

Environmental principles and governance consultation: a briefing for local groups July 2018

This briefing provides guidance on Friends of the Earth's position on the current government consultation on Environmental Principles and Governance to aid campaigners who wish to respond.

Please do submit a response from your group and encourage members to put in individual responses, using the online portal [here](#). The deadline for submitting your response is 2 August 2018. For more information please contact kierra.box@foe.co.uk.

You can read the consultation proposals [here](#). Below we have outlined suggested answers for each of the questions in the consultation. Questions consist of multiple choice options followed by the opportunity to give a reason for your answer. We recommend editing these suggestions by adding your own personal points and unique or local examples. It's more effective to have a range of similar responses than a series of identical copy and pasted responses. However, if you don't have time to write your own response, you can copy and paste our suggested response. Bear in mind that these responses are written from the perspective of a group. If you are responding as an individual you might have to edit the phrasing for some answers. You can also save the form and come back to it later, complete it in whatever order is most comfortable for you, or even skip some questions altogether.

Some background to the consultation

The Principles and Governance consultation sets out the government's plans for the Principles and Governance Bill. This process will move EU environmental principles into UK law and result in an environmental watchdog to enforce environmental laws after we leave the EU and lose access to European enforcement mechanisms. This consultation is a chance for the public to learn about and input into the government's current plans.

Without a strong, independent watchdog, underpinned by robust environmental principles, to replace EU procedures we could be left with weaker environmental laws and a limited ability to hold those responsible for environmental damage to account. Friends of the Earth have been campaigning throughout the Withdrawal Bill process for such a watchdog, and for the transfer of all EU environmental principles, to replace EU procedures. Unfortunately the watchdog promised in the Withdrawal Bill isn't strong enough and public authorities won't be bound to act in accordance with EU environmental principles. The consultation document also omits important environmental principles that should be included in the Principles and Governance Bill. It's vital we take this opportunity to make sure we have a strong, independent watchdog to ensure our environmental laws are effectively enforced.

Answering the consultation

Introduction

[Fill in your personal details. If you're responding as a Friends of the Earth Local Group indicate that you are responding as part of an organisation and select 'Non-governmental organisation/charity' as the organization type.]

Part 1: Environmental Principles

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

Select: 'High Importance' for the environmental principles listed from 1a to 1f. Suggest 'animal sentience', 'the right to environmental information', and 'the right of access to environmental

justice' as other principles for 1g to 1i and rate these as 'High Importance'.

Reason: It's vital we transfer **all** of the current EU environmental principles into UK law to ensure we maintain our current environmental standards after Brexit, as promised by Theresa May and Michael Gove. We shouldn't be asked to choose between them or weaken the way they apply. This is why we are also including three EU principles currently missing from the consultation document: animal sentience, the right to environmental information and the right of access to environmental justice. It is important that this list is non-exhaustive to allow additional principles to be added in the future.

[The above point can be made in any of the boxes from 1a to 1i, though the box for 1i might be most logical. If you'd also like to write about why specific principles are important to you, [this ClientEarth summary](#) outlines all the main principles and links to a report giving some examples which you may find useful.]

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

Select: 'No'.

Reason: Neither of the two options set out in the consultation document go far enough. The bill must enshrine the EU environmental principles in primary legislation and ensure that the central role of the principles in EU law is replicated in UK law. The requirement to 'have regard to' the statutory policy statement is not enough as it does not give any indication of the weight that ministers should give to the principles. Instead we suggest that public authorities are required to 'apply' the principles (as Option 1 proposes setting these out in primary legislation) and to 'act in accordance with the statutory policy statement' proposed in options 1 and 2.

The proposals should be strengthened to include a requirement for all public authorities to fully act in accordance with the principles in the formation of policy and legislation; in public authority decision-making and in many other stages of environmental management; as per current arrangements. The scope of the watchdog should also be extended to monitor compliance and use legal methods of enforcement.

