

Submission in response to: DEFRA Consultation on Environmental Principles and Governance: 2nd August 2018

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The Edge is a voluntary built and natural environment think tank and is multi-disciplinary in a landscape remarkable for the number of single-discipline institutions it contains. We stand for being:

- **Interdisciplinary:** bringing built environmental professionals together, inclusively along with others who share their concerns.
- **Open and creative:** working across all disciplines with competitors and collaborators.
- **Strategic in approach:** encouraging accessible and shared knowledge and seeking to connect place, practice, policy and research.
- **Visionary:** in identifying the issues and in promoting effective and urgent responses to both local and global challenges.
- **Professional:** developing a broad-based ethic of responsibility to social and environmental demands based on an equitable global framework.
- **Business-like:** furthering the skills and capacity of the UK construction industry to promote prosperity and deliver a better built environment.

Response:

We welcome this consultation and the opportunity to contribute to shaping the UK's future environmental framework. Our response has been informed by expertise in a range of disciplines, as appropriate for such a wide-ranging consultation document.

It is our view that the proposals in the consultation fall short of replacing the current arrangements, especially in terms of governance, and we have summarised our concerns and recommendations below.

UK-WIDE COLLABORATION

The consultation proposes that the Environment Act and governance body ("watchdog") would only apply in England. We note the intention to seek collaboration with the other nations of the UK, however this is a statement of intent only.

We think this is a fundamental area of weakness in the proposals, since environmental concerns extend across national borders, effective environmental guardianship requires collaboration across those borders, and this in turn offers opportunities for economies of scale, data sharing, better use of resources etc.

The Edge believes strongly that **environmental governance should be developed at a UK level**. The Climate Change Act (CC Act) and associated Climate Change Committee (CCC) are an example of this being achieved and delivering effective UK-wide advice and oversight. This could be the minimum common ground, with each nation free to implement higher standards or more extensive governance should they wish to.

We of course fully respect the devolution agreements and would stress this must be a collaborative effort rather than being seen as led by Westminster for the other UK nations to adopt, as also pointed out by the Environmental Audit Committee (EAC)¹. In order to set the tone for future collaboration and increase chances of success, **the devolved administrations should be approached as soon as possible to jointly develop a draft of the upcoming Environment Bill and discuss possible governance arrangements.**

PART 1 - ENVIRONMENTAL PRINCIPLES

We understand a number of questions in this consultation have been superseded by the Withdrawal Act (§16), which requires the inclusion of environmental principles in an Act rather than a policy statement.

We welcome this.

We would however note that the Withdrawal Act requires “Ministers of the Crown” to “have regard to” these principles. We strongly recommend that the Environment Act should expand this to **all public authorities** (and statutory undertakers, such as water utilities), who should be required to **“have special regard to” the principles** and to **“act in accordance with” the policy statement**. This would make legislation more effective and less open to interpretation.

We would also recommend the inclusion of the following principles, as recommended by the EAC:

- principle of **non-regression** i.e. maintaining at least the same level of environmental regulation in the future; this would match the UK government's commitments, including those made in the context of Brexit negotiations;
- principle of **protection**, which is included in EU Treaties and requires the EU to pursue a high level of environmental protection; this would match the government's commitment to maintain similar (or improved) levels of environmental protection post-EU exit;
- principles already included in EU and international law, such as: **making use of the best available scientific knowledge**, from the Paris Agreement; **conserving ecosystem structure and functioning, in order to maintain ecosystem services**, from the Convention of Biological Diversity; and **anticipating, preventing or minimising the causes of climate change and mitigating its adverse effects**, from the UN Framework on Climate Change – as also recommended by the CCC and Adaptation Sub-Committee (ASC).

