relating to the environment
- (b) the principle of preventative action to avert environmental damage
- (c) the principle that environmental damage should as a priority be rectified at source
- (d) the polluter pays principle.
- (e) the principle of sustainable development
- (f) the principle that environmental protection requirements must be integrated into the definition and implementation of policies and activities
- (g) public access to environmental information
- (h) public participation in environmental decision-making
- (i) access to justice in relation to environmental matters

We would support the addition of a further principle of **non-regression** – i.e. that there should be no rollback of environmental protections, but an improvement of protections in further law reform.

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

Yes. This should be scrutinised widely and subject to parliamentary approval. We would support the recommendation of the Environmental Audit Committee's recommendation that the Environment Bill should include provisions for **all public authorities** to have a duty to act in accordance with the principles.





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)?

EIC would support Option 1, i.e. the Bill including the principles within it. Environmental principles by definition should be durable and long lasting, and this also replicates more closely the current situation where the principles are in EU Treaties.

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

The main gap will be that UK Ministers will no longer be accountable for delivering the environmental policy objectives they have set, in the way that they are accountable through EU mechanisms for complying with EU environmental directives, more specifically, we would endorse the analysis by Greener UK that

'The UK's departure from the EU will create a number of gaps in our governance mechanisms, which must be addressed, including the requirement to:

- *Monitor and measure the state of the environment in a fully transparent fashion.*
- *Ensure proper implementation of environmental law and policy.*
- *Check compliance with environmental law and policy by government, business and other actors.*
- *Enforce environmental law by initiating investigations into possible breaches and responding to complaints from citizens and civil society organisations.*
- *Identify and act on breaches, with the application of appropriate remedies and sanctions (including legal and financial sanctions).*
- *Review and report information regarding both the state of the natural world and performance against policy objectives.*
- *Publish environmental information fully and transparently.*





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

Yes, though we would the body should be capable of holding not just government, but all public bodies with an environmental remit to account.

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

Yes.

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?

The Environment Bill should create a series of statutory targets for the environment based on those proposed in the 25 Year Environment Plan, and the new body should provide **annual assessments, delivered to Parliament**, showing the government's progress (or lack of progress) to meeting those targets, providing advice on "policy gaps" (similar to Committee on Climate Change reports), and potential policies to meet targets.

These statutory targets, along with the role of the new body in holding government to account to meet those targets, will support the growth of the environmental industries and investment in new environmental infrastructure, by providing a degree of certainty as to the long-term outlook for environmental policy.

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?

Yes, provided that the body has sufficient resources to do this without weakening its ability to provide overarching analysis, advice and accountability on environmental issues.

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?

Yes, as the proposals are not adequate as the stand. Offering public advice to Parliament and Government, whether in the form of Advisory Notices or public reports, is important, but does not give the certainty needed that environmental goals and efforts to meet them will be persisted with and given appropriate priority.

In terms of environmental businesses, ongoing uncertainty weakens the investment case for developing new innovative technologies or scaling up production. For example, the current





draft Air Quality Strategy sets targets about reducing the number of people in areas with Particulate Matter levels above WHO guidelines. Delivering these targets would likely require technologies to reduce PM pollution from, for example, certain types of HGVs or from wood burning stoves, but if the businesses which could do this don't believe future governments will stick to this target they may not be willing to invest resources to do this.

The key aims and targets of the 25 Year Environmental Plan should be put in legislation and the body should have the powers, as a last resort, to take legal action against the government and hence to force action to attain these policies and targets. There could also be an option for the body to be able to levy fines on the Government, with these fines being paid into a 'national environment fund' the proceeds of which would be spent on national environment projects (e.g. enhancement of national parks) as directed by an independent board of trustees.

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?

The new body should have the remit over any public authority which has some involvement in the environment.

This reflects the fact, as stated in the consultation document but currently not recognised in its proposals, that the responsibility for the delivery of environmental policy and law rests not with **central government**, but by responsible authorities e.g. the Environment Agency, Natural England, local authorities etc. Therefore, they must be included within the remit of the body.

