

Response ID ANON-GJ7K-Y1Q8-6

Submitted to **Environmental Principles and Governance after EU Exit**
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Introduction

What is your name?

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Are you responding as an individual or on behalf of an organisation?

Individual

If you are responding on behalf of an organisation, please enter your organisation below:

Organisation type:

Other

If you selected "Other" please state what this is below:

Elected representatives, Members of the European Parliament

Where do you currently reside?

Europe

Would you like your response to be confidential?

Confidentiality:

No

If you answered Yes to this question please give your reason.:

Part 1: Environmental Principles

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

Sustainable Development - a) Sustainable Development:

High Importance

Please give any reasons for your answer (Please limit to 250 words):

Sustainable development is a vital guiding principle that aims to meet the needs of the current generation as well as future generations. It promotes equality and justice and recognises the interdependence of environmental, economic and social considerations. The concept is crucial to avoid the risk of damaging trade-offs, e.g. economic benefits being given priority over environmental protection. The UK is a signatory of the Sustainable Development Goals (SDGs) and therefore expected to contribute to them internationally and deliver them domestically. The Government states that "The UK is committed to the delivery of the Sustainable Development Goals. The most effective way to do this is by ensuring that the Goals are fully embedded in planned activity of each Government department" (<https://www.gov.uk/government/publications/implementing-the-sustainable-development-goals/implementing-the-sustainable-development-goals--2>).

Precautionary Principle - b) Precautionary Principle:

High Importance

Please give any reasons for your answer (Please limit to 250 words):

The Precautionary Principle is a key precept in EU law which provides a robust legal backstop against the destruction of the environment. It is a safeguard that absolutely must be retained post-Brexit.

Based on the idea that the environment is unowned, the precautionary principle demands that developers, for example, prove, to a legal standard, that their plans will not damage the environment nor the habitats of wild animals where there is uncertainty about the environmental impact of an issue. With 271 special protection areas for birds (SPAs) and 658 special areas of conservation for other species (SACs) across the UK, this principle is vital for the protection of vulnerable species, from the leatherback turtle to the hen harrier.

Prevention Principle - c) Prevention Principle:

High Importance

Please give any reasons for your answer (Please limit to 250 words):

The prevention principle is central in avoiding damage and is key for example to the UK's planning policy. It is of high importance as it requires preventive measures to anticipate and avoid environmental damage, making it clear that offsetting damage to habitats, landscape and wildlife is to be avoided and should be a last resort after avoidance and mitigation of damage have been properly explored and exhausted.

Polluter Pays Principle - d) Polluter Pays Principle:

High Importance

Please give any reasons for your answer (Please limit to 250 words):

The polluter pays principle is vital since it ensures that preventative action should be taken to avert environmental damage and where that fails the cost burden for clearing up pollution falls on those responsible for creating it rather than on the community at large. Disincentives such as penalties can also be seen as an application of the polluter pays principle and act as a deterrent.

Rectification at Source Principle - e) Rectification at Source Principle:

High Importance

Please give any reasons for your answer (Please limit to 250 words):

This principle works in conjunction with the prevention and polluter pays principles, ensuring that environmental damage is, as a priority, rectified at source, to prevent the spread of any resultant damage as much as possible. It plays an important role in the mitigation hierarchy concerning environmental damage. Furthermore, the rectification at source principle drives legislation for landowners, operators and appropriate authorities with regard to the remediation of environmental damage such as land and site contamination and water pollution.

Integration Principle - f) Integration Principle:

High Importance

Please give any reasons for your answer (Please limit to 250 words):

The Integration Principle requires environmental protection to be integrated into all other policy areas, in line with the promotion of sustainable development, see a). It is vitally important since it requires all Government departments to pay regard to environmental protection in their decision-making. It should also prevent environmental considerations from being viewed as subsidiary to economic factors - proper use of the integration principle would give equal weight to the importance of environmental factors.

Other Principle 1 - g) Other Principle 1:

High Importance

Please state what Other Principle 1 is below:

The principle of animal sentience.

