

RESPONSE TO DEFRA CONSULTATION DOCUMENT:

'ENVIRONMENTAL PRINCIPLES AND GOVERNANCE AFTER THE UNITED KINGDOM LEAVES THE EUROPEAN UNION'

Consultation response from:

Victor Anderson victoranderson7@aol.com

on behalf of **Green House think-tank**, NGO, based in England.

There is no need to treat this response as confidential.

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

We want to see the EU Environmental Principles continuing to apply in the UK, and this is now a requirement of Section 16(2) of the European Union (Withdrawal) Act. We would add to this the principle of "Concern for the interests of members of future generations."

2. Do you agree with these proposals for a statutory policy statement on environmental principles?

• Yes but we are very concerned by the suggestion (para 33c) that the principles would apply merely on a "have regard to" basis, which is far too weak a form of words. Our preference is for "act in accordance with" or "in conformity with". We are alarmed by the suggestion in para 41 that fiscal processes would be excluded from the scope of the principles, because clearly public spending and taxation are major functions of government and the principles would be very easily undermined if this exclusion took place.

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)?

Option 1 is preferable, and it is also now a requirement of Section 16(1) of the European Union (Withdrawal) Act. This will put the environmental principles into the Bill, giving them a firmer basis in law than inclusion in an NPS, which would be too easy for ministers to change.

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

We are very concerned by the repetition of the term "environmental law". This only covers one relevant area, when arguably it is much more important to establish mechanisms to ensure that environmental considerations are fully taken into account in all areas of policy. For example, environmental principles should be applied to infrastructure development, transport policy, energy

policy, climate change, trade agreements, macroeconomic management and tax reform, and not simply to a narrowly-defined environmental “silo”.

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

There is a need for caution about the wording of some of these objectives: (i) the interpretation of “well-evidenced” must take into account the Precautionary Principle (in fact that is the whole purpose of the Precautionary Principle*); (ii) “avoiding overlap with other bodies” could prevent the application of environmental principles to areas such as infrastructure (given the existence of the National Infrastructure Commission) and the regulation of utilities; (iii) the mention of “proportionate” and “other priorities” obviously carries the danger that environmental principles will not be applied where departments other than Defra object, rendering them weakly implemented in practice.

* See Rupert Read ‘Precautionary Principle’, Green House website: <https://www.greenhousethinktank.org/precautionary-principle.html>

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

Yes, but again the term much “environmental law” is too narrow. The new body should also be concerned, as a minimum, with planning policy, infrastructure development, transport, energy, taxation, and trade. It should ensure that all areas of policy and implementation reflect the Environmental Principles. It is essential that the new body is not confined within the limits of Defra’s areas of responsibility.

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?

Yes, although again the question refers to “environmental policies”, when the new body should be ensuring that the Principles are applied to all areas of policy. If the principles are only seen to apply to specifically “environmental” policies, they will very easily be rendered ineffective.

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. It is difficult to see how the body could work effectively without public input of this sort.

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?

Advisory notices are clearly by themselves completely inadequate as an enforcement mechanism. It is essential that the new body should be able to require changes in policies and plans, and also draft

international trade and other agreements, through binding notices (subject to appropriate notice periods and discussion and appeal processes).

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?

All England and UK-wide public bodies should be held to account by the new body, together with private sector bodies holding contracts with the public sector to deliver goods and services to the public. Without this wide scope, compliance with the principles could easily be evaded through devolving responsibilities to local authorities or through outsourcing. The hint in para 116 (and similar wording elsewhere), implying potentially limiting the remit of the new body in practice to “the most significant national or strategic issues” apparently signals a worrying intention to not properly enforce environmental principles in the majority of instances where they apply.

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 new body should give advice to government about compliance with international environmental agreements. There is a particular need for advice about: (i) achieving non-statutory targets, such as those under the Convention on Biological Diversity; (ii) any areas where the new body comes to the view that UK domestic law does not fully reflect obligations entered into in international agreements; (iii) the implications of “planetary boundaries” science. The UK should remain a member state of the European Environment Agency.

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

The very widespread effects of climate change (e.g. on biodiversity and water supply) would make it impossible in practice to maintain the exclusion of climate change from the remit of the new body, particularly as regards adaptation, for example in the provision and design of infrastructure.

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

It is essential for the new body to advise on planning policy. In particular, it should report to Parliament its opinion on drafts of: National Policy Statements, National Infrastructure Assessments, and the National Planning Policy Framework (referred to in para 136).

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

The new body should have its own media communications department. The credibility of Natural England has been greatly damaged by having its media relations dealt with by core Defra.