In addition, we would note that the environmental principles listed in the Withdrawal Act are largely focused on democratic and policy processes and on environmental protection rather than **progressive improvement to environmental regulations and outcomes**; these improvements are required if government is to meet its stated intention to leave the environment in a better state than it inherited it, and if the 25 Year Environment Plan is to be delivered in practice. In general we think there is value in clear measurable targets, with monitoring and regular reporting; this focuses action and public awareness, as exemplified by the Climate Change Act and carbon budgets; however, we are also aware there is no widespread consensus yet on how this could easily cover a wide range of environmental issues. We would therefore recommend the following:

- Government should publish **measurable targets that at the very least reflect the 25 Year Environment Plan**, against which progress could be monitored by the new body;

¹ EAC report, 24th July 2018

- In parallel, Government should consider options for how the Bill could require **progressive improvement** of environmental regulations and/or outcomes. As a minimum and in the immediate term we would recommend a requirement for regular reviews of how the requirement for improvements could be enshrined in statute (e.g. every 5 years).

We would also recommend the inclusion of other principles which would help interpretation in the accompanying policy statement, such as a principle of **prudent and rational use of resources**, **UK-wide collaboration** between the devolved administrations and a principle of **public money for public good**.

Altogether, these principles would demonstrate the UK's commitments to environmental leadership, offering **export opportunities** for UK actors; this can already be seen for example in the field of climate action, where the Climate Change Act has afforded a degree of commitment and policy stability and established the UK as an international leader; this has supported the development of export opportunities for technical and policy expertise, as recognised by government in its Clean Growth Strategy².

We also think the concept of **environmental rights** needs consideration as it could contribute to other objectives such as reducing health inequalities, to which environmental factors are a known contributor³. We understand it may need to be covered elsewhere in the Environment Act than as one of the principles.

We would stress the associated benefits of environmental protection and enhancements, including **public health benefits**. There are numerous and well-documented synergies in this domain, including for example (but by no means limited to) **air pollution**, **water quality**, and the **proximity to green space and the natural environment**.

These could in turn offer **increased efficiencies**, including much-needed gains to **healthcare** but also **systemic improvements**. For example, in the field of water quality for human consumption, the Drinking Water Inspectorate already highlights the difficulties and costs of water treatment associated with industrial and agricultural pollution incidents, and the need for better prevention at source⁴.

PART 2 – ACCOUNTABILITY FOR THE ENVIRONMENT

Powers of the body

Enforcement is the most significant and important role to fill if the UK is to match and improve on current arrangements once it leaves the EU. Enforcement mechanisms, including the potential for sanctions if necessary, are crucial to ensure proper and effective application of the law. In the past 15 years approximately half of cases decided between the UK and the European Court of Justice were related to environmental matters, with the large majority of cases ruling that the UK was in breach of its obligations⁵. In addition, breaches in compliance at the local level could benefit from strategic scrutiny to identify failures and possible remedies, for example in the case of planning, building regulations, or local air pollution control.

² "The UK's International Leadership and Actions to Reduce Emissions Overseas", in *Clean Growth Strategy*, page 27, October 2017 with April 2018 amendments

³ See for example the work of the Institute of Health Equity, including the 2010 report "Fair Society Healthy Lives (The Marmot Review)"

⁴ http://www.dwi.gov.uk/about/annual-report/2016/Drinking_water_2016_Public%20water_supplies_England.pdf

⁵ Institute for Government, Jill Rutter, Gove's post-Brexit environment watchdog, 15 November 2017
<https://www.instituteforgovernment.org.uk/blog/gove-post-brexit-environment-watchdog>

The stated preferred option in the consultation is for the body to have solely advisory powers. We strongly advise that this is not sufficient, and **falls very much short of the government's commitment to ensure at least the same level of environmental protection** as currently afforded by the European Commission and Court of Justice. We agree that a conciliatory approach should always be preferred first, including co-operation and advisory notices. **However, the body must have effective enforcement powers**, for example the power to initiate Judicial Review and the power to issue binding notices that are enforceable in court⁶. The use of fines should also be considered, as it can be a powerful deterrent when used strategically; we would however recommend that they are not applied when under-resourcing is a likely reason for non-compliance in the first place. Any funds generated from fines should be clearly ring-fenced for environmental protection and improvement projects.

These powers should apply to central government and to all public bodies (and statutory undertakers). In the large majority of cases we would expect enforcement in the form of advisory or binding notices to local authorities and other public bodies (and statutory undertakers), with central government ultimately held to account if stronger enforcement was needed.

