

## **Environmental Principles and Governance after the United Kingdom leaves the European Union: Consultation on environmental principles and accountability for the environment**

Confor: Promoting forestry and wood ([www.confor.org.uk](http://www.confor.org.uk)) is a not-for-profit membership organisation which represents 1500 sustainable forestry and woodusing businesses across the UK. Confor represents the whole forestry and wood supply chain and focuses on strategic issues vital to the success and sustainable future of the sector. It produces regular policy papers, including several directly relevant to this consultation<sup>1</sup>.

### **Response to questions**

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

While all of the principles are key, ranking their importance is a somewhat superficial exercise, Confor has listed them in the order of importance in terms of their effect on '*underpinning future policy-making*' as per the question raised.

- *Integration Principle.* Environmental protection requirements must be integrated into the definition and implementation of policies and activities.
- *Prevention Principle.* Preventive action should be taken to avert environmental damage.
- *Rectification at Source Principle.* Environmental damage should as a priority be rectified by targeting its original cause and taking preventive action at source.
- *Sustainable Development.* Development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs.
- *Precautionary Principle.* Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.
- *Polluter Pays Principle.* The costs of pollution control and remediation should be borne by those who cause pollution rather than the community at large.

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<sup>1</sup> <http://www.confor.org.uk/news/brexit/>

In addition, to those listed above the following principles should also be included and prioritised to the same level as the principles listed above:

*A principle that environmental management should take place at the appropriate temporal and spatial scales.* Environmental issues are addressed at a scale that makes best ecological sense. For example, freshwater management is considered best done at a catchment-level, whereas climate change requires a much broader response.

*Non-regression principle.* There should not be a rollback of environmental protections, promoting a ratcheting up of ambition in subsequent law reform and prevention of any lowering of standards or scope. It could operate to ensure that environmental protections remain strong in the UK over time, setting a benchmark for constant improvement.

It is crucial to note that there is no single agreed definition of any of these principles or how they should be used. Their application in a UK context should, and will necessarily, have differences to their interpretation in the EU.

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

A statutory policy statement should be produced as set out below in the response to Question 3.

**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)?**

An amended version of Option 1 is preferred as neither option is sufficient to ensure that all principles are well-defined, commonly understood and that guidance on their interpretation is regularly updated in line with emerging scientific evidence.

Placing the principles on the face of the Bill will tend to see them and their definitions and subsequent interpretation as being 'set in stone'. A more flexible and methodical approach should be incorporated into the process.

While the need to develop domestic environmental principles arises from our exit from the European Union, the UK should not take an insular approach to their application and we need to ensure that they can be modified to reflect changing European and international standards. From a Welsh perspective, there is concern by Welsh Ministers that the UK Parliament is seen as the body to develop and maintain these principles without consultation with all parts of the UK. Instead a UK-wide policy statement should be co-developed.

An amended version of the process for Option 1 is recommended and set out as follows. The Environmental Principles and Governance Bill will include:

- a. The set of environmental principles (suggested in our response to Q1 above);
- b. A requirement on government to publish a UK-wide policy statement co-developed with the devolved administrations explaining how specified environmental principles should be interpreted and applied;
- c. A requirement for government to embed the interpretations outlined in the statutory policy statement on environmental principles in their policies and carrying out their relevant functions; and
- d. Powers for the new environmental body discussed in Part 2 to provide oversight of application of the statutory policy statement by government.

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

The consultation rightly identifies key procedural ‘gaps’ that will be created when we leave the EU, however, what the consultation fails to set out is the important contribution that the ‘softer’ aspects of governance make to the overall application of environmental law and with whom and which bodies this responsibility will lie in the future.

‘Soft’ governance is a fundamental and crucial tool for creating and maintaining effective and long-term systems capable of delivering our environmental ambitions. Soft’ governance is a widely recognised concept and its application can help lead to greater levels of accountability and professional autonomy by those bodies which are governed. For instance, long term monitoring, future trends analysis, access to data at a spatial level, horizon scanning and leadership are all potential governance gaps that the UK should look to maintain and improve in the future. Further consideration must also be given as to what access governments in the UK will have to EU data from our time in the Union. This could be critically important in understanding environmental change and impact.

The confusion posed by the lack of clarity on what future relationships between bodies and governments will look like is likely to hinder the government’s ability to fill the governance and enforcement gaps in question. A clear view of how a newly proposed body will engage with these various stakeholders is a crucial first step in assessing whether proposals are adequate.

Moreover, there are other governance gaps that have not been mentioned in the consultation document, namely what powers the new body will have to issue penalties to incentivise action.

