

Environmental Principles and Governance after EU Exit - Defra consultation

ClientEarth written response

Part 1: Environmental principles

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

Sustainable development

1. **Other response:** Sustainable development is most commonly and broadly understood to mean development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs. It also generally requires that environmental needs are promoted and integrated into economic and social policies. Both of these are valuable aims.
2. However, sustainable development serves as more of a high-level objective at the EU level rather than as a 'principle'. In EU case law it has been referred to as a 'fundamental concept of environmental law' (*R v Secretary of State for the Environment, Transport and the Regions ex parte First Corporate Shipping* [2000]) and an 'essential objective of the [EU] system' (*Commission v Council (Environmental Crime)* [2005]). It is also incorporated to some degree into the principle of integration and plays a role as an overarching policy driver.
3. Because it has a different legal character to the core EU environmental principles, it would be inappropriate to list sustainable development alongside the principles in the new Bill. Instead, it should be incorporated through a more fitting legal framing such as an overarching policy aim.

Precautionary principle

4. **High importance:** The precautionary principle is a well-developed principle and must be fully incorporated into domestic law. As recognised in the consultation document, it has had substantial international uptake, appearing in over 50 agreements (including the Rio Declaration) as well as ICJ jurisprudence (in the 2010 *Pulp Mills* decision).
5. EEA Report 1/2013 draws on cases in which the principle was not enlisted sufficiently early (in some circumstances - such as in relation to the use of the pesticide DBCP and its impact on male fertility - resulting in extensive harm) and notes that precautionary approaches have enormous value in avoiding harm.
6. UK public authorities dealing with environmental issues are guided by the precautionary principle - the legal basis for this must be continued. For instance, the Forestry Commission notes in its Enforcement Policy Statement that the precautionary principle sometimes

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requires that enforcement action be taken even where risks are uncertain. Natural England also adopts the principle when conducting Habitat Regulation Assessments, noting “when there is sufficient scientific uncertainty about the likely effects of the proposals under consideration, the decision taken will be precautionary in nature”.

7. The precautionary principle must be adequately formulated. Rather than the bare minimum version contained in the consultation document (the weakest version of the principle: ‘uncertainty does not justify inaction’), the Government should adopt a robust version which at least allows protective measures to be taken where there is uncertainty as to the existence or extent of a risk to the environment: ‘uncertainty justifies action’. An even stronger version requires demonstration that an activity will not have a significant negative effect on the environment before proceeding - adopting this approach may sometimes be appropriate.

Prevention principle

8. **High importance:** The prevention principle provides that damage should be anticipated and prevented before it occurs, rather than allowed to happen and subsequently remedied. Timely prevention of environmental damage makes intuitive sense, particularly when the damage is likely to be irreversible or where reparation would be excessively expensive or difficult to deal with through civil or criminal liability.
9. The prevention principle is fundamentally important to ensure that environmental degradation is first and foremost avoided. As a general concept, it is well-understood and informs the basic rationale for many environmental protection laws at international, EU and national levels. Environmental liability regimes and economic instruments have preventive components in so far as they are designed to deter environmentally damaging behaviour and activities. In addition, it is a core component of good waste policy, which requires actors to first encourage the prevention or reduction of waste production, and only second deal with waste recovery.
10. Prevention can be linked to both pollution sources and points of impact. Public authorities should adopt policies to assess and regulate pollution sources to make them less damaging. In relation to points of impact, authorities may focus on preventing the effects of pollution or activities in particular areas by, for example, adopting quality standards for receiving environments or establishing protected areas to prevent harm occurring to particular habitats or species.

Polluter pays principle

11. **High importance:** The polluter pays principle is an important principle of environmental law. It underpins crucial legal regimes such as the EU Environmental Liability Directive which was implemented in UK law through the Environmental Damage Regulations 2009 and, even before the EU Directive, formed the basis of the UK’s domestic system for the remediation of contaminated land or water pollution under the Environmental Protection Act 1990.
12. The importance of the polluter pays principle has received judicial recognition. For instance, in *Re Mineral Resources* [1999], Neuberger J observed that “there is considerable public interest in the maintenance of a healthy environment, and in the principle pithily expressed as ‘the polluter must pay’.”