Please give any reasons for your answer (Please limit to 250 words):

The principle of animal sentience should be added. The EU Treaty of Lisbon was groundbreaking when it enshrined in law the recognition that animals are sentient beings that feel pain and experience stress. This principle is called animal sentience and its inclusion was absent from the EU Withdrawal Bill.

Despite the draft Animal Welfare Bill, announced in December 2017, which states that the Government will have to consider animal sentience in the future when they draw up new laws, there is a real risk that there will be a gap in legal protection for animals as there is no guarantee it will reach the statute book before Brexit becomes effective.

Other Principle 2 - h) Other Principle 2:

High Importance

Please state what Other Principle 2 is below:

The right of access to environmental justice.

Please give any reasons for your answer (Please limit to 250 words):

The right of access to environmental justice should be added as a principle of high importance in order to maintain, as a minimum, all of the principles that currently protect the environment in the EU. This would also be in line with the UNECE Aarhus Convention, of 1998 of which the UK is a signatory.

Other Principle 3 - i) Other Principle 3:

High Importance

Please state what Other Principle 3 is below:

The right to environmental information.

Please give any reasons for your answer (Please limit to 250 words):

The right to environmental information should be added as a principle of high importance in order to maintain, as a minimum, all of the principles that currently protect the environment in the EU. This would also be in line with the UNECE Aarhus Convention of 1998, of which the UK is a signatory.

Please describe below any additional environmental principles which you consider should underpin future policy-making. For each state whether you consider them to be of high, medium or low importance. Please also give any reasons for your answers.:

The principle of environmental non-regression should be added as a principle of high importance. This would help ensure a commitment not to leave the environment in a worse state than at present by avoiding any lowering of environmental standards post-Brexit, or a chilling effect on future environmental policy development. It features as an example in the outcome of the UN's Rio +20 sustainable development summit in 2012.

Question 2 Do you agree with these proposals for a statutory policy statement on environmental principles (this applies to both Options 1 and 2)?

No

If "Other response" was selected please state what this is below (Please limit to 250 words) :

Please give any reasons for your answer (Please limit to 250 words):

Neither Option 1 nor Option 2 go far enough. The environmental principles need to have statutory underpinning. It is crucial that they are enshrined in primary legislation and listed in The Environmental Principles and Governance Bill (EPGB) itself. Public authorities need to be required to 'apply' and 'act in accordance with' the principles as well as the statutory policy statement when drawing up and implementing policy. Therefore, the requirement for the Government 'to have regard to the statutory policy statement on environmental principles is not nearly strongly enough. Robust monitoring and enforcement mechanisms - such as the power to take legal action - are crucial to ensure the kind of scrutiny and accountability currently exercised by the European Commission and the European Court of Justice. Furthermore, the principles currently not listed need to be added to the EPGB, see Question 1 g), h) and i), and there has to be scope to add further environmental principles in future.

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)?

Option 1 - Environmental principles listed on the bill

If "Other response" was selected please state what this is below (Please limit to 250 words) :

To protect environmental protections from being eroded post-Brexit, the environmental principles need to be listed on the bill rather than only be set out in the policy statement. This way they are undisputedly part of the legal fabric that takes environmental protection forward. Without this guarantee enshrined in the bill, the principles could be eroded or disregarded in the future. However, additional changes have to be made to the proposals in order to maintain, as a minimum, all of the powers and instruments which currently protect the environment in the EU. See answer to Question 2 for further details.

Please give any reasons for your answer (Please limit to 250 words):

Part 2: Accountability for the environment

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

Other response

If "Other response" was selected please state what this is below (Please limit to 250 words):

Membership of the EU has been a key factor in much of the positive action taken on environmental issues in Britain over the last few decades. EU laws are currently protecting millions of British animals and acres of precious countryside and wildlife. Almost 11,000 square miles are recognised as special areas of conservation under the Birds and Habitats Directives, offering protection for rare and endangered species.

Having consistently highlighted the importance of transposing into UK law key general environmental principles enshrined in the EU treaties, such as the precautionary and polluter pays principles, we welcome the requirements of Section 16 of the EU (Withdrawal) Act – specifically the authority to take proportionate enforcement action, including legal proceedings.