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

Yes, we do agree with these objectives, particularly the final objective listed referring to a need for operating in a 'proportionate' way which balances environmental protection against other priorities. While the environment has intrinsic value, it must be recognised that people are fundamental to its protection and enhancement into the future and a socioeconomic and environmental sustainability go hand in hand (as recognised by the principle of sustainable development). In practice, this will mean that governments cannot default to individuals without support, frameworks, infrastructure or resources to achieve environmental delivery. What is capable and reasonable to expect of individuals or businesses is always changing, but including the final objective is key to ensuring that this balance is maintained.

More generally, the list of objectives falls short of describing what type of body it will be, how it will function and importantly where it will sit in the context of UK governance architecture. Indeed, there is no real explanation why all these objectives need to be delivered by one single body, and most crucially how the body will be able to effectively deliver them. To address this the new body should have the ability to impose financial penalties on governments who fail to adequately implement objectives.

There is substantial expert evidence that similar powers held by EU authorities have been key drivers of action in the past and this lever to ensure environmental policy is delivered in a timely, fair and sensible manner. This is particularly relevant to Confor and its members who manage land through Agri-environment schemes – through which circa 90% of funding to maintain and enhance wildlife habitats and biodiversity is estimated to be delivered.

A key concern raised in discussion is that being independent of Government was not in itself sufficient and that there were many examples of 'arm's length' bodies who have their independence curtailed through political pressure. To truly be outside of political influence the body must have the ability to impose sanctions in addition to its other 'softer' functions.

Again, it is important to recognise that the concept of a 'new body' is intended for England only and offers no insight or recognition of the approach advocated by UK government for frameworks. We advocate that a UK-wide framework is co-developed and the devolved administrations are not tacked on to the process at a later date.

**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?**

Yes. However, the consultation offers insufficient detail as to what this arrangement might look like and particularly how scrutiny would be delivered.

**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?**

In principle yes, however understanding the scope of this function is critical to answering the consultation question. Members of the public are also key stakeholders and the 'agents of delivery' for many environmental objectives – for instance, land managers and businesses who deliver regulatory action as well as participating in Agri-environment schemes. There is no mention of what power these individuals and businesses will have to address failures of government to ensure environmental delivery is implemented to agreed standards, including timely payment of activities contracted for the benefit of the environment and subsequently the public at large.

The lack of detail raises a number of other concerns as well, particularly around the devolutionary aspects. For instance:

- Is the ability to submit complaints limited to individuals in England?
- Is there capacity for a company to submit a complaint against only English institutions or does it extend to private businesses in receipt of public money
- What is the value of a non-legally binding statement/response from an environmental body? Is there a right of appeal? If the harshest sanction that the body can offer is a non-legally binding statement, what difference is it actually going to make?

**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?**

If the UK Government is truly committed to be the first generation to leave the environment in a better condition, then it must ensure it has appropriate powers, including an obligation for delivering effective enforcements and issuing appropriate penalties to achieve this.

**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?**

Yes, the new body should hold government departments and agencies, such as the Forestry Commission, to account as many of these bodies implement environmental delivery. However, the body should not have the ability to hold individuals and businesses to account as this would replicate existing functions carried out by these agencies themselves. Furthermore, as regards devolutionary issues, the remit depends on the function and more work is needed to clarify this before responding. Form must follow function, not the other way around. As has already been suggested, further analysis is required to understand the geographical jurisdiction of the new body.

**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?**

No, we do not agree. Environmental protection is a global challenge and scrutiny and oversight of international environmental agreements should be part of the body's remit. This is particularly important as a means of influencing and coordinating international environmental action and delivery.

If the suggested new body is not responsible for ensuring compliance with international environmental agreements, where does this sit? The body should oversee domestic environmental law, including that derived from the EU.

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

Too little information is given to be able to respond to this question comprehensively and a full and detailed consultation to investigate these areas would be essential. However, it is key to note that environmental and land management objectives and concerns are intertwined and cannot be isolated into separate areas. There should not be a duplication of existing bodies and functions which would represent poor value for public money, however it is difficult to see how the new body would not touch on aspects already under the guise of existing bodies. Greater integration and joined-up thinking is needed on the environment and for this reason further, more detailed consultation should be given to understand the nature of the body's role as relates to its remit and functions

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

No answer.

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



There are a number of basic questions not considered in the consultation that need close attention before decisions are taken to progress the process. These include:

- Cost – how much will the new body cost? Where does the money come from? What cost savings will be made in other areas to accommodate the new body?
- Appointments and positions – How will this work? Who will be responsible for appointments?
- Practical considerations – Where will the body be based? This becomes incredibly important if it is to have a UK function.
- Timeline – When will this new body become operable? Is it needed for the EU exit transition period? What happens in cases of overlap, where the European Commission and the new body may both feel they have jurisdiction?

## **Confor**

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