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13. The polluter pays principle has also influenced numerous policy areas. It is referenced particularly in policy areas such as management of hazardous substances, contaminated land management, waste management and guidance for environmental reporting. For instance, in guidance provided to businesses on the Astonfields Industrial Estate in Stafford, James Perry, from the Environment Agency's Hazardous Waste Team noted "at the Environment Agency we follow the 'polluter pays principle', so if something does happen, the company responsible will have to pay the costs of clean up and recovery".
14. The polluter pays principle must be included in the draft Bill in order to cement its position as a crucial element of the UK's environmental management regime.

Rectification at source principle

15. **Medium importance:** The principle that environmental harm should be rectified at source is fundamental to many areas of environmental policy including with regards to remediating land contamination and water pollution. It operates in conjunction with the polluter pays and prevention principles in particular to provide an overarching framework for dealing with activities that will have an effect on the environment and helps to prioritise the manner with which environmental harm is dealt.
16. This principle should deal with clean-up more generally as opposed to merely targeting the original source of environmental damage and taking preventive action. As such, the formulation of the principle in the draft Bill must reflect this broader scope.

Integration principle

17. **High importance:** The integration principle requires that environmental protection is integrated into policy areas and activities in addition to those focused on environmental issues. It is designed to fill normative gaps and ensure that environmental protection is considered in all relevant decision-making procedures, not just in the 'environmental' sector. The integration principle can assist in reconciling conflicting norms so that environmental protection is achieved. Generally, it helps to guarantee that environmental matters are taken into account at an early stage of decision-making and given sufficient weight.
18. The European Commission has identified 13 policy areas (including trade and employment) with which environmental considerations must be integrated. In *Sweden v Commission* [2007], the Court of Justice of the European Union (CJEU) upheld an argument based on the integration principle (among others) to challenge EU measures in non-environmental policy fields for their compliance with environmental protection requirements. The principle was also considered in *Environmental Crime* [2005], where the CJEU held that, in light of the integration principle, Community institutions should have introduced a measure concerning the enforcement of environmental law through criminal measures under the EU Treaty, despite criminal law being a matter traditionally reserved for member states.
19. Although the integration principle is less developed than the core EU environmental principles, it has an important role in ensuring that environmental issues do not exist in a vacuum. The UK has an opportunity now to go further than the EU by fully enshrining the integration principle into its domestic legislation and taking its legal implications more seriously.

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Non-regression (other principle 1)

20. **High importance:** Achieving the Government's ambition to leave the environment in a better state than we found it requires adherence to a non-regression principle. Non-regression prevents backwards steps being taken in the adoption, alteration and implementation of environmental laws. This is not only environmentally beneficial, but also provides certainty and creates a political landscape supportive of progressive environmental policies.
21. Further, and consistent with the Environmental Audit Committee's (EAC) recommendations, a principle of progression – requiring that environmental law is actively developed and improved to better protect the environment – could be adopted.
22. In evidence to the EAC, Michael Gove supported the inclusion of a non-regression provision in the UK-EU future partnership agreement and the principle is referenced in the Brexit White Paper. However, there is also significant value in adopting non-regression as a standalone principle within domestic law. We don't need the EU to police domestic environmental laws.
23. The principle is an emerging norm within international environmental law – see, for instance, the Paris Agreement on climate change, the Draft Global Pact for the Environment and several IUCN materials including a 2016 resolution which urges all governments to “take steps to implement effectively and to reinforce the principle of non-regression”. The UK can therefore take the lead by adopting a strong and enforceable non-regression – or progression – principle.