One area where it is vital that the body has a remit is in assessing the effectiveness of enforcement bodies such as the Environment Agency and local authorities in enforcing environmental legislation. Significant parts of the environmental enforcement chain have been hollowed out in recent years, so for example:

- Local authority Trading Standards Officers have been ineffective in enforcing energy efficiency regulations, no doubt largely due to lack of resources (of 122 local authorities contacted by EIC, none had ever levied a fine for failure to display an Energy Performance Certificate)
- In a major city council looked at by EIC, the reductions in the number of Contaminated Land Officers has meant each one is responsible for assessing 400 planning applications on contaminated sites a year, up from 150 a year in 2013. As a result fewer site visits to inspect the quality of land remediation are made.

We do not envisage the new body necessarily pursuing individual local authorities for poor enforcement, but we would expect it to make an assessment of whether there was a systemic





failure of enforcement and to be able to require the government and other public sector bodies collectively to address this.

The proposal to introduce an environmental net gain approach for development means that the new body should in particular have a role in national infrastructure projects, both to advise on and scrutinise national infrastructure planning, to ensure the highest standards of environmental protection.

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?

The body should be able to comment and advice on the Government's performance in delivering its international environmental obligations, especially where such obligations interrelate with domestic/EU-derived policies.

Question 12: Do you agree with our assessment of the nature of the body's role in the areas outlined above?

We support the proposals for the body to cover environmental impacts from agriculture and marine/fishery policy.

Climate change and broader environmental goals and policies are often interlinked, and can be complementary (energy efficiency) or conflicting (the dieselisation of the car fleet). Ideally one body would be responsible for holding the government to account on both issues to ensure that trade-offs and policy conflicts are recognised early and resolved. Also if, as we advocate, the environmental body had the power to take legal action against the government, it would have stronger powers than the Climate Change Committee which would be illogical. This suggests either the new body incorporating the work and expertise of the CCC, or being required to work closely with it.

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

One of the key proposals in the 25 Year Environment Plan is the embedding of an 'environmental net gain' principle for development including housing and infrastructure. This means that it is *essential* that the new body has the ability to both advise on planning policy and intervene in planning decisions in matters of particular environmental significance. One of the key aims of this kind of intervention would be to ensure that environmental net gain principle is being properly embedded.





For instance, in the new National Planning Policy Framework (NPPF), there was no mention of net environmental gain. This risks a lack of cross-departmental buy-in to the principles of 25 Year Environment Plan, which is a fundamental ingredient to its success.

Another potential function of this aspect of the body's remit is that it needs to be able to oversee environmental impact assessments.

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

UK-wide approach

A UK-wide approach would enable those environmental issues which are transboundary (such as the movement of waste and resources in response to say landfill bans in one part of the UK) to be assessed on a wider basis, and would also increase the expertise within and available to the body. It might also encourage some commonality of policy frameworks – while some competition between different parts of the UK terms of level of ambition is welcome, wholesale regulatory divergence (such as on the technical accreditation of vehicle emissions control systems for English Clean Air Zones and Scottish Low Emission Zones) would not be helpful.

We therefore see strong advantages in the body being co-owned and co-designed by each of the devolved national governments, in order to ensure that there is buy-in from each nation. We have seen evidence that this consultation was not shared in advance with the devolved governments, which suggest that Defra is not currently co-operating with those governments on the design and implementation of the new body. This would be an error and we would urge the UK government to ensure cross-national co-operation on this issue as soon as possible.

EU/Brexit negotiations

Ongoing uncertainty around governance and principles would make it more difficult for the UK to reassure the EU over its intention to avoid what the EU has called 'environmental dumping' i.e. seeking to give manufacturers a competitive advantage by allowing them to adhere to lower standards than competitors in the EU27. It is likely that the EU will press for some form of equivalence around environmental standards as part of a trade deal and so strong UK environmental governance could make it easier to conclude such a deal.

Timing

While it is hard to see the body being up and running by March 2019, it needs to be so by the end of the proposed transition period.

