



**Response by National Parks England to
'Environmental Principles and Governance after the United Kingdom leaves
the European Union - consultation on environmental principles and
accountability for the environment'
July 2018**

Introduction

National Parks England (NPE) supports the policy-making process by co-ordinating the views of the nine English National Park Authorities (NPAs) and the Broads Authority. It is governed by the Chairs of the ten authorities. We welcome the opportunity to contribute to this consultation. Our response represents the collective view of officers who are working within the policies established by the NPAs and Broads Authority and follows internal consultation amongst the officers.

Summary

- We support the establishment of an independent statutory body and have set out in this response the key functions and qualities that we believe it should have (see question 9 in particular).
- We wish to see the six environmental principles set out in Annex A transferred into UK law so that they continue to underpin Government policy post EU exit. In addition, we wish to see the principles of public participation, access to environmental information and access to justice included in the framework. We have also set out other important safeguards and arrangements that are key to securing the future health of National Parks and other protected areas.
- It is important that the environmental principles are established with a legal underpinning and set out in the Environment Bill.
- The new body must have powers to act and robust sanctions to apply.
- The new body should have the remit to respond to complaints from third parties including members of the public.
- The new body should be independent from Government and be well resourced.
- The remit of the new body must include climate change.
- The new body should advise on national planning policy.
- The new body should monitor all Government activity – not just Defra activity. All Government policy and activity has the potential for environmental impact including energy policy, housing, transport, defence, health, education and communications.

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

Annex A of the consultation document sets out 6 principles which are currently defined in EU Law. All 6 principles should be retained and transferred into UK Law.

The consultation asks which of these principles are most important but a ranking exercise is not appropriate because all the principles stated are equally important in forming an interacting and mutually supportive framework.

The three principles of *public participation*, *access to environmental information* and *access to justice* should be added. While these principles are covered by the Aarhus Convention (and so should be unaffected by leaving the EU) they should be explicitly included in any new UK law to give them equal weight to the other principles and ensure delivery of truly sustainable development and public participation.

As well as the overarching principles above, issues of key importance for the future health of National Parks which should be included in legislation are:

- The retention of the safeguards contained within EU legislation (the Birds and Habitats Directives as transposed in The Conservation of Habitats and Species Regulations 2017) in order to support and promote the Government's strong commitment to the best landscapes and wildlife sites in the UK.
- The arrangements for the protection and monitoring of designated wildlife sites and rare species and habitats should be based on standards at least as high as existing EU legislation.
- The objectives for improvements in river and standing water quality achieved as a result of the Water Framework Directive should be maintained and rigorously enforced.
- The legal requirement to assess the impact of large scale developments, plans and programmes should be maintained. The special thresholds identifying National Parks as sensitive areas should be maintained.

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

We support Option 1. Option 1 would provide greater protection of the principles than Option 2. The evolution of application of environmental principles (para 37) can be addressed through monitoring, reporting and guidance from the new body and, where necessary, enforcement action. The greater flexibility provided by Option 2 is not needed. The principles set out in the document have changed little since 1992. To achieve sustainable development there is a need to retain the simple basic principles. These can be supplemented by interpretation through secondary legislation if necessary. Option 1 provides greater reassurance from future Governments making ad hoc changes so gives the long-term stability that environmental protection and action needs and will assist with the delivery of the 25 Year Environment Plan.

Option 2 is too weak and provides no teeth for the regulator. It would be easier to implement but also easier to change at a later date and so will not assist with the long-term vision and ambitions of the 25 Year Environment Plan. Fundamentally, not listing the principles in the Environment Bill would fail to meet the promise by the Secretary of Stateⁱ of not only matching but exceeding the protections offered by existing EU Environmental Law in post-Brexit legislation.

We would welcome greater clarity on how the 'have regard duty' will be applied to 'relevant functions' of Government departments as well as their policy making. Such clarity will be required for the new body, for other government departments, and for the wider public.

The language of paragraphs 40 and 41 is outdated and implies that there is always a conflict between achieving environmental and economic objectives, whereas the principle of sustainable development is that economic, environmental and social goals can be met in a holistic way not through a process of trade-offs between competing aims. The principle of proportionality is an unnecessary addition to those set out under our response to Question 1.

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)?

It is important that the principles are established with a legal underpinning, set out in the Bill (Option 1), rather than appearing only in a guidance document. This will future proof the principles as they could only be altered through primary legislation and give them additional weight in policy and practice.

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

Current national enforcement mechanisms apply to businesses, organisations and individuals but not Government. So, what will be missing when we leave the EU is the oversight of Government actions and policy on the environment, actions that impinge on it and mechanisms for enforcement.

Severing links with the EU will remove the oversight function of the ECJ and key EU policy fora which have played a significant role in setting and enforcing environmental case law across the EU. After exiting the EU legal processes to examine the actions of Government, make judgements and take enforcement action will be reduced. The new body must have the powers and robust sanctions to replace the role of the ECJ.

Over the course of its membership of the EU, the UK (along with other member states) has been found in breach of EU environmental law, and a series of key cases have cumulatively built EU case law, which in turn has informed judgments and safeguard our environment. This case law is supported by the key environmental principles set out in the Treaty on the Functioning of the EU but not in the individual pieces of EU legislation that the EU Withdrawal Bill may transfer to the UK Statute Book. So, there would be no set of precedents and case law and no overarching context against which to make judgements without the principles.