However, the risk of having environmental legislation eroded through statutory instruments with little parliamentary scrutiny and losing protections where EU law is transposed but no longer updated very much remain.

Well-functioning monitoring and enforcement mechanisms are crucial to ensure the kind of scrutiny and accountability exercised by the European Commission and the European Court of Justice, which currently have the legal might to take Member States to court should they fail to live up to their responsibilities. These are precisely the powers the Commission was recently forced to exercise when it referred Britain to the ECJ for consistently breaching EU legal limits on toxic air.

To successfully safeguard environmental protections post-Brexit, the new body needs to be fully independent and provided with adequate expertise, resources, financing, and enforcement powers.

Please give any reasons for your answer (Please limit to 250 words):

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

Objective voice - a) Act as a strong, objective, impartial and well-evidenced voice for environmental protection and enhancement.:

Partially, but with amendments

Please give any reasons for your answer (Please limit to 250 words):

We partially agree with this first objective, but with amendments. This objective should be amended to state at the outset that the body has a primary focus on enforcement and compliance of public authorities. This is a crucial part of the 'governance gap' that will be left by Brexit if the UK is no longer required by the EU institutions to comply with EU environmental standards. The enforcement/compliance focus is essential if the new body is to have the level of impact needed, and this should be made clear in the first objective. We therefore propose the following addition to this objective, such that it would read: "Act as a strong, objective, impartial and well-evidenced voice for environmental protection and enhancement, with a focus on the investigation, enforcement and compliance of public authorities with environmental obligations". In this regard, the new body should follow the Paris Principles put in place for Human Rights bodies, which has been crucial in the UK as regards anti-discrimination: <https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx>.

Independent - b) Be independent of government and capable of holding it to account:

Yes

Please give any reasons for your answer (Please limit to 250 words):

Yes, we agreed with this objective that the body should be independent of government and capable of holding it to account. However, this objective will only be met if the new body is given sufficient powers and functions and has a resourcing model independent of government. Making the body answerable to parliament, not the government of the day, will also strengthen its independence whilst ensuring its accountability.

Statutory basis - c) Be established on a durable, statutory basis:

Partially, but with amendments

Please give any reasons for your answer (Please limit to 250 words):

Yes, we agree with this objective but would like to see it amended to specify that the body is established through primary legislation. Setting out that the body will be established through primary legislation will deliver a body with greater durability.

Clear Remit - d) Have a clear remit, avoiding overlap with other bodies:

Yes

Please give any reasons for your answer (Please limit to 250 words):

Yes, we agree with this objective. However the avoidance of overlap with other bodies should more precisely mean that there should no overlap of functions. We have argued that a primary function of the new body should be to focus on enforcement/compliance of public authorities. So, for example, in relation to climate change (which we address fully in a subsequent question), the new body should have a remit over climate change, but so too should the Committee on Climate Change. However, this is not an overlap, as the functions of the two bodies are different. It is important that overlap is not confused with better integration – which, as we argue in Question 1 f) is a key principle which needs to be pursued as part of the establishment of the new body.

Powers to deliver - e) Have the powers, functions and resources required to deliver that remit:

Yes

Please give any reasons for your answer (Please limit to 250 words):

Yes, we agree with this objective. However, the specifics of what is currently proposed do not provide the sufficient powers and functions to deliver that remit. We deal with this in our responses to other questions. On the issue of resources, the level of resources is vitally important - the new body needs to be well-resourced both financially and in terms of personnel, and that funding is ring-fenced. But it is also vital that resourcing is at arms-length from government, and this is important in meeting the objective of independence from government. We recommend that this is done by the body being resourced by parliament, not by government. The National Audit Office, for example, is funded by the Public Accounts Commission and could offer a model.

