

DEFRA consultation: Environmental principles and governance after the UK leaves the EU

The Heritage Alliance

2 August 2018

The Heritage Alliance is England's largest coalition of independent heritage interests. We unite more than 115 organisations which together have over 7 million members, volunteers, trustees and staff. The vast majority of England's historic environment (including more than half of rural England) is owned, managed or cared for by Heritage Alliance members. The Alliance is represented on DEFRA's Rural Development Programme Monitoring Committee, and the Alliance's specialist Rural Heritage Group has written this response.

The consultation is [here](#). This was an online response.

PART 1: ENVIRONMENTAL PRINCIPLES

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

Sustainable Development

High importance

This is highly important from a historic environment perspective, indeed all perspectives, but it needs to be taken well beyond the basic principle of not compromising future generations, so that it fully encompasses the three over-arching objectives of sustainable development: economic, environmental, and social. These are well defined in the new 2018 National Planning Policy Framework (in paragraph 8); and we particularly draw attention to its definition of the environmental objective: "to contribute to protecting and enhancing our natural, built and historic environment; including [etc]...". This approach is at the core of plan-making and decision-taking in the planning system. The 25-Year Environment Plan takes the same integrated approach, seeing the natural and historic environments as integrated and inseparable, and giving parity of approach to both, as does DEFRA's Health & Harmony consultation. We are therefore surprised that this consultation seems to have ignored this instead of carrying it forward. It is very important that this parity of approach for the natural and historic

environments is taken forward into the environmental principles, into the statutory policy statement, and into the remit and powers of the proposed new body.

The sustainable development principle is a core part of any suite of environmental principles as a reminder that change is not inevitably harmful, that it can bring not only economic and social but also environmental benefits; and that the natural and historic environments cannot survive without economic activity and income to fund their management and maintenance.

Precautionary principle

High importance

The precautionary principle is important from a historic environment viewpoint (especially for example in the treatment of archaeology), but we do not feel it appropriate to rank the principles in this list either generally or from a historic environment viewpoint.

Prevention principle

High importance

Polluter pays principle

High importance

The polluter pays principle is important from a historic environment viewpoint (especially for example in the treatment of archaeology), but again we do not feel it appropriate to rank the principles in this list either generally or from a historic environment viewpoint.

Rectification at source principle

High importance

Integration principle

High importance

Additional principle 1

**An additional principle needs to be added to those in Annex A:
“Integrated management of the natural and historic environment”.**

This principle needs to refer to the UK environment as the product of thousands of years of human intervention, to the indivisibility of the natural and historic environments, and to the multiple benefits which accrue from managing them in an integrated way. This has not generally been the approach taken in the past (see our response to Q4). As the 25-Year Plan says, “in the past, our failure to understand the full value of the benefits of environment and cultural heritage has seen us make poor choices. We can change that...” .). We do indeed need to change that, and a specific principle devoted to the indivisibility of the natural and historic environments will help that to happen. We know Historic England has also suggested a new environmental principle along these lines, and the Heritage Alliance is happy to work with DEFRA, DCMS, Historic England, and others in establishing the rationale for this and the optimal wording.

Additional environmental principles

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.

There are a number of historic environment (including the marine historic environment) conservation principles set out in international, European, and UK policy and law, like the definition of conservation as a process of managing change, the primacy of in-situ conservation, and so on. These are not necessarily transferable into a suite of general environmental principles, but they should not be diminished by non-inclusion, so the Bill and policy statement should refer to them.

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

Other response.

We agree with the proposals in general terms. However, it is vitally important that the statement takes an integrated approach to the environment. This consultation – in contrast to the 25YEP and DEFRA’s Health & Harmony consultation – seems to address only the natural environment, and has virtually no reference to the historic environment. That presumably is accidental rather than intentional, but it is essential that the statutory policy statement expressly addresses the environment as a whole, ie explicitly and unequivocally includes the historic as well as natural environment, and the importance and benefits of treating them in a holistic way.

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)?

Other response

The environmental principles need to be clearly-defined, widely-understood, widely-agreed, and updated as knowledge and circumstances change.

The EU (Withdrawal) Act 2018 requires the Bill to contain the principles set out in Clause 16, but the Bill should go further. Many principles need more detail for intelligibility and certainty, like the need to expand the sustainable development principle by explicitly setting out the three objectives of sustainable development, as above. More importantly, if Government really intends this generation to be the first to leave the environment in better condition, the principles need a strong foundation. Recording them explicitly on the face of the Bill sends a strong message that they have permanent government commitment which cannot be diluted without the express agreement of Parliament. These principles are well-established nationally and internationally and unlikely to change frequently, and effectively-worded legislation should allow sufficient flexibility without compromising this security.

At the same time, most of the detail should be in the policy statement, rather than the Bill: this allows more scope to consult, more scope to explain what the principles mean, and then more flexibility for detail to be reviewed and updated.