Without these changes the proposals will lead to a fragmented approach to the development and implementation of policy across different levels of government, and prevent effective enforcement of compliance. This would make it too easy for environmental protection to be avoided or subordinated to other priorities, such as economic growth or the requirements of new trade agreements. Anything less would be a weakening of the current arrangements and fail to replicate the current role that the EU environmental principles play.

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)?

Select: 'Option 1 – Environmental principles listed on Bill'.

Reason: Option 1 provides an important safeguard against future weakening of EU environmental safeguards by making sure that any attempt to remove current principles would require full parliamentary scrutiny. It would be important for this list to be non-exhaustive, to allow additional principles to be added in future. It is also important that all public authorities are required to 'apply' the listed principles in formulating and implementing policy.

Part 2: Accountability for the environment

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

Select: ‘I think the governance gap will be greater in some areas than that described in the consultation document.’

Reason: There are two main governance and enforcement gaps beyond those identified in the consultation paper. There is a lack of proper enforcement powers of the new body and no certainty of how citizens can raise complaints on possible breaches of environmental law in the future. Both of these must be addressed to ensure a governance gap will not arise upon the UK leaving the EU and if the Government’s aspirations for a world-leading body are to be realised.

National accountability mechanisms mentioned in the consultation don’t have the power to issue proceedings against government or an official role of examining compliance with environmental laws. They also don’t have the technical knowledge, expertise, or explicit commitment to the prioritisation of the environment. Therefore, current proposals do not match the role of the CJEU, EEA or EC. This makes it likely that the environment will be side-lined. Judicial Review, whilst somewhat effective, suffers from significant flaws and has been systematically undermined. It’s clear that the watchdog must resolve these issues to meet the enforcement, governance and other gaps in environmental protection that will arise upon the UK leaving the European Union.

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

a) Select: ‘Yes’.

Reason: The body can only truly be effective at enforcing environmental laws if it is independent from the government and has the power to legally hold public authorities to account with legal mechanisms. This is especially important if cooperative approaches fail and legal action is required. It must be impartial and well-evidenced to have authority and gain respect from across the political spectrum.

b) Select: ‘Yes’.

Reason: This is an important objective, but one that the current proposal doesn’t meet. It doesn’t set out clear standards, reporting requirements or legal mechanisms to define what ‘scrutiny’ entails for the new watchdog. Without this the watchdog won’t have the power to fulfil its role to take legal action where environmental laws are breached.

c) Select: ‘Yes’.

Reason: The proposed body will not fulfil objective a) effectively unless it is established on a durable, statutory basis. This objective would offer certainty of clear routes to effective environmental remedy on an ongoing basis, which will be vital to protect and enhance our environment.

d) Select: ‘Yes’.

Reason: The proposed body will not fulfil objective a) effectively unless it has a clear remit, avoiding overlap with other bodies. However, it is important to be clear that providing legal enforcement remedies on issues where voluntary mechanisms are already provided via other bodies does not equate to overlap.

e) Select: ‘Yes’.

Reason: Without the powers, functions and resources required to deliver its remit, the new body will not be able to operate effectively. Therefore, the body should receive government reports, review government plans and monitor government progress in meeting emissions targets and other environmental standards. The body should also have the power to issue legally binding enforcement notices if the government fails to meet its targets. In the event of government non-compliance the watchdog should be able to impose fines. The body must also have the power to investigate complaints from both citizens and organizations to adequately reflect the powers of the

EU Commission.

f) Select: 'Partially with amendments'.

Reason: The current phrasing of the objective is of some concern. The consultation places heavy focus on 'proportionality' and worryingly excludes regulatory decisions and administrative actions by government or its delivery bodies. This is concerning, as it is capable of compromising the extent to which principles will be implemented. Breaches of environmental law are not currently assessed against domestic policy interests but this would be changed by this objective. At EU level, the proportionality principle has been utilised as tool to prioritise environmental principles, rather than relegate them to a secondary concern. The consultation's explicit exclusion of matters concerning national security and fiscal security highlights a misapplication of the proportionality principle that we currently benefit from under EU law.

g) Select: 'Yes'.