Managing environmental issues at the appropriate scale (other principle 2)

24. **Medium importance:** The scale at which an environmental matter is best managed varies.
25. Climate change, for instance, must be managed on a global scale, but also on a national scale to ensure that each country contributes to international efforts by reducing its total carbon emission levels. By contrast, the management of rivers and freshwater bodies may best happen at a catchment-wide level as recognised in Defra's “Catchment Based Approach: Improving the quality of our water environment”.
26. It is increasingly acknowledged that management of some environmental issues is best delivered via an ecosystem-based approach – for instance Convention on Biological Diversity Decision V/6 (2005) describes the ecosystem approach as “the primary framework of action to be taken under the Convention”.
27. An ecosystem-based approach is holistic, recognising the inter-connections between individual components and the plethora of ecosystem processes. This approach has gained particular traction in the context of marine conservation and fisheries management including in Defra's 25 Year Environment Plan (25YEP).
28. An added consideration in the UK context is that environmental policy matters are devolved. EU law currently provides a consistent and harmonised framework, but greater divergence is possible after exit. The UK may therefore benefit from an agreed domestic approach to addressing governance of environmental matters and more clarity on the extent to which certain overarching outcomes or policy approaches should be pursued at a UK-wide level.

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29. This principle requires appropriate resourcing and allocation across the scales of government. It does not simply require decentralisation, but rather deliberate consideration of the most appropriate scale for the management of particular environmental matters.

Environmental net gain (other principle 3)

30. **Do not include:** The 25YEP proposed the embedding of an 'environmental net gain' principle for development, including housing and infrastructure, with the potential for its eventual expansion into other areas of environmental policy.

31. The idea of 'net gain' is conceptually similar to offsetting. Offsetting has had mixed results in practice in the UK, with a report on Defra's pilot programme concluding that whilst biodiversity offsetting could deliver improvements in biodiversity outcomes, successful delivery would require additional resources and ecological expertise in local authorities; a more holistic and nuanced way of measuring losses and gains; better safeguards for irreplaceable habitats and more secure long-term legal protection for new sites.

32. The incorporation of a net gain principle may therefore weaken environmental outcomes due to its significant shortcomings. Furthermore, it is far from clear that net gain can operate across all areas of environmental policy, as environmental principles should. It would therefore be inappropriate to include net gain as an environmental principle.

33. If net gain is to be relied on more in environmental management, then the limitations of offsetting must be dealt with, and its role as a tool of last resort within the mitigation hierarchy more clearly cemented.

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.

34. The list of principles contained in the Bill should be a minimum list, with a clear, transparent process involving public consultation and appropriate parliamentary procedures for updating this list.

35. An additional principle which would also be a valuable inclusion in the new Bill is that all future policy and decision-making must be based on the best available scientific evidence. Robust, impartial science should be a core component in law and policy formation and implementation and in reaching decisions which affect the environment.

36. There are also other legal concepts that are sometimes discussed alongside the environmental principles. Whilst not principles per se, they have an important role to play in environmental law, and should be incorporated into the new Bill in the appropriate legal form.

37. For instance, environmental rights are highly valuable aspects of environmental law. However, they do not have the same legal character as principles: they provide specific and enforceable legal advantages rather than more general guidance, and so must be treated appropriately. As such, whilst it is crucial that the Aarhus rights listed in s16(2)(g)-(i) of the European Union (Withdrawal) Act 2018 (Withdrawal Act) are protected in domestic UK legislation, they must not be provided for through the same legal mechanism as the

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environmental principles. The forthcoming Bill provides an opportunity to improve how these rights are implemented in UK law.

38. General objectives are another important element of environmental law. In this regard, the legal duties attached to the principles should be framed with reference to a general objective: all public bodies exercising powers or functions relating to environmental management or affecting the environment should be required to aim for a high level of environmental protection by, among other things, having special regard to the environmental principles. This framing will be crucial in (i) elucidating the purpose of the principles and (ii) legitimising action taken by public authorities with the aim of protecting the environment. This is an important step to take in order to ensure that action taken with respect to the principles is not seen as disproportionate.