Transparency - f) Operate in a clear, proportionate and transparent way in the public interest, recognising that it is necessary to balance environmental protection against other priorities:

Partially, but with amendments

Please give any reasons for your answer (Please limit to 250 words):

We partially agree with this objective but it needs amending. The current proposal of 'balancing environmental protection against other priorities' sets a dangerous precedent by establishing the weakest level of environmental protection. Environmental protection frequently comes under threat as a result of competing priorities, such as particular forms of economic development, industrial activities, infrastructure proposals or other planning in the built environment. These other priorities can be compatible with high levels of environmental protection, but only if a strong environmental regulatory regime is in place, and if environmental considerations are truly integrated across departments and policies of government. We propose the following amendment to replace 'recognising that it is necessary to balance environmental protection against other priorities' with 'recognising that it is necessary to ensure the highest level of environmental protection, so it is not compromised in the pursuit of other priorities'.

Other objectives - g) Other objective not listed:

Yes

Please list any other objectives below (Please limit to 250 words) :

- 1) Act as a voice for the natural world and ecosystems, undertaking public engagement to further the interests of nature and the ecological sustainability of human action.
- 2) Enable public engagement through the legislative process.

Please give any reasons for your answer (Please limit to 250 words):

1) The body needs an additional objective which is a broad remit to freely engage with the public and make public interventions which will benefit and protect the natural world, and which help facilitate a shift in human activities towards greater ecological sustainability. The interconnectivity between human activity and the environment/ecological systems is a fundamental reality which is frequently at risk of marginalisation. Giving the new body this broad objective and remit will help address this marginalisation and play an important part in addressing environmental impacts, including root causes, and maximising responses to urgent environmental problems.

2) One of the main benefits of EU law has been the possibility of civil society engagement (the third Aarhus pillar) and the tools it has provided to the public.

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

Yes

If "Other response" was selected please state what this is below (Please limit to 250 words):

Please give any reasons for your answer (Please limit to 250 words):

It is fundamentally important this new body is assigned all three interrelated functions outlined in the consultation document and this remit should cover extant environmental law.

General scrutiny and advice should be sought from the new watchdog, but not be too narrowly defined. Trade-offs and synergies across sectors and departments must be considered and the watchdog should be framed in such a respect. The 25-year environment plan, Clean Growth Strategy and the NPPF, for example, were all crafted in isolation and too narrowly defined - this needs to be rectified.

Moreover, the new body needs more authority than merely guiding Governmental direction - time and again the CCC informs the Government that proposed action isn't enough and that carbon budgets need to be adhered to - yet nothing happens as we slip further from achieving the targets. This cannot happen with the body in question. The role of the EC and ECJ in handling complaints about Governmental adherence to environmental law must be accounted for in the post-Brexit situation.

When Government activity will cause environmental impacts, strong, transparent mechanisms need to be in place to enable stakeholders to formally question these activities - there cannot be a delay; such authority is required from the outset, and information about where and how people can direct their complaints needs to be provided. And when targets or objectives are not adhered to, this body must assume the role of enforcer to ensure that the Government is held to account - this is imperative given the absence of the ECJ.

Question 7 Should the body be able to scrutinise, advise and report on the delivery of key environmental policies, such as the 25 Year Environment Plan?

Annual assessment 25YEP - a) Annual assessment of national progress against the delivery of the ambition, goals and actions of the 25 Year Environment Plan:

Yes

Please give any reasons for your answer (Please limit to 250 words):

The Government needs to be held to account on medium and long-term plans and in this respect, annual assessment, as with the periodic assessment conducted by the Committee on Climate Change (CCC), would ensure that none of the targets slip too far or too fast from attainment. Moreover that the Government is held to account. This would be similar in function to the role played by the European Environment Agency (EEA). They should also be periodically reviewed to ensure that they remain the correct ambitions and goals. Iterative and reflective strategy is the most likely to succeed and environmental developments and policy are fast-moving and could be quickly outdated. Therefore a key role of the new organisation would be to ensure that the Government is on the right track.