Other objectives:

- Have the power to take legal action against all public bodies, including issuing fines, in order to enforce environmental law.
- Have a mechanism to enable citizens to bring complaints concerning breaches of environmental law.

Reason: We would add the above objectives to ensure that the public retain a direct right to environmental justice and to ensure the new body has the required 'teeth' to provide an enforcement function of equal strength as that currently available via the EU.

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

Select: 'Other response' – the new body should have functions to scrutinise the government but it should not have an advisory role.

Reason: A 'world-leading' governance body should have the power to ensure that government – and all public bodies - follow all currently applicable laws, no matter the source. However, rather than producing non-binding advice, it should have the power to take strong enforcement action in relation to extant law and laws deriving from the EU.

It would be more effective for a separate advisory body to work with government to produce specific targets in relation to both extant law and laws derived from the EU. The separation of an enforcement body with such powers from an advisory body is important to ensure effective accountability and effectively distributed resources.

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

a) Select: 'Yes'.

Reason: We agree with the intent behind these abilities, but it must be ensured that the body is primarily focused upon its core role of providing continuity in access to environmental justice and strong governance and enforcement mechanisms for legislation, rather than monitoring for government on progress in achieving its own policies.

The watchdog should be able to offer an annual assessment of progress against the delivery of the 25 Year Environment Plan as it is the force currently driving government commitment on the environment. However, levels of ambition within the 25 Year Environment Plan are already too low, and the body will be unable to enforce the plan's goals unless they are moved into legislation. The government must therefore bring forward an Environment Act setting out more ambitious broad

goals for environmental improvement and nature's recovery, and a process for establishing and enforceable, measurable goals in secondary legislation.

It is also vital that the implementation reports that will be published by the Secretary of State include the necessary scientific and technical information to enable a new watchdog to effectively assess legal compliance. The watchdog should also have the power to direct the government and public bodies on what should be included in such reports.

b) Select: 'No'.

The primary purpose of the body should be to scrutinise the government in relation to environmental law and to legally enforce environmental obligations and targets set by the government. It would be more effective for a separate advisory body to work with government to produce specific targets in environmental law.

c) Select: 'Yes'.

Reason: The body should have the ability to respond to government consultations but this shouldn't be its primary focus. The body should instead prioritise resources for its primary aim of providing strong governance and enforcement mechanisms for legislation.

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?

Select: 'Yes'.

Reason: It is essential that the body is able to respond to and investigate complaints from the public. Without this function we would see a major shift from current arrangements and a significant weakening of civil society's access (via the European Commission) to a free, accessible, relatively quick and effective mechanism for ensuring that public authorities comply with environmental law. Citizens should be able to file a complaint about a potential breach of environmental law free of charge. Complainants should be involved throughout the proceedings and people should not only be involved in identifying problems but in developing solutions. Judicial review is not a satisfactory replacement for EU procedures.

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?

a) Select: 'Include'.

Reason: The proposal to issue binding notices is welcome, but these must carry real weight rather than being advisory. The proposal within this consultation that the 'enforcement' body have only advisory functions marks a significant difference from current arrangements. In practice it would result in UK government and public bodies being held at a lower standard of environmental delivery, even if the statute book remained unchanged.

Little detail is provided in this proposal on how binding notices would work or in what circumstances they might be justified. Such notices would be of most value if they arose from a consideration of the merits of government decision-making. The use of binding notices should be extended to enforce delivery by all public bodies.

b) Select: 'Include'.

Reason: The new body must be able to initiate legal proceedings, and to intervene in proceedings brought by others where appropriate. The use of legal intervention should be extended to enforce delivery by all public bodies. It is essential that recourse to legally biting mechanisms is available. This is not only valuable in itself, but it also enhances the seriousness with which any advice and recommendations made by the watchdog will be taken.

c) Select: ‘Partially, include but with amendments’.