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

39. **Other response:** A statutory policy statement on the environmental principles (now required by the Withdrawal Act) will be an important aspect of the UK's new environmental regime.
40. It should elaborate on the principles' meanings and their roles across a range of contexts including policy development and implementation, decision-making, and should aid in judicial interpretation. The statement should be detailed whilst reserving some discretion for decision-makers as appropriate for their status as guiding principles rather than precise rules.
41. To ensure its longevity and authority, the statement must have statutory footing. In *Duddridge* [1996], the Court of Appeal held that if the Government announces a policy it intends to adopt without being obliged to do so, it is entitled to subsequently define the limits of that policy. The Bill must imbue the policy statement with legal force by associating it with a strong statutory duty on all public authorities to act in accordance with the policy statement.
42. The best available science will be valuable in determining the correct application of the principles. However, the policy statement should provide a high-level framework for the application of scientific knowledge rather than being an instrument itself dependent on scientific advice.
43. The statement should be formed through wide and transparent consultation and presented in draft to Parliament(s) for scrutiny and approval.
44. The policy statement should be subject to frequent review to ensure that its content continues to reflect the latest environmental knowledge and priorities. This process should be transparent, including public consultation and parliamentary scrutiny and approval.

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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)?

45. **Other response:** As required by the Withdrawal Act, the principles must be listed in the Bill (Option 1). This will help to ensure certainty, permanence, accountability and enforceability.
46. However, simply listing the principles in the Bill and accompanying this with a policy statement is insufficient. As recommended by the EAC, the Bill must establish strong duties on all public authorities (since it is not just central Government that has responsibilities relating to the environment, as recognised in the consultation document) to ensure that the principles and policy statement have the appropriate status in environmental decision-making and policy development and that failure to adequately account for the principles can be challenged.
47. This requires the creation of three separate duties that reflect the different characters of the principles and the policy statement. These should be formulated as duties to:
- aim for a high level of environment protection by, among other things, having special regard to the principles themselves;
 - act in accordance with the policy statement; and
 - interpret and apply legislation consistently with the principles.
48. These duties are sufficiently strong, giving significant legal weight to the principles and making clear that consideration of the principles must be thorough and not merely box-ticking. This is in contrast with other environmental duties. For instance, the Select Committee on the Natural Environment and Rural Communities Act 2006 (NERC Act) reported that that Act's duty to have regard to the purpose of conserving biodiversity is "weak, ineffective and lacks clear meaning".
49. The third duty mirrors the duty in s3 Human Rights Act 1998, bolstering the role of the principles in statutory interpretation.

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?

I think the governance gap will be greater in some areas than that described in the consultation document

50. The Government's current proposals do not succeed in closing the post-Brexit governance gap. Whilst existing domestic bodies do play a role in environmental governance, many functions are currently delivered by EU institutions. In order to ensure that environmental law is not impotent and ignored, functions ensuring its proper implementation must be replicated (and enhanced) domestically.

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51. Importantly, the consultation document recognises the wide enforcement gap resulting from Brexit. Through its role as ‘guardian of the treaties’, the European Commission enforces environmental law. It is empowered to investigate citizens’ and civil society’s complaints of non-compliance and initiate proceedings in the CJEU when necessary. In turn, the CJEU can issue judgments and impose fines for continued non-compliance. The UK’s judicial review procedure does not provide a replacement for this. It is not systematic, can be expensive and can usually assess only the procedural legality of a decision rather than consider its technical merits. Judicial review alone cannot be relied upon for proper enforcement of environmental law – a new form of merits review, backed up with robust sanctions and remedies, is necessary.
52. Other governance mechanisms will also be lost. For instance, under EU law, member states are required to develop implementation plans regarding their environmental obligations and report on progress against these plans. The consultation document envisages that these requirements will be replaced with an obligation on the Secretary of State to publish implementation reports and data. This is insufficient – there should be duties on all relevant public bodies to produce transparent plans and progress assessments in relation to their environmental obligations within specified timeframes.