Advice on policy - b) Provide advice when commissioned by government on policies set out in government strategies and other published documents and how they are being implemented:

Yes

Please give any reasons for your answer (Please limit to 250 words):

Yes, it is important that this body has the requisite expertise to guide Government on the content of policies and published documents, as well as how they should be implemented. The real flaws of recent Government strategies is that they are siloed, piecemeal, myopic, economically driven and poorly conceived because they belittle the complexity of the long-term, cross-scale problems at hand (a Clean Growth Strategy that doesn't mention fracking, and a long-term environmental plan which fails to consider transport are just two examples here). With this new body, there is a real opportunity to address the systemic flaws that are widespread in strategy setting at the current time. In stating that 'environmental problems need to be balanced with the delivery of other policy priorities and economic growth', there is an opportunity for the Government to do exactly this with the proposed body. With transparent advice on the trade-offs and synergies between diverse policy areas, this balance can be sought with adequate regard not just to economic considerations, but also social and environmental ones. So it is fundamentally important that this advice capacity is included in the remit of the watchdog.

This role should not just cover the 25 Year Environment Plan, nor solely be sought by Government commissioning - it should be a broader function which ensures that all Government policy is fit for purpose from a long-term sustainability perspective.

Respond to consultations - c) Respond to government consultations on potential future policy:

Yes

Please give any reasons for your answer (Please limit to 250 words):

It is important that the new body has an independent voice as a stakeholder in future consultations.

Other - d) Other response:

If you selected yes to "Other" please state what this is below (Please limit to 250 words):

Please give any reasons for your answer (Please limit to 250 words):

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?

Yes

If you selected yes to "Other response" please state what this is below (Please limit to 250 words) :

Please give any reasons for your answer (Please limit to 250 words):

Yes, the new body should have a remit and powers to respond to and investigate complaints from members of the public, in addition to the powers to initiate

investigation, see response to Q5. As a result of EU membership, UK citizens and civil society organisations currently have the right to make free complaints and petitions to the European Commission about failures to comply with EU environmental law. UK citizens also currently have the right to petition the European Parliament – individually or with others - on a subject within the EU's fields of activity which affects them directly, including environmental matters. Brexit will end these rights. To fill this gap, the new body should be empowered to receive and review complaints and petitions from members of the public and civil society organisations. The new body should be able to take a range of actions in relation to complaints and petitions, including the issuing of binding notices requiring compliance from public authorities. Complaints and petition procedures should be free and easily accessible to the public, with minimal bureaucracy. The body should work to empower, advise and inform the public.

As a signatory to the Aarhus Convention the UK has international obligations to provide the UK public with access to information, participation in decision-making and access to justice in environmental matters. A complaints model, as proposed by the new body, has the potential to improve public participation and address some of the gaps mentioned above which will result from Brexit. However, it cannot replace measures needed by the UK to fully comply with Aarhus.

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?

Binding notices - a) Binding notices:

Include

Please give any reasons for your answer (Please limit to 250 words):

It cannot be stressed enough that the new body must have a proper legal enforcement role. Nevertheless, the proposal for the environmental watchdog to issue binding rather than just advisory notices is welcome. They should require Government as well as public bodies to implement corrective action specified in the notice. More detail is needed on how this proposal would work in practice.

Intervention in legal proceedings - b) Intervention in legal proceedings:

Partially, include but with amendments

Please give any reasons for your answer (Please limit to 250 words):

We welcome the proposal for the body to be provided the right to intervene in legal proceedings brought by others, including judicial review. However, it must have a proper legal enforcement role in addition; crucially, the power to initiate legal proceedings and to issue fines and sanctions where necessary. Anything less would drastically increase the likelihood for the government to escape the kind of scrutiny and accountability currently ensured by the European Commission and the European Court of Justice.

Undertakings - c) Agree environmental undertakings:

Partially, include but with amendments

Please give any reasons for your answer (Please limit to 250 words):

We are supportive of this proposal so long as the right for the body to agree environmental undertakings is an additional mechanism, fostering dialogue and cooperation, and does not replace its legal powers.

Powers - other - d) Other powers not listed above:

Yes

If "Other powers not listed above" was selected, please list them here. (Please limit to 250 words):

Yes, the power to initiate investigations.

Please give any reasons for your answer (Please limit to 250 words):

See response to Q5.

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?