Reason: We welcome the use of environmental undertakings outlined in the consultation document, as this encourages a co-operative relationship between government and the watchdog. However, we do not agree that these should be used *instead* of legally binding enforcement mechanisms. Rather, they should operate as a precursor to legal proceedings should a co-operative approach fail in securing government compliance with environmental law.

d) [List any other powers you think the new watchdog should have to enforce environmental laws.]

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?

a) Select: Yes

Reason: Limiting the watchdog’s remit to the actions of central government departments, as proposed, is far too narrow an approach. Despite the consultation suggesting that the watchdog could request central government to force other bodies to remedy their breaches, this would be too inefficient, puts further pressure on stretched government departments, and will result in an ineffective regulatory body. It is much more efficient for the watchdog to act to remedy breaches directly itself.

It is bodies such as the Environment Agency, Natural England and local authorities, amongst others, that apply environmental legislation, so if the watchdog is to ensure that our environmental laws are followed, it is important that these bodies fall within its jurisdiction.

b) Select: ‘Yes’.

Reason: [Same as above.]

c) Select: ‘Yes’.

Reason: [Same as above.]

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?

a) Select: ‘Include all’.

Reason: A ‘world-leading’ governance body should have the power to ensure that government, and all public bodies, follow all currently applicable laws, no matter the source. This includes both EU environmental law retained under the EU (Withdrawal) Bill and domestic environmental law not based on EU legislation.

b) Select: ‘Include all’.

Reason: [Same as above.]

c) Select: ‘Include all’.

Reason: EU laws have often played a role in ensuring the UK complied with international obligations. Current proposals lack a procedure for ensuring our international obligations are met after Brexit. If the proposed watchdog does not have oversight over the international environmental agreements to which the UK is party, there is a risk that these obligations will not be met.

Question 12. Do you agree with our assessment of the nature of the body’s role in the areas outlined below?

a) Select: ‘Disagree’.

Reason: The Committee for Climate Change (CCC) plays an important advisory role on the implementation of the Climate Change Act. However, it has no enforcement powers and can't request information from government bodies. It is likely that the new body would have the powers to issue sanctions and initiate legal proceedings, thereby providing a synergistic role to the CCC; working with its advice and making sure the government meets its duties under the Climate Change Act. With 55% of greenhouse gas reductions subject to European Court of Justice enforcement, there's a significant risk that the UK's ability to achieve its targets will be harmed if this oversight mechanism isn't effectively replaced. If the body does not cover climate change it will raise the risk of a significant governance gap on climate laws after exit.

Not only does explicitly excluding the new body from considering climate change risk creating a governance gap on climate change, but it could mean that the assessment of policies that provide multiple public benefits (for example, peat bog restoration, which benefits water quality and biodiversity as well as climate) would be done in a less holistic way than might otherwise be the case.

b) Select: 'Partially agree'.

Reason: The remit of the body should cover all environmental law, including that of agriculture, fisheries and the marine environment. We recommend that the ambition behind the 25 Year Environment Plan is revisited and elevated before being transposed into enforceable secondary legislation. The remit of the body should cover all of the policy areas outlined in the consultation document in so far as they intersect with environmental matters. This includes agriculture, fisheries and the marine environment.

c) Select: 'Partially agree'.

Reason: [Same as above.]

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

Select: 'Yes'.

Reason: As suggested in the consultation document, the body should provide a mechanism to ensure the correct application of environmental law within the planning system. In our view, the new body should be tasked with a clear duty to engage directly with the planning process, planning decisions, development plans, and policies and proposals which raise issues of a significant, strategic nature.

Part 3: 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?

[A space for you to add any additional comments or information.]

Part 4: Consultee Feedback on the Online Survey

[Feedback on how easy it was for you to find the consultation documents, understand the questions, and complete the survey.]