

ENVIRONMENTAL POLICY FORUM

c/o Society for the Environment

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Mary Creagh MP
Chair, Environmental Audit Committee
House of Commons
London
SW1A 0AA

1st June 2018

Dear Mary,

Re: EAC Inquiry into the Government's Environmental Governance Consultation Paper

I am writing to you on behalf of the Environmental Policy Forum (EPF). The EPF is a network of UK environmental professional bodies promoting environmental sustainability and resilience for the public benefit. The EPF's member bodies have a collective membership of around 70,000 environmental professionals, many of whom are individually chartered in environmental practice, science and engineering disciplines.

We welcome your inquiry into the Government's Environmental Principles and Governance after EU Exit consultation paper.

Since September 2017 we have been calling for the following key points to be addressed, and we attach to this letter the previous submissions that we have made which also address this subject - and in short:

1. Environmental Body or bodies

Transferring the letter of the law through the EU Withdrawal Bill is only part of the process of ensuring that environmental protections remain as strong or stronger than they are currently and to ensure effective governance of environmental law once the UK exits the EU.

We will equally require means to ensure all the UK governments and their regulatory agencies are held to account for their implementation of the detail of the law, as leaving the EU will bring an end to the investigative role of the European Commission and the direct jurisdiction of the Court of Justice of the European Union (CJEU). As the situation currently stands, there will be what is being referred to as a 'governance gap'.

To fill this governance gap, any new England or UK environmental governance body or bodies must be established in primary legislation, be Independent, expert and adequately resourced. They must have powers to compel formal Ministerial responses and be directly accountable to Parliament(s). This body, or bodies, needs to be operational before exit day, or the day when the jurisdiction of relevant EU institutions no longer applies.

Any new body or bodies must replace all of the functions and powers that are currently being delivered by EU institutions and that will no longer apply after EU exit. Specifically, any proposed new body or bodies must collectively have the following powers and functions:

Monitor and report on:

- The state of the environment – in a consistent and comparable fashion
- Performance against environmental policy objectives, milestones and targets

Assess compliance with environmental law and policy:

- The implementation of laws, plans and policies by the regulatory bodies
- The legality of decisions and compliance with statutory obligations

Enforce environmental law:

- Initiate its own investigations and take forward complaints from citizens and civil society organisations in line with the UK's obligation under the Aarhus Convention
- Establish or take cases to an independent court or tribunal
- Have powers to apply a full range of remedies and sanctions from negotiations through to a range of fines or penalties in line with current ECJ powers

Determine or make recommendations on:

- Standards, targets and milestones for environmental domains such as freshwater and air quality based on best available scientific information
- Changes to environmental law and policy necessary to achieve and fully implement domestic or international targets or obligations
- The resources required by regulatory bodies to properly carry out their functions and duties

Provide for protection of cross-boundary environmental assets:

- Any joint body necessary should be co-designed by, and report to, all four governments
- Any agreed joint environmental standards or protections should be minimum standards with countries permitted to set and enforce higher standards if they wish to do so

2. Environmental Principles

The Environmental principles that will be lost when the EU Treaties no longer apply to the UK must be replicated in domestic law. They should be underpinned by primary legislation and must apply to all future Government policies and legislation

Environmental Principles must, as a minimum, include the following:

- The precautionary principle
- The polluter pays principle
- The proximity principle that environmental damage should as a priority be rectified at source
- The principle to promote sustainable development at home and overseas
- the principles that preventive action should be taken

There are additional principles that could also be embedded in domestic law to drive forward a world-leading environmental governance framework. For example:

- Pollution Prevention: reducing or eliminating pollution at source based on taking an integrated approach to environmental protection
- Integrated approach: systems thinking should underpin an integrated approach to environmental management, helping to prevent shifting environmental burdens and optimise outcomes
- Transparency & Inclusivity: multi-level and multisector stakeholder engagement, accountability and empowerment should underpin environmental policy development; local level buy-in and participation should guide the design of local solutions
- Innovation Principle: policy or regulatory decisions and controls should consider the role of innovation as a driver for jobs, growth, social and environmental improvement

3. Possible models

The above sections set out the red lines or criteria against which any Government proposals can be judged and any key gaps highlighted. This section notes some possible models that the Government could adopt or draw upon:

- The Committee on Climate Change provides a good model for an independent organisation that provides scrutiny and makes recommendations on targets or “budgets” that could be applied to the wise use of natural resources.
- The National Audit Office provides an example of a body that is directly accountable to Parliament
- The New Zealand Commissioner for the Environment and the Environment Court of New Zealand provide many (but not all) of the functions and hold many of the powers that will be needed once the UK exits the EU and could be adapted for the UK

We are, of course, also preparing our joint response to Defra's consultation, as our members have significant concerns around these matters, which we have repeatedly raised with MPs and Peers during the EU (Withdrawal) Bill's passage through Parliament.

Our organisations are committed to working with Parliament to achieve our mutual goal of an improved environment for future generations. We would welcome the opportunity to discuss our concerns with you and to explore how we can best work with you to inform this important work, drawing upon the collective expertise of our members.

In particular, if it might be helpful, I am also Chair of the Yorkshire & Humber Academic Health Science Network, based at Calder Park, Wakefield, and would be pleased to meet with you to discuss in Wakefield at any convenient time.

Yours sincerely,

Professor William Pope
 Chair, Environmental Policy Forum
 Chair, Society for the Environment