



Environmental Principles and Governance after the United Kingdom leaves the European Union: Consultation on environmental principles and accountability for the environment

Historic England is the Government's statutory adviser on all matters relating to the historic environment in England. We are a non-departmental public body established under the National Heritage Act 1983 and sponsored by the Department for Digital, Culture, Media and Sport (DCMS). We champion and protect England's historic places, providing expert advice to local planning authorities, developers, owners and communities to help ensure our historic environment is properly understood, enjoyed and cared for.

We are pleased to have the opportunity to respond to this important consultation in and set out below our response to the questions posed in Appendix 1.

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

All of the examples of environmental principles given in Annex A are important, and both the polluter pays and precautionary principles (cited in the main document) are fundamental to the sustainable stewardship of our environment. However, as with our response to question 3 (below), we think it more appropriate that these principles (and any possible weighting in terms of future policy-making) are consulted upon during the drafting of the statutory policy statement.

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 the suggestion of a statutory policy statement

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)?

We think that it would be better for the principles to be set out in the policy statement (option 2), rather than within the Bill itself. In our view this would be less constraining in terms of flexibility for periodic future updates. International approaches to the environment and sustainable development are developing continuously and the ability in future to refresh the principles periodically in the light of changes in thinking. For example had the principles been established prior to 2015 it would have been desirable to review them in the light of the 2015-2030 UN Sustainable Development Goals. In addition inclusion in the policy statement would allow more time to consult fully and reach consensus on these vital principles.

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

While accepting that it will be important to ensure that all appropriate mechanisms are in place **the key issue from Historic England's perspective is to ensure that the unique opportunity for cultural heritage to be incorporated in the principles is taken. Cultural and natural environments are two sides of the same coin and should be indivisible.** Because the EU has not considered cultural heritage as an area of competency, it has not (with the notable exception of the EIA Directive) legislated for it. This created a system which made an artificial and arbitrary distinction between the cultural and natural environments, arguably affording greater weighting to one than the other, and which ran contrary to other international legal frameworks, such as the Council of Europe's European Landscape Convention and UNESCO's World Heritage Convention, both of which view the natural and cultural environments as inseparable. This approach also runs counter to our own





domestic legislation, such as the NERC Act 2006 which says that “*Natural England will be able to conserve and enhance the English landscape for aesthetic, cultural and historic purposes as well as those carried out for habitat protection purposes*”, and counter to guidance such as the NPPF which also takes an integrated approach to cultural and natural environments. Integrating cultural heritage in the principles would therefore be consistent with domestic legislation and guidance and would avoid the perpetuation of the artificial distinction between the cultural and natural environments created by the EU’s approach to policymaking. **To this end, we propose that a clear statement on the scope of ‘the environment’ be included within both the legislation and the policy, confirming that this includes both the historic and natural environments.** We recommend an additional environmental principle should be added to Annex A:

***Integrated Management of the Cultural and Natural Environment.* The environment of England is the product of the interaction between people and nature over thousands of years and its cultural and natural values should be sustained by integrated approaches to management**

We would be happy to discuss the rationale for and wording of this additional principle further if this would be helpful

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

We fully support the ambition to be the first generation to leave the environment in a better condition than we found it and agree with the proposed objectives set out in paragraph 79, provided it is clear that the definition of environment includes cultural as well as natural components

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

We agree with all the proposed functions as set out in paragraphs 81 and 82, and think it particularly important that scrutiny relates to both domestic and retained EU law (not simply the latter).

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?

We think it would be a useful and important role for the new body to scrutinise delivery of government policies such as the 25 Year Environment Plan as part of its function.

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?

While we would support the principle of the new body having such powers, in exercising them it would be important to avoid duplication with any other bodies already similarly tasked.

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?

We note (in relation to paragraph 96, and our response to question 4, above) that the European Commission only oversees member state implementation of the aspects of the environment it has directly legislated for. It is important that the new body should help to enforce government delivery of all aspects of UK environmental law, not merely those derived from EU legislation.





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 support the option set out in paragraph 117a that the new body's work in investigating and requiring compliance should be directed at central government departments and that other bodies, including NDPBs, should be covered indirectly. In this respect it will be important to ensure that government departments that sponsor NDPBs specify clearly in funding agreements the environmental objectives they expect NDPBs to deliver or support and that resources to enable delivery are identified.

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 agree with the government's proposal that the new body should have a remit in relation to both current and new environmental legislation, and we suggest that this should include that relating to cultural heritage. We also agree that the new body should not have a remit in relation to international environmental law as this would duplicate and confuse the existing compliance mechanisms.

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

While we agree with the assessment of the body's role in relation to the areas outlined, we would stress that the list is not an exhaustive one. In support of our comments, we note that in relation to agriculture in particular (paragraph 128), the government has made the following statements on cultural heritage:

Heritage Statement (Nov 2017) "*Within the farmed environment, historic buildings and places are supported by the Common Agricultural Policy. After the UK has left the European Union, we will continue to offer protection to our precious landscapes and rural heritage. We will work across government to continue to protect rural historic sites and features, enhancing the character of our beautiful landscapes and supporting geodiversity.*"

25 Year Environment Plan (January 2018) "*We will introduce a new environmental land management system... It will incentivise and reward land managers to restore and improve our natural capital and rural heritage.*"

Health and Harmony command paper consultation on the new Agriculture Bill (May 2018) "*Enhanced beauty, heritage and engagement with the natural environment Agriculture and farming practices shape our rural historic environment, our distinctive landscape features and our historical monuments. The conservation and enhancement of our cultural heritage contributes directly to a healthier environment, benefitting people, offering support to thriving rural economies and national prosperity.*"

In light of these statements, we think it important that the new body also has oversight of matters relating to the historic environment in these and other policy areas, not merely in relation to the natural environment.

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

The analysis of the context in the consultation document is sound, particularly in relation to the importance of the new body functioning alongside, but with clear boundaries between, established planning systems, and not being involved in individual decisions. We believe that the new body could have an important role in advising on how best environmental considerations should be built into





strategic planning policy, provided that great care is taken not to duplicate the work of existing environmental organisations. Similarly the new body could usefully advise on the implementation of policy, including for example Environmental Impact Assessment and Strategic Environmental Assessment, provided that clear demarcation lines are established to prevent duplication with the work of other environmental organisations. In providing advice the new body should be able to address both the natural and historic environments, the recognition of which should be included in the legislation, the statutory policy, and the body's remit. Unless this is done the existing imbalance between the handling of natural and historic environment matters would be worsened. This is something which would be of serious concern to Historic England.

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

From Historic England's perspective the most important outcomes from this consultation should be a move away from the artificial distinction between the cultural and natural environments that has resulted from the EU treating cultural heritage as a delegated matter beyond its competence, while fully engaging in the natural environment.

To this end an additional environmental principle should be added to Annex A

Integrated Management of the Cultural and Natural Environment. The environment of England is the product of the interaction between people and nature over thousands of years and its cultural and natural values should be sustained by integrated approaches to management

and a clear statement on the scope of 'the environment' should be included within both the legislation and the policy, confirming that this includes both the historic and natural environments.