NMDs and NDPBs - a) Non-Ministerial Departments (NMD's) and Non-Departmental Public Bodies (NDPBs):

Yes

Please state which NMDs and NDPBs should be directly in scope below:

Yes, as a default all Non-Ministerial Departments (NMD's) and Non-Departmental Public Bodies (NDPBs) should be directly in scope. An important example would be the Forestry Commission.

Please give any reasons for your answer (Please limit to 250 words):

The Forestry Commission currently receives income from oil and gas companies for exploration leases, which is in conflict with the first objective in the most recently published Annual Report: "Protecting our trees, woods and forests from increasing threats such as pests, diseases and climate change". The legislation for the Forestry Commission tasks it with the "development of afforestation and the production and supply of timber and other forest products". It does not seem that this would naturally include oil and gas exploration.

It also conflicts with the Government's carbon reduction commitments and the Forestry Commission's commitment to sustainability of the forest estate. The Commission's Sustainability report has at its core targets to reduce fossil fuel based energy, which are undermined by the organisation's commercial attachment to fossil fuel exploration. This growing interest is not mentioned in the 2016-17 Annual Report (the most recent available), underlining the lack of transparency on this topic.

See answer under d) as to why NMDs and NDPBs should be directly in scope as a default.

Local authorities - b) Local authorities:

Yes

Please state which local authorities should be directly in scope below:

Yes, as a default all local authorities should be directly in scope. An important example would be local planning authorities.

Please give any reasons for your answer (Please limit to 250 words):

Planning is meant to play a critical role in assessing whether proposed development is suitable, including on environmental grounds. The new watchdog needs to be able to step in where it fails to fulfil this purpose.

For example, roadbuilding and other large scale infrastructural investments need scrutiny in the long term by a new environmental watchdog.

See answer under d) as to why local authorities should be directly in scope as a default.

Other public authorities - c) Other public authorities:

Yes

Please state which other public authorities should be directly in scope below:

The Greater London Authority should be included directly in scope as should other public authorities. Our answer to d) explains why we have not included other additional public authorities in this answer.

Please give any reasons for your answer (Please limit to 250 words):

See answer under d)

Other - d) Other response:

Yes

Please give any reasons for your answer (Please limit to 250 words):

As we have argued elsewhere in this submission, the new body should have a primary statutory function on enforcement and compliance of public authorities. Its powers need to be significant and its scope should be broad in the sense that all public authorities which have environmental duties, are tasked with undertaking environmental action or policy, are in the scope of the new body. We have not provided an exhaustive list of all those public authorities we would like to see in scope. The default position for setting the remit should be that ALL NMDs, NDPBs, local authorities and public authorities are directly in scope - unless particular reasons are advanced as to why an authority should not be included and if so, what other arrangements are in place for that body. This pertains to England, as arrangements for the other UK nations need to be made in parallel or by another mechanism which fully respects devolution.)As the environment is partly a devolved matter, the different parts of the country will have to collaboratively find a solution as to how exactly this will work. However, we believe that the new body will need UK-wide powers as environmental issues don't respect borders. For example, there should be a reciprocal arrangement for representation on each other's Management Boards.

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?

Oversight EU retained - a) EU environmental law retained under the EU (Withdrawal) Bill:

Include all

If "Other response" was selected please state what this is below (Please limit to 250 words):

Please give any reasons for your answer (Please limit to 250 words):

All environmental law retained under the EU (Withdrawal) Bill/Act needs to be in the watchdog's remit in order to have a chance to fill the massive governance gap in environmental law opened up by Brexit.

Oversight domestic - b) Domestic environmental law not based on EU legislation:

Include all

If "Other response" was selected please state what this is below (Please limit to 250 words):

Please give any reasons for your answer (Please limit to 250 words):

The new body should include oversight of all domestic environmental law (not based on EU legislation) to ensure an environmental watchdog with teeth that has the power to hold the Government and public authorities to account where they fail to meet their environmental responsibilities, no matter the source.