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

The objectives of the new body are acceptable except for the last one about proportionality and balance of environmental versus economic goals. This implies that there is always a conflict between achieving environmental and economic objectives, whereas the principle of sustainable development is that economic, environmental and social goals can be met in a holistic way. Economic competitiveness, prosperity and job creation are all undermined if the environment is degraded. The work of the Natural Capital Committee and National Ecosystem Assessment have demonstrated this. The principle of proportionality is about making trade-offs and balancing competing objectives and can be used to claim that environmental actions are too expensive despite

the negative consequences and externalised costs of actions. We need to retain the concept of sustainable development as benefiting all aspects in a holistic way.

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

Yes, the new body could have a role scrutinising and advising on extant environmental law and making sure that it is fit for purpose and reflects the latest scientific information and good practice. The body should advise on all existing policy and legislation, such as planning, transport and housing, that has major environmental impacts.

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, the new body should scrutinise, advise and report on key environmental policies such as the 25 Year Environment Plan but it should also apply these roles to other Government policies as all policy has the potential for environmental impact including energy policy, housing, transport, defence, health, education and communications. The new body should have a role in monitoring delivery of the 25 Year Environment Plan but the body's oversight should not be restricted solely to policy and actions emanating from Defra.

We need an equivalent of the Equality and Human Rights Commission for the environment which has powers of enforcement and can apply meaningful sanctions.

The new body needs a very clear remit as to its advisory and regulatory roles as these could conflict. For example, what would happen if it was the advisor and regulator but the advice was ignored by Government or if the body's own advice turned out to have negative environmental consequences?

Questions 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?

The new body should have the remit to respond to complaints from third parties including members of the public as this is part of what we are losing by leaving the EU.

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?

The establishment of an independent statutory body as proposed will be essential for the enforcement of future environmental policy and principles. It is our view that the independent statutory body should:

- have the ability to hold Government (ministers) to account, and thus be independent of Government but report to Parliament and the public;
- be expert and able to undertake its own investigations;
- be evidence-based;
- be well-resourced to allow it to develop the expertise and stakeholder networks necessary to hold government to account on such a rapidly changing and complex area in terms of capacity and funding;
- be able to levy sanctions (including fines) on Government and others for breaches of environmental law and demand remedial action (including orders to restore or compensate);

- ensure implementation and compliance with environmental legislation; and
- be able to initiate legal action when necessary.

Starting out with issuing advisory notices is what EU does now but without the ability for the new body to escalate actions and sanctions in a meaningful way (including stop notices, fines and orders for restoration and compensation) how does the process escalate in a meaningful way to ensure compliance? Where are the levers needed to ensure pro-environmental behaviours and activities or ensure corrective actions or changes of policy? In NPE's view, the body should have the power to issue stop notices immediately if required.

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?

We agree that Option 'a' in paragraph 117 is the preferred option.

If the new body's scope and powers extend to other authorities that are already covered by the mechanisms set out in Annex D there is a risk of diluting the focus of the new body and of confusion and conflicts of interest. It could also create duplication of effort. The new body needs to replace the strategic oversight of Government activity that we are losing and not get involved in the detailed existing infrastructure that already governs other organisations.

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?

Yes, but the definition of 'environmental law' needs to be clear but not so narrow that the overarching environmental impacts of all policy cannot be considered. Otherwise, the new body would be ineffectual and conflicting policies will arise. There is a serious risk of the work of new body being 'siloed' and ineffective by only considering issues falling under Defra's responsibilities.

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

The exclusion of climate change from the new body's remit does not make sense as this is an overarching issue that interacts with all other policy and is probably the defining environmental issue of our time.

The body needs to scrutinise all Government policy, not just the work of Defra, and look at the interactions between the work of different departments to be truly effective. The new body should establish procedures and mechanisms for liaising with the Committee on Climate Change to give a coherent approach and take account of interactions between other policy areas and climate change issues – for example, transport policy.

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

The new body should advise on national planning policy. It could also review the application of environmental law within the planning system as suggested in paragraph 135 and make recommendations for improvements in practice as needed. There may be a role for the new body to scrutinise national infrastructure projects and this would require the establishment of protocols and procedures for working with the National Infrastructure Commission.

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

As we have said above (Q9) the new body will need to develop the expertise and stakeholder networks necessary to hold government to account on such a rapidly changing and complex area. In order to help develop the expertise and networks required quickly, we would advocate the use of secondments of experienced staff from the statutory agencies, local government and the third sector to help establish the new body.

Whilst the consultation refers to links with the Committee on Climate Change, it is obviously important that clarity is also provided over the relationship and responsibilities of the new body with existing statutory advisors on the environment and other existing regulatory bodies.

The new body should oversee all Government activity – not just Defra activity.

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ⁱ For example - Michael Gove, 15 March 2018: “Brexit, with the right decisions, can enhance our natural environment ... not only will there be no abandonment of the environmental principles that we’ve adopted in our time in the EU but indeed we aim to strengthen environmental protection measures and to create new mechanisms to incentivise environmental improvement.”