

Response to consultation: Environmental Principles and Governance after the United Kingdom leaves the European Union

Response from The Buckinghamshire and Milton Keynes Natural Environment Partnership (the “NEP”)

Introduction

The Buckinghamshire and Milton Keynes Natural Environment Partnership is the area’s Local Nature Partnership. We bring together local authorities and organisations from across the public, private, health and education sectors, as well as conservation and community organisations to champion the value of the Buckinghamshire environment in decision-making, and to encourage environmental protection and improvement for multiple benefits – for the environment, businesses and the economy, and the health and wellbeing of communities and the society of Buckinghamshire.

We welcome the opportunity to comment on the current consultation on developing environmental principles and accountability prior to an Environmental Principles and Governance Bill, due in the autumn of 2018.

The main thrust of our response is the need for a post-Brexit environmental watchdog to be in place post-Brexit and equipped with sufficient powers to compel the government to act. Our response is necessarily strategic at this stage, and is based on our own themes, strategies, experience and work that we are currently prioritising to achieve the NEP’s objectives in Buckinghamshire and Milton Keynes.

We urge you to consider carefully the points we make below, which we believe are essential to properly address to ensure a well-functioning post-Brexit environmental watchdog, in place in a timely manner, with sufficient authority for enforcement and which adheres to a clear set of environmental principles. The NEP considers that the areas below must be addressed in order for the government to meet its ambition to ensure it leaves the environment in a better state that it inherited it, to deliver the vision of the 25 Year Environment Plan and to ensure the UK is a “World leader in environmental protection once we leave the EU”.

Please also note that the Buckinghamshire and Milton Keynes Natural Environment Partnership is a signatory to the joint-LNPs response to this consultation and whole-heartedly supports the points made in that response. We set out here our additional considerations to the consultation to be considered alongside that response.

The NEP's response

New environmental Watchdog for England – functions and powers

1. Insufficient enforcement powers - the NEP does not believe the enforcement powers proposed as sufficient – they fall short of those that already exist in EU law.

The consultation document states that the new watchdog would issue advisory notices in relation to the government bodies and subjects in its remit. However, the NEP does not believe this goes far enough in being able to replace the current system of enforcement, where the European Commission and the European Court of Justice have been able to compel the government to act on environmental issues. Advisory notices would not equate to power to compel the government to take action; and the body would not have the power to take government or public authorities to court as a last resort.

2. Remit will not cover climate change – the NEP is concerned that climate change actions should also be sufficiently enforced

While we note that the government considers that the existing Climate Change Committee already fulfils the role of watchdog on the government's performance in relation to climate change, we note again that the committee cannot compel the government to act or take it to court. Therefore, in order to ensure sufficient enforcement powers, we would expect to see the new watchdog's remit to include climate change, and/or ensure an effective mechanism is put in place, between the new watchdog and climate change committee, that ensures such enforcement.

3. Timing – the NEP is alarmed that the new organisation would not be in place in time for the UK's departure from the EU in March 2019

The NEP is concerned that the government's proposed watchdog will not be in place ready for exit day in March 2019. We do not believe it is sufficient to rely on the possibility of a sufficient and effective transition arrangement being agreed in order to ensure the UK continues to meet its obligations during any such transition period. It would be preferable for the organisation to be in place before the UK exits the EU.

4. Lack of detail on the form and nature of the organisation

The NEP would also urge the government to provide further detail as soon as possible concerning the form of the organisation, how it will be funded, how it will be kept independent, and the nature of its reporting cycle, which body (specifically) it will report to, and how it will ensure timely and full reports on all aspects of environmental policy. The organisation should be transparent in its use of public money and be answerable to Parliament.

In this respect we would urge the Government to learn lessons from the National Audit Office.. The NAO already reviews Government performance in specific environmental policy areas and reports to Parliamentary committees, including the Environmental Audit Committee, the Efra Committee and the PAC, is independent from government and is transparent about its use of Government money and money saved through its work. While the NAO tends to support inquiries in particular policy /topic areas, rather than perform a systematic review of the success of all government environmental policy, some key lessons could be learned from the NAO model, and in developing

one that could be put in place to cover the wider remit and systematic review of full environmental policy effectiveness, efficiency and economy (spending wisely, spending well and spending less).

To perform a governance role in its entirety, in addition to a role such as that of the NAO, the new environmental body would need not only to be able to scrutinise, advise and report on the delivery of key environmental policies, but also on policy formation, and make recommendations for changes in policy as a result of lessons learned.