We agree the body should be **stable, well-funded, and independent from government** and it should report directly to Parliament, for example with similar appointment, funding and reporting arrangements to the National Audit Office.

We think that, beyond enforcement powers, there is also a **need to ensure strategic long-term direction of environmental policy**, a role currently provided by the EU Commission. We are aware this may conflict with enforcement powers, and would recommend government to consult with experts in this field to ensure these functions are maintained once the UK leaves the EU, whether through a new body or through extending the remit of an existing one.

Scope of the body

We have two main areas of concern about the scope of the proposed body:

1 - Climate change is currently excluded from its remit, on the basis that it is already looked after by the CC Act and CCC. As pointed out by the CCC and ASC themselves⁷, the separation of climate change from other environmental issues is artificial; there would also be serious limitations with leaving climate change action to the CC alone post-Brexit:

- The CCC only has an advisory and scrutiny role. While government has so far met its carbon budget obligations, and we very much welcome this, there may in the future be the need for enforcement measures to ensure the UK meets its 2050 target⁸.
- The CCC's scrutiny role ultimately only applies to UK carbon budgets; as pointed out by the CCC and ASC themselves, a number of climate-related policies are currently enforced at the EU level e.g. those related to the EU Energy Performance of Buildings Directive and Energy Efficiency Directive⁹. Filling this enforcement gap once the UK leaves the EU is particularly important since progress in reducing emissions from the building sector is urgently needed if the UK is to meet its carbon reduction targets¹⁰.

⁶ For a detailed review of options, we would refer for example to ClientEarth, "A New Nature and Environment Commission", May 2018

⁷ Letter from the CCC and ASC to Secretary of State, 30th May 2018

⁸ as recommended for example by the recent report "10 Years of the UK Climate Change Act", by the Centre for Climate Change Economics and Policy (CCCEP) and the LSE's Grantham Institute, April 2018

⁹ Letter from the CCC and ASC to Secretary of State, 23rd July 2018

¹⁰ CCC Annual report, 28th June 2018

- Excluding climate change from the body's remit would miss opportunities for synergies and neglect the two-ways interactions between the natural environment and climate change: in particular, the environment's capacity to adapt to climate change is intrinsically related to its current state. The proposed separation would also risk presenting government with conflicting advice due to lack of joined-up thinking; for example, it would be theoretically possible that one body would advise on the use of biomass on carbon reduction grounds, without taking account of environmental impacts such as air quality and biodiversity. We think that, without encroaching on the work of others, the new body could collaborate with and use the advice of other bodies, in particular that of the CCC's ASC^{7,9}.

2 - Overall remit: it is not clear from the current consultation proposals whether the body's remit would be limited to the implementation of the 25 Year Environment Plan, DEFRA policies, or overall government policy. We strongly recommend that **its remit should not be limited to the 25 YEP nor indeed to DEFRA policies alone**. In particular, it must be able to advise on and if necessary take action related to policy areas that interact with the environment, including from **BEIS, MHCLG, and the Department for Transport and the Department of Health and Social Care**, all influential on and affected by the delivery of environmental objectives in practice, for example:

- Flooding risk is influenced by a number of factors including site location of development and the planning of green infrastructure from local to regional levels, which in turn can deliver other environmental objectives such as air quality, water quality, and biodiversity;
- Transport patterns, with associated air pollution, noise, and carbon emissions, are dependent upon infrastructure and planning decisions from the regional to local planning level, such as site allocation, density, mix of uses, and improved conditions for active travel (walking and cycling).

Interaction with planning: we would not expect the body to intervene in individual planning decisions, as this could duplicate existing functions and would require significant resources; however, we would expect it to:

- Be able to advise on strategic matters and relevant policy, including the National Planning Policy Framework;
- Carry out investigations as it saw fit, including on local authorities and other public bodies; for example, it may identify systemic issues through the review of planning policies or decisions in the whole (without reviewing individual cases);
- Take appropriate enforcement action if required (noting our previous point that in the large majority of cases we would expect it is central government that should be ultimately held to account).