

ENVIRONMENTAL POLICY FORUM

c/o Society for the Environment

RESPONSE TO THE DEFRA CONSULTATION ON ENVIRONMENTAL PRINCIPLES AND GOVERNANCE AFTER THE UK LEAVES THE EU

Introduction

1. The Environmental Policy Forum (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.
2. We welcome Defra's consultation on environmental principles and accountability for the environment. We set out our response to this forthwith.

1. Environmental Principles

- 1.1. We welcome the Krebs/Letwin amendments to the EU (Withdrawal) Bill and strongly support the inclusion of the following environmental principles in primary legislation:
 - 1.1.1. the precautionary principle;
 - 1.1.2. the prevention principle;
 - 1.1.3. the proximity (rectification at source) principle;
 - 1.1.4. the polluter pays principle;
 - 1.1.5. the principle of sustainable development;
 - 1.1.6. the integration principle;
 - 1.1.7. and principles relating to public access to environmental information, public participation in environmental decision-making and access to justice in relation to environmental matters.
- 1.2. There must be no rollback on the principles we have come to expect and accept as common practice or minimum standards, nor any deterioration of these standards.
- 1.3. In addition, we advocate:
 - 1.3.1. a principle of transparency and inclusivity, whereby multi-level and multi-sector engagement, accountability and empowerment underpin environmental policy development, and local buy-in and participation guide the design of local solutions;
- 1.4. In the 25 Year Environment Plan, the Government set out its intention to embed a 'net environmental gain' principle for development. We welcome this ambition but feel the concept at present is poorly defined. This Bill represents an

opportunity to embed this principle in legislation, but also to develop its definition to ensure it delivers genuine environmental equivalence and improvement at appropriate spatial and temporal scales, and is evidence based.

1.5. Any policy statement that is used to set out the government's position on how the principles should be interpreted and applied must be clear and explicit.

1.5.1. This policy statement and any potential future changes to it must be fully and transparently consulted upon, and properly scrutinised by Parliament.

2. A New, Independent and Statutory Body

2.1. *Form* It is imperative that the new body is:

- 2.1.1. genuinely and wholly independent from government, in terms of its leadership, resourcing and role;
- 2.1.2. UK-wide, directly accountable to Parliaments/Assemblies;
- 2.1.3. adequately and efficiently resourced;
- 2.1.4. includes environmental experts;
- 2.1.5. and cannot be dissolved without Acts of the relevant Assemblies/Parliaments.

2.2. *Functions*

- 2.2.1. The new body should monitor and report on the state of the environment in a consistent and comparable fashion, and assess performance against environmental policy objectives, milestones and targets. In England, these objectives, milestones and targets should be those currently being developed for Defra's 25 Year Environment Plan.
- 2.2.2. The new body should use existing data for this monitoring and assessment function. Data should be reported to it by the relevant body/bodies and the new body should have the authority to command such data if these are not forthcoming. This must not represent a major resource imposition on existing bodies, either in terms of data collection or otherwise. Where data is not available, the new body should have powers to undertake or commission such research or assessments.
- 2.2.3. The new body should enforce environmental law, whether by initiating its own investigations and taking forward complaints from citizens and civil society organisations in line with the UK's obligation under the Aarhus Convention and/or by establishing or taking cases to an independent court or tribunal.
- 2.2.4. The new body should determine or make recommendations on milestones, standards and targets for environmental domains such as freshwater and air quality based on the best available scientific information. It must be able to advise on changes to environmental law and policy as necessary to achieve and fully implement domestic or international targets or obligations, and also to make recommendations on the resources required by regulatory bodies to properly carry out their functions and duties.

2.3. Powers

- 2.3.1. The new body must have the ability and authority to carry out its functions as set out above. It must also have a range of effective enforcement mechanisms to use at its discretion, though in a transparent and proportionate manner.
- 2.3.2. Where resolution cannot be reached through a conciliatory approach, the body should be given automatic standing to initiate judicial review proceedings. However, given that judicial review only examines the process and legality of decisions rather than technical merit, it should also be able to initiate direct legal proceedings based on merit, including powers to issue quashing orders (which quashes a decision), prohibiting orders (which will prevent a public body from acting outside the law again), mandatory orders (which will impose an obligation upon a public body to perform its legal obligations) and compensation orders (where injury, loss or damage has resulted).
- 2.3.3. Sanctions for non-compliance should include financial penalties where appropriate, the funds from which should be ring-fenced for environmental restoration, remediation and enhancement.
- 2.3.4. The new body should also be able to intervene in third party legal proceedings relevant to its remit.