The Bill should also include a statutory definition of the environment which explicitly includes the natural and historic environments. That definition should apply to the environmental principles and the policy statement, and the remit, objectives, and powers of the new body.

It should also clarify its territorial extent, including the UK Marine Area for which the UK Government is responsible.

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.

For the historic environment, there is less to lose and much to gain: it is vital that future arrangements are a great improvement on the past. The EU did not see the historic environment as within its competence, and did not (except via the EIA Directive) legislate for it. In the UK, this created an artificial and arbitrary division between the natural and historic environments. That approach conflicted with the European Landscape Convention, and with commonsense, but more importantly it meant that the historic environment was largely ignored, especially in environmental funding decisions: funding depended almost entirely on whether an activity was in the scope of EU Directives, biasing funding very

heavily towards those areas and away from others. In addition, even those bodies charged with reporting on the environment have had a very limited remit to report on the historic environment.

That artificial and damaging division must not be repeated in future. The 25-Year Plan now gives parity of approach to the natural and historic environments, and views this in a holistic way, and this needs to be followed through in the statement of environmental principles, in the statutory policy statement, in the duties and functions of the proposed watchdog body, and in funding via ELMS or otherwise.

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

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

Yes, but as above it is very important that the environment is unequivocally defined to include the historic environment alongside the natural environment.

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

Yes. This probably requires it to have greater powers than those suggested in the consultation, including (but not only) the power to impose financial penalties on governments, where appropriate, to ensure that environmental policy is delivered in a sensible, timely, and fair way. This is not only a matter of effective environmental policing, but also of calling government to account if it (for example) acts unfairly to those who are delivering environmental policy on the ground, like land managers delivering public goods via ELMS.

c) Be established on a durable, statutory basis

Yes. This probably requires it to have greater powers than those suggested in the consultation.

d) Have a clear remit, avoiding overlap with other bodies

Yes. But it is important that it and other bodies work in partnership, avoiding either overlaps or gaps.

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

Yes. This probably requires it to have greater powers than those suggested in the consultation.

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

Yes, but again it is very important that the environment is unequivocally defined to include the historic environment alongside the natural environment.

The concept of ‘balancing’ environmental protection and other priorities needs further consideration. There may be tensions between these, but this is not an inevitable conflict between irreconcilable objectives: there will almost always be ‘win-win’ solutions which contribute to both objectives, and a healthy economy and economically-sustainable communities are essential to a healthy environment, not least in funding its management and maintenance.

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

Yes. It is obviously very important that its remit covers both domestic and transferred EU legislation, ie not just EU legislation. It should include the natural and historic environments, including marine legislation. It is also important to avoid overlaps or conflict with other bodies.

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?

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

Yes. The 25-Year Plan should be a strong focus for the new body. Again it is very important that the environment is unequivocally defined to include the historic environment alongside the natural environment, and that historic environment progress is scrutinised with everything else. This should include the marine environment, even though that was not covered in the 25-Year Plan.

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; again it is very important that the environment is unequivocally defined to include the historic environment alongside the natural environment. If the body is to be independent and seen to be independent, it also needs discretion to direct its scrutiny as it thinks fit.

c) Respond to government consultations on potential future policy

Yes; again it is very important that the environment is unequivocally defined to include the historic environment alongside the natural environment.

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. It is important to ensure that an effective complaint mechanism with effective sanctions exists (including but not only financial penalties), available not only for environmental bodies, but also for the public and other stakeholders, including obviously land managers involved in land management schemes. The existence of an effective complaint mechanism with effective sanctions would encourage government departments to consult stakeholders effectively so as to get systems and processes right from the beginning, avoiding problems like those which have happened with direct payments and with Countryside Stewardship.

Again, it is very important that the environment is unequivocally defined to include the historic environment alongside the natural environment. It is also important to avoid duplication or conflict with other bodies.

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?

a) Binding notices

Don't know. This is outside our expertise, but if the Government intends to meet the aim of ensuring that this is to be the first generation to leave the environment in a better condition, it is important that the powers of the watchdog body are sufficient to help to achieve that. It is also important that the body concerns itself with all relevant legislation, not just transferred EU legislation.

b) Intervention in legal proceedings

See previous answer.

c) Agree environmental undertakings

See previous answer.

d) Other powers not listed above

See previous answer.

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?