Oversight International - c) International environmental law:

Include all

If "Other response" was selected please state what this is below (Please limit to 250 words):

Please give any reasons for your answer (Please limit to 250 words):

The new body should have oversight of all international environmental law to which the UK is party. As the UK is currently part of the EU, the European Court of Justice (Court of Justice of the European Union (CJEU)) has legal standing in mixed agreements where Member States have duties under international agreements and this intersects with EU law. In some cases it is via EU law that Member States are discharging their obligations as signatories of international agreements. The ECJ and the other EU institutions therefore play a role in ensuring compliance of Member States with international environmental law. Brexit is likely to end this function of EU institutions in relation to international agreements. Therefore it is important for the new body to have a function which includes all international environmental law within its scope. Moreover, in the quest to ensure the principle of integration is fulfilled through this new undertaking, it is simply

logical that a new environmental body has all environmental considerations within its remit to ensure consistency and prevent duplication or gaps in oversight.

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

Climate change - Climate Change:

Disagree

If "Other" was selected please state what this is below (Please limit to 250 words) :

Please give any reasons for your answer (Please limit to 250 words):

The characterisation of the current mechanisms under the Climate Change Act is misleading. The Committee for Climate Change (CCC) plays an important advisory role in the implementation of the Climate Change Act, but it has no enforcement powers nor can it request information from the Government. An enforcement body that could issue sanctions and initiate legal proceedings would work in tandem with CCC, acting on its advice to ensure the Government discharges its duties under the Climate Change Act.

The UK's target for 55% greenhouse emissions reductions are currently subject to European Court of Justice enforcement; not replacing this vital oversight will materially damage the UK's ability to meet these targets. Climate change may be subject to international governance beyond the EU, but this does not provide for legal enforcement. By excluding climate change from the proposed body's remit, it will create a dangerous governance gap that could turn climate change policies into zombie legislation. Climate law will not function effectively without a strong and independent enforcement body as otherwise it will be too easy for public authorities to ignore their legal obligations.

Excluding climate change also sends a concerning message about the UK's political will to tackle the climate breakdown. It attempts to divide climate change from our environment where no division exists. It will harm the holistic assessment of policies which provide a public good. Peat bog restoration, for example, provides both environmental and climate benefits.

Agriculture - Agriculture:

Partially Agree/Disagree

If "Other" was selected please state what this is below (Please limit to 250 words) :

The remit of the body must cover all interconnected aspects of 'environmental law'.

'Environmental law' may be a broad and imprecisely defined category but some clarity over the duties of the body and the public authorities it is to have power over can be achieved. The remit of the body should be broad in scope so that it can decide what areas most require its attention. This could be achieved by using a definition of 'environmental law' similar to that of 'environmental information' in s 2(1) of the Environmental Information Regulations 2004, which would cover any legislation affecting (or likely to affect) a wide variety of environmental factors.

When it comes to agriculture, fisheries and the marine environment, it is important that the environmental law the body is to oversee is not based on the current iteration of the 25 Year Environment Plan.

The plan must be revisited and improved before it is turned into enforceable UK law. Currently, it lacks actual legislative proposals and the intentions it lays out are too weak and too distant. Reports from the Soil Association and Land Workers' Alliance, and Friends of the Earth, see Q14, should be considered instructive in strengthening the 25 Year Environment Plan, in respect of agriculture, fisheries and the marine environment.

Ultimately, the remit should cover all of the policy areas outlined in the consultation document, and beyond, in so far as they intersect with environmental matters, following the principle of integration. Clearly, this includes agriculture, fisheries and the marine environment.

Please give any reasons for your answer (Please limit to 250 words):

Fisheries and the Marine Environment - Fisheries and the Marine Environment:

Partially Agree/Disagree

If "Other" was selected please state what this is below (Please limit to 250 words) :

Please give any reasons for your answer (Please limit to 250 words):

Same as above: response to 'agriculture'.

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

Yes

If you selected yes to "Other response" please state what this is below (Please limit to 250 words):

Please give any reasons for your answer (Please limit to 250 words):

It is important that the body can advise and hold the planning system to account. The NPPF review earlier this year would have been an opportunity to develop a more ambitious planning system that has zero tolerance for the destruction of our natural environment and to prove the Government is taking the concerns of affected communities seriously.

