

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

The passage of Clause 16 of the European Union (Withdrawal) Act 2018 has pre-empted this decision. We are broadly supportive of the principles contained therein, subject to the qualifications in Qn 2 below.

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

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 our view that ‘principles’ which can be modified by Ministers through Statutory Instruments are hardly principles at all. It is essential that a statement of principles be encoded in primary legislation and be amendable only by Parliament (or by the devolved assemblies in devolved areas).

We note with concern the exclusion of national security and Finance Acts from the ambit of these principles (para 41). This means that any Government policy badged in these ways can be put through in contravention of environmental principles agreed by Parliament, and we strongly oppose such a suggestion.

Para 40 raises the issue of balancing the environmental principles against other principles, such as prosperity. We would commend the approach of the Well-Being of Future Generations (Wales) Act 2015, which outlines well-being goals (in effect, principles) covering the whole of Welsh Government activity (including Finance Acts) and requires Government and statutory agencies to show how their policies contribute to achieving all the well-being goals. It also outlines ‘ways of working’ to ensure that this happens and that the public can be fully engaged in considering the impact of policies not only now, but also on future generations. We believe that the England and UK reserved matters would benefit from a similar approach and would commend this to DEFRA. We would hope that the Inter-Governmental Agreement which has been made between the UK and Welsh Governments will allow Welsh policies on occasion to be adopted across the UK rather than a mechanism for imposing English solutions in the devolved nations.

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

Yes, and we support the recommendations made by the National Assembly for Wales’ Climate Change, Environment and Rural Affairs Committee to seek to fill this ‘governance gap’ in a way which both respects the devolution settlement and ensures tight governance for the environment across the UK - <http://www.assembly.wales/laid%20documents/cr-ld11622/cr-ld11622-e.pdf> especially Recommendations 7, 8 and 9.

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

As the consultation document states, there needs to be clarity regarding the body's role with regard to devolved matters, and the interaction between devolved and reserved responsibilities under the current devolution settlement and under any UK Frameworks agreed under the terms of the Intergovernmental Agreement. We are especially concerned at the possibility of a single UK agency having oversight of both reserved matters and matters which relate only to England, as there is a danger of 'mission creep' between these responsibilities and of conflict between the UK/England agency and devolved agencies. We believe that it may be necessary to have a UK and an England agency, or at least clearly delineated departments within the same agency, as well as bodies acting in the devolved nations.

With regard to reserved matters we are concerned that the objectives for the body as described in para 79 do not seem to include any enforcement function. Acting as "a strong ... voice for environmental protection and enhancement" is commendable, but – sadly – is unlikely to be enough to prevent breaches of the environmental principles by other agencies and private bodies. See also Qns 8 & 9 below.

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

Yes, subject to clarity regarding its role (if any) with regard to devolved legislation. The body must have expertise in the current UK devolved constitution as well as in environmental matters per se.

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, with regard to England.

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, with regard to England. We do not understand why para 94 states that any declaration by the body "would not be legally binding". We believe that there should be consideration of a body with quasi-judicial functions rather than one with advisory capacity only.

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, at the very least, all the mechanisms outlined in paras 105-107 should be available to the body with regard to England (and we believe that similar functions should exist with regard to Wales through a Welsh body or by agreement with a UK body).

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 wording of this question and the section preceding it (paras 113-118) illustrate the difficulty of establishing a coherent remit for a body covering both UK reserved and England only matters. The UK Government is both the “national government” for the UK, from which many areas are devolved to the devolved parliaments, and the “national government” for England, responsible in England for those devolved areas. The distribution of functions between “national” and local government is different in each of the four nations, and is also different in some parts of England (subject to devolution deals) as compared to others. This patchwork of responsibility at different levels requires careful thought in establishing the new body, in respect of:

- Ensuring that Government at one level cannot avoid scrutiny by simply devolving responsibility for a particular area to another level not covered by the new body; and
- That there is expertise within the body, including the right of appointment to its governing body, relating to all levels of government with regard to which it will carry out functions.

We would recommend extensive and detailed consultation with the devolved administrations, local government representatives from all four nations, and non-departmental public bodies in all four nations prior to laying legislation on this matter.

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?

We support the inclusion of both EU derived and purely domestic law within the remits of all UK and devolved environmental bodies post Brexit, as the distinction between these types of law will gradually erode as changes are made outside the EU.

We also believe that the new UK body should have at least an advisory role with regard to other International environmental agreements to which the UK is party. It seems perverse that important International treaties which affect how environmental principles are effected in the UK should be completely outside the remit of such a body. We understand the argument for existing enforcement (as opposed to advisory) functions to remain in the hands of the international bodies where they currently reside.

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

We support the current work of the Committee on Climate Change and believe that the two bodies (and any devolved bodies) should be required to work closely together on their respective remits.

The discussion of agriculture (paras 128-9) and fisheries (paras 130-3) fails to take into account the implications of the interaction of devolved and reserved functions and requires considerable further thought as part of the mechanisms of the Intergovernmental Agreement.

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

Yes, in England. In Wales, planning law and guidance is evolving in a significantly different direction to that in England, due to the Planning (Wales) Act 2015 and the Well-Being of Future Generations (Wales) Act 2015. See our comments above regarding the interaction between devolved and reserved aspects of planning law.

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

Paras 137-143: We support the suggestion that the body/bodies established should be answerable to Parliament rather than to the Government. In the case of any body with pan-UK functions, and *a fortiori* any body with functions relating to devolved areas, it should be jointly sponsored by all four parliaments (analogous to the arrangement regarding the CCC, para 187, but with parliaments rather than Governments being the sponsoring bodies). There should be a statutory requirement to report to the devolved parliaments as well as to the UK Parliament, and a statutory right for all legislatures to nominate members to the governing body.

13 (sic). Overall, how satisfied are you with our online consultation tool?

The restriction to 250 words in answering each question, while encouraging conciseness, seems unreasonable when such an important and complex area of law is under consideration. "The devil is in the detail" and we suggest that DEFRA needs the expertise of respondents to this consultation on many of the details.

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