5. Interaction with Planning Policy

The NEP would welcome an environmental governance body that closely interacts with wider planning policy, to achieve better consistency between the goals of each policy area and how each can help deliver the objectives of the other.

In this regard we would welcome the suggestion that the new body should be both a key consultee when planning policy is being considered (e.g. updating the NPPF), and on providing advice on the implementation of the environmental aspects of existing planning policy and suggest future potential changes. We would expect any such advice to be firmly based on experience from the ground and for the new body to have a continuous dialogue with organisations that operate across both the planning and environment space, including Local Nature Partnerships such as ours.

Environmental Principles that should apply – to shape environmental law and policy making

6. Environmental Principles – including in law or in a statutory policy statement?

The consultation explains that the government will create a “new statutory statement of the environmental principles which will guide us, drawing on the current international and EU environmental principles”. It sets out two options for the legislative bases of these principles:

- i) that environmental principles would be listed in the Environmental Principles and Governance Bill, with a single policy statement under that legislation to explain how they should be interpreted and applied; or
- ii) that the Bill would not list the principles – rather they would be set out and explained in a statutory policy statement issued under primary legislation.

The consultation suggests that the second option may give more flexibility to ministers to adopt different principles over time, as scientific knowledge and understanding evolves. Our concern with that approach, however, is that the principles would not receive the same statutory status as they would do under option i).

We believe that option i) would give more weight to the principles, ensure the government can be better held to account over them, and ensure they are clearly laid out and understood. Should the government opt for the first option, the NEP would urge parliamentary scrutiny be required to approve any proposed changes in policy statements.

7. Which environmental principles should be included?

The NEP supports the view that all the possible post-Brexit environmental principles currently listed in the consultation annexe should be included, and that the principles adopted should draw on current international and EU environmental principles:

- Sustainable development – development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs;
- Precautionary principle – where there are threats of serious or irreversible damage, a lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;
- Prevention principle – preventative action should be taken to avert environmental damage;
- Polluter pays principle – the costs of pollution control and remediation should be borne by those who cause pollution rather than the community at large;
- Rectification at source principle – environmental damage should as a priority be rectified by targeting its original cause and taking preventative action at source;
- Integration principle – environmental protection requirements must be integrated into the definition and implementation of policies and activities.

Whatever principles are selected, the NEP considers it important that they are:

- Clearly set out and well explained so they can be understood by all intended all audiences;
- Followed consistently by all audiences – including regulators and industry when applying them in practice;
- Together that they ensure *at least* the same environmental standards and principles are in place as are currently with the UK part of the EU; and ideally stronger;
- Clear as to how each should be taken into account in decision-making, when, for example, a number of principles may apply (i.e. if any are overriding / take priority).

Summary

The NEP has set out above the areas we think are particularly key in response to the consultation document. To summarise our responses in relation to the questions in the consultation document, please see the following Table:

Table: Consultation questions and the NEP's view as set out above

Consultation Q number	NEP's view set out in this document at...
Q1 Which environmental principles do you consider as the most important to underpin future policy-making?	See the NEP's response above, point 7.
Q2 and 3 re proposals for a statutory policy statement and whether that should include the principles...	See NEP's response above, point 6.
Q4 Do you think there will be any environmental governance mechanisms missing as a result of leaving the EU?	See NEP's response above, point 4.

Consultation Q number	NEP's view set out in this document at...
<p>Q5 Do you agree with the proposed objectives for the establishment of the new environmental body?</p> <p>Q6 Should the new body have functions to scrutinise and advise the government in relation to extant environmental law?</p> <p>Q7 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?</p> <p>Q8 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?</p>	See NEP's response above, point 4.
<p>Q9 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?</p>	See NEP's response above, point 6.
<p>Q10 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?</p>	Not answered directly but relates to NEP's response above, point 4.
<p>Q11 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?</p>	Not answered directly but relates to NEP's response above, point 4.
<p>Q12 Do you agree with our assessment of the nature of the body's role in the areas outlined above?</p>	See NEP's response above, point 2.
<p>Q13 Should the body be able to advise on planning policy?</p>	See NEP's response above, point 5.
<p>Q14 Do you have any other comments or wish to provide any further information relating to the issues addressed in this consultation document?</p>	Not answered directly, covered in all the NEP's responses, above.

We look forward to your acknowledgement of receipt of our response and to hearing a response to these concerns.