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

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

The question is hard to answer because the headline question says "directly or indirectly in scope", but the sub-questions say only "directly in scope". The new body should focus primarily on central government departments, but potentially other bodies, perhaps any public bodies with environmental functions or duties (including Natural England, the Environment Agency, other NDPBs like Historic England or the Heritage Lottery Fund, local authorities, etc – it would be best not to have an exclusive list) should be in scope if not a primary focus.

b) Local authorities

Please state which local authorities should be directly in scope below

See previous answer

c) Other public authorities

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

See previous answer

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?

a) EU environmental law retained under the EU (Withdrawal) Bill

Include all. Again, it is very important that this is driven by the 25-Year Plan and by the needs of the whole environment, not just areas previously covered by EU Directives; and that the environment is unequivocally defined to include the historic environment alongside the natural environment.

b) Domestic environmental law not based on EU legislation

Include all.

c) International environmental law

The Heritage Alliance is a company limited by guarantee registered in England and Wales, Registered No: 4577804
Registered Charity No. 1094793. Registered Office: 5-11 Lavington Street London SE1 0NZ

Unsure. A formal oversight role could potentially create confusion. But it might be helpful if this body was able to inform government of perceived failures.

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

Climate Change

Agree.

Agriculture

Partially Agree. It must again be very clear that the new body's duties extend across the historic environment as well as the natural environment. It is important to integrate the historic environment more effectively into agricultural and land use policy and legislation.

Fisheries and the Marine Environment

Partially Agree. It must again be very clear that the new body's duties extend across the marine environment, and that it does address the marine historic environment even though the 25-Year Plan so far has not. Government should also review the narrow definition of 'good environmental status' used in the Marine Strategy Framework Directive and elsewhere.

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

Yes. As proposed, the body should be able to advise on planning policy, primarily at a strategic level, functioning alongside the planning system, but with a clear boundary from it, and avoiding duplication of the work of other environmental bodies. This should include not only town and country planning (including obviously the natural and historic environment) but also national infrastructure and marine planning. The new body should not become involved in the making of individual plans or in individual planning decisions.

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?

Firstly, as the 25-Year Plan says, “in the past, our failure to understand the full value of the benefits of environment and cultural heritage has seen us make poor choices. We can change that...”. Changing that, and in particular integrating the natural and historic environment, need to be at the core of the environmental principles, the statutory policy statement, and the remit and activities of the new body. As with the natural environment, the scale of the historic environment problem is colossal: for example, we have already lost half our traditional farm buildings, and hundreds of thousands more are in decay; and almost half of scheduled monuments are under threat, as are parkland, hedgerows, and historic field systems. More effective regulation can help to some extent, but for most of the rural historic environment, the economics of farming mean that funding as a public good is its only chance of long-term survival.

That especially means that policy and funding must no longer be narrowly based on EU Directives, even when transposed into UK law. Instead they should be driven by UK issues and UK needs, by consideration of public benefit, by public consultation, and by the achievement of measured outcomes rather than process. They can and should be world-leading. The 25-Year Plan is (as it says) a once-in-a-generation opportunity to reform the management of the environment, by making policy and regulation more effective, efficient, and proportionate, and by designing a world-leading environmental land management scheme based on the provision of public goods. This approach has the potential to be truly transformative in the way in which land managers care for the natural and historic environment, to reverse decades of decline, and to achieve the ambitious aim of being the first generation to leave the environment in a better condition.

The historic environment has extensive public support, demonstrated by membership of heritage organisations (seven million people belong to Heritage Alliance member organisations), formal and informal visits to heritage, and extensive coverage in the media. That large constituency is not likely to be happy if the Bill failed to follow the lead of the 25-Year Plan and the Health and Harmony consultation in giving parity to the natural and historic environments, and ensuring that the proposed body will treat the historic environment as being integral to, and as important as, the natural environment.

Secondly, if the principles, policy statement, and the new body are to follow a Natural Capital approach and/or an ecosystem services approach, these need to be explicitly defined to include both the natural and historic environments. They usually are interpreted in that way, as they are in the 25-Year Plan, but unless this is made very explicit there is a danger that the environment will once again be interpreted in a narrow way based on transposed EU Directives, and in 25 years another government will be saying that “our failure to understand the full value of the benefits of environment and cultural heritage has seen us make poor choices”.

PART 4: CONSULTEE FEEDBACK ON THE ONLINE SURVEY

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

Neither satisfied nor dissatisfied. We are grateful for the opportunity to comment, there is no problem with an online consultation tool in principle, and this specific tool mainly works well in actual use.

However:

- 1. It is vital for the consulting body to provide a Word version of the questions. That (a) allows respondents to see and review all the questions before beginning to answer them, and (b) allows respondents if they choose to draft their responses and share them with others (ie, in the case of membership organisations like the Heritage Alliance, with members) before finally pasting them into the online response tool. Respondents otherwise have to waste large amounts of time cutting and pasting the questions into their own Word documents before they can begin to draft responses.**
- 2. Questions should always include open answer options (almost all do in this consultation, but that is not always the case).**
- 3. Questions should not (except perhaps in very simple cases) ask respondents to rank options.**
- 4. It would also be helpful if the online tool allowed users to save work to date without closing it.**

For further information, please contact The Heritage Alliance:

Contact

Joe O'Donnell
Policy and Communications
The Heritage Alliance
020 7233 0800
policy@theheritagealliance.org