2.4. Scope

- 2.4.1. The new body's remit should cover all public bodies with decision-making authority over environmental matters; however, the body should engage with central government first in matters relating to public bodies for which central government has clear and direct accountability.
- 2.4.2. The new body should complement the work of bodies such as the Climate Change Committee and the Joint Nature Conservation Committee, which should retain their abilities to provide advice and report on targets; the new body should ensure that advice is properly considered and agreed targets are met by the relevant body/bodies. This extends to future bodies, such as the Shale Environmental Regulator.
- 2.4.3. The new body's remit should include providing advice to government on the development and implementation of national planning and infrastructure policy, and scrutinising decision-making concerning Nationally Significant Infrastructure Projects to ensure environmental law and principles are upheld.
- 2.4.4. We strongly advocate for the new body's remit to extend over all four countries of the United Kingdom. It should be co-created with the devolved administrations, enabling environmental protections and standards to be set jointly. These should be considered the minimum, baseline framework, which should not hinder any government in setting and enforcing higher standards if they wish to do so. The new body should be accountable to all four Parliaments/Assemblies.

2.4.5. The remit of the new body should include the international agreements to which the UK is party and the obligations to which the UK has committed. The new body should advise the government on current and future international agreements, as well as monitor and assess the government's compliance with these and delivery against concomitant milestones, standards and targets.

3. Overall Environmental Governance

- 3.1. We do not envisage this body replacing the current institutional framework relating to environmental matters, whether they be devolved or UK-wide. It is to transfer the functions and powers that are currently being delivered by EU institutions and that will no longer apply after the UK leaves the EU.
- 3.2. The regulatory scrutiny and enforcement actions undertaken by existing statutory bodies must not be duplicated, but rather supported and, if anything, strengthened.
- 3.3. An efficient and effective new body, with overarching and meaningful duties and powers, could enable us to drive forward our world-leading ambitions.

4. The EPF stands ready to advise or otherwise assist in the development of environmental principles and governance as we prepare to leave the EU. Our organisations are committed to working with the Government to ensure the environment is protected and enhanced for the public benefit. We would welcome the opportunity to discuss our position with you further and to explore how we can best work with you to inform this important transition.

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



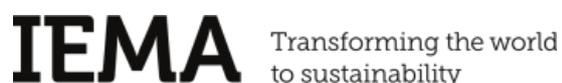
Dr Stephanie Wray, President
Chartered Institute of Ecology and
Environmental Management



Terry Fuller, CEO
Chartered Institution of Water and
Environmental Management



Dr Colin Church, CEO
Chartered Institution of Wastes
Management



Martin Baxter, Chief Policy Advisor
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Adam Donnan, CEO
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Dr Peter Spillett, President
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Daniel Cook, CEO
Landscape Institute



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Notes:

1. The Environmental Policy Forum (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. www.socenv.org.uk/EPF
2. The Chartered Institute of Ecology and Environmental Management (CIEEM) is the leading professional membership body representing and supporting 5,000 ecologists and environmental managers in the UK, Ireland and abroad. Our Vision is of a society which values the natural environment and recognises the contribution of professional ecologists and environmental managers to its conservation. www.cieem.net

3. CIWEM (the Chartered Institution of Water and Environmental Management), is the leading independent Chartered professional body for water and environment professionals, promoting excellence within the sector. www.ciwem.org
4. CIWM (the Chartered Institution of Wastes Management) is the leading professional body for the waste management sector representing around 6,000 individuals in the UK. Established in 1898, CIWM is a non-profit making organisation, dedicated to the promotion of professional competence amongst waste managers. CIWM seeks to raise standards for those working in and with the sector by producing best practice guidance, developing educational and training initiatives, and providing information on key waste-related issues. www.ciwm.co.uk
5. IEMA is the membership body for more than 14,000 environment and sustainability professionals worldwide. We support individuals and organisations in setting and achieving globally recognised standards for sustainable practice, in turn driving the development and uptake of sustainability skills. We add value for our members by providing the knowledge, connections and recognition necessary to lead change within organisations at all levels. We are independent and international. We apply the combined expertise of our members to provide evidence and influence decision-making, working towards our vision of transforming the world to sustainability. www.iema.net
6. The Institution of Environmental Sciences (IES) is a membership organisation that represents professionals from fields as diverse as air quality, land contamination and education - wherever you find environmental work underpinned by science. A visionary organisation leading debate, dissemination and promotion of environmental science and sustainability, the IES promotes an evidence-based approach to decision and policy making. www.the-ies.org
7. The Institute of Fisheries Management (IFM) is an international organisation of people sharing a common interest in the modern management of recreational and commercial fisheries. www.ifm.org.uk
8. The Landscape Institute is the chartered body for the landscape profession. It is an educational charity working to promote the art and science of landscape practice. The LI's aim, through the work of its members, is to protect, conserve and enhance the natural and built environment for the public benefit. The Landscape Institute provides a professional home for all landscape practitioners including landscape scientists, landscape planners, landscape architects, landscape managers and urban designers. www.landscapeinstitute.org
9. The Society for the Environment is comprised of 24 Licenced Bodies, with over 500,000 members between them. It received a Royal Charter in 2004, which empowers it to regulate the Chartered Environmentalist (CEnv) and Registered Environmental Technician (REnvTech) registration in the UK. There are now over 7,000 environmental professionals currently registered who share a common vision of delivering sustainability through environmental professionalism. www.socenv.org.uk