Instead, the proposed changes, for example, effectively give support to unabated hydrocarbon extraction while strengthening a ban, in all but name, on onshore wind, one of the cheapest, most popular forms of renewable energy. The changes are in direct contradiction with the UK's commitments enshrined in the Climate Change Act and the ratification of the Paris Climate Agreement, as well as the advice provided in July 2016 by the Committee on Climate Change regarding shale gas extraction. In addition, the proposals weaken the protection for local wildlife sites and the guiding principle of sustainable development.

Furthermore, written statement HCWS690 by Secretary of State Greg Clark, published seven days after the consultation closed, seeks to relax planning laws and cut local authorities out of the decision-making process in order to accelerate plans to fast-track fracking across England. It is doubtful that the Government would have assessed even a handful of responses to the hefty consultation at that point.

Planning is meant to play a critical role in assessing whether proposed development is suitable, including on environmental grounds. The new watchdog needs to be able to step in where the planning process fails to fulfil this purpose.

Part 3: Overall environmental governance

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

Please explain below:

Periodically there is sweeping new awareness of environmental issues and the Government is running to catch up with them. Micro plastics and marine plastics are examples where public awareness has shot up and legislatively the UK is running far behind what the public wish to see enforced. Better horizon scanning might allow decision-makers to spot these issues coming up from further out.

It is worth remembering that the Government stated in its 2017 Conservative manifesto (<https://www.conservatives.com/manifesto>) that “we be the first generation to leave the environment in a better state than we inherited it”. If the Government is serious about delivering on that pledge, it needs to fundamentally increase the power and scope of this new body, especially with regard to investigation, enforcement and compliance.

We would like to stress the need for a new Clean Air Act and Environmental Protection Act to ensure strong environmental standards, control, management and monitoring in the UK. We also support ClientEarth’s call for a new Nature and Environment Commission.

Furthermore, without a modern, written constitution, the UK has no clear mechanism regarding the entrenchment of guiding principles. It is also unclear how the various EU agencies will be replaced (Chemicals and REACH, for example) so thought will need to be given as to how such replacement bodies will interact.

This consultation response has been produced by the UK’s Green MEPs: Keith Taylor, Jean Lambert and Molly Scott Cato.

Keith Taylor is a member of the European Parliament’s committees on Transport and Tourism, and Environment, Public Health and Food Safety. He is Vice-President of the Parliament’s Animal Welfare Intergroup and the European Chair of the Climate Parliament.

Jean Lambert is a member of the European Parliament’s Employment and Social Affairs Committee and a substitute member of the Committee on Civil Liberties, Justice and Home Affairs. She is an Honorary Founder Supporter of Clean Air in London.

Molly Scott Cato is a member of the European Parliament’s Committee on Economic and Regulatory Affairs and a substitute member of the Committee on Agriculture and Rural Development.

Many of the ideas and opportunities proposed here are covered in greater detail in the following reports:

- [1] Exiting the EU, not the Environment <https://www.carolinelucas.com/sites/carolinelucas.com/files/Safe%20Guarding%20Environment%20after%20Brexit.pdf>
- [2] A New Nature and Environment Commission: Speaking up for nature and holding the powerful to account <https://www.documents.clientearth.org/library/download-info/a-new-nature-and-environment-commission/>
- [3] The Future of British Farming outside the EU: A Report by the Soil Association <http://mollymep.org.uk/wp-content/uploads/Soil-Association-FULL-Feb17.docx.pdf>
- [4] UK Environmental Policy Post-Brexit: A Risk Analysis https://cdn.friendsoftheearth.uk/sites/default/files/downloads/Environment%20and%20Brexit%2C%20C%20Burns%20Et%20a%2C%20March%202018%20web_0.pdf
- [5] Farming after Brexit: A Report by Simon Fairlie <http://mollymep.org.uk/wp-content/uploads/Simon-Fairlie-FULL.doc.pdf>

Part 4: Consultee Feedback on the Online Survey

13 Overall, how satisfied are you with our online consultation tool?

Neither satisfied nor dissatisfied

Please give us any comments you have on the tool, including suggestions on how we could improve it. :

It would have been useful to have the option to download the consultation response document and submit a response via email.