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

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

53. **Partially, but with amendments:** It is critical that the new body is established to act as a strong, objective, impartial and well-evidenced voice for environmental protection and enhancement. The body must embody each of these characteristics in all of its operations and represent the interests of people and nature.
54. The new body must ensure that its institutional culture, practices, language and methodologies continue to meet these objectives. To help guide this, the body should have an overarching statutory purpose such as ‘to act on behalf of nature and ecosystems, recognising that humans form an integral component of natural systems’. This language incorporates the ecosystem-based approach that underpins international legal agreements such as the Convention on Biological Diversity. Having a broad purpose will direct the body’s work and allow it to both complement and critique the functioning of existing environmental bodies with comparable purposes, such as Natural England.
55. The body must act as a voice for people and nature, representing and fighting for their interests. It must take this role seriously by working closely with local communities and other public interest groups in open, accessible and iterative processes. Regular open sessions to discuss matters on the body’s agenda and consultation on proposed topics for review or inquiry would contribute to this. This is crucial to the body’s functioning (the knowledge of local people will be essential in setting its strategic direction), and its longevity: an organisation treasured by the electorate will be much harder to dismantle.

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Be independent of government and capable of holding it to account

56. **Partially, but with amendments:** The independence of any watchdog is essential if it is to function freely and faithfully. Building adequate independence into a statutory body is not straightforward. Whilst the actual independence of the new body will also depend on cultural practices that emerge, appropriate legal design is critical.
57. In evidence to the EAC, Sir Amyas Morse noted that the new body must 'not [be] in the reach of Government' if it is to be fully independent and empowered to hold Government to account. He emphasised the importance of the body having discretion to identify and explore issues of its own volition.
58. Our preferred model for the body is a Non-Administratively Classified Parliamentary Entity like the NAO. This recommendation is compatible with that of the EAC following its recent inquiry.
59. Failing this, the body should be established as a Non-Departmental Public Body such as the EHRC. However, the EHRC model must be enhanced. To improve the new body's independence, its senior members of staff should be appointed by parliament(s); the body should report to and be accountable to parliament(s); and it should receive ring-fenced funding from its sponsoring department(s).
60. Links to parliament(s) (as recommended by the EAC) will improve the ability of the body to act based on its own priorities, rather than those of the Government of the day and will make it harder for government(s) to dismantle the body or amend its aims if its powers become problematic. Proper independence will fundamentally underpin the very functioning of the body.

Be established on a durable, statutory basis

61. **Yes:** Dismantling of the body can be guarded against through the use of an appropriate legal form. Establishment through primary legislation is essential in this regard, as witnessed in the 2010 'bonfire of the quangos': those bodies established under primary legislation, such as the Climate Change Committee and the Health and Safety Executive came out unscathed.
62. A cross-UK body, supported by four distinct but interlocking pieces of legislation, would also add security to the new body's existence. Even if one nation were to seek to erase or weaken it, it would persist in the other nations. It would also provide some cross balance to the organisation in terms of its priority setting.
63. To ensure the durability of the new body, it would be sensible to learn from the example of the Press Recognition Panel (PRP) which was established by Royal Charter. The PRP's Royal Charter, which sets out, inter alia, the purpose and functions of the PRP can only be amended if the amendment is approved by a two thirds Parliamentary majority. Where a proposed change falls within the legislative competence of the Scottish Parliament, a two-thirds majority of that Parliament must approve the amendment. Government should consider this model when designing the new body and seek to replicate the durability and stability this structure establishes.

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Have a clear remit, avoiding overlap with other bodies

64. **Partially, but with amendments:** ‘Environmental law’ is broad and imprecisely defined, and views may reasonably differ on where exactly its boundaries lie. However, it is important to know the duties the body will oversee and the public authorities over which it will have power. A broad definition of ‘environmental law’ will allow the body to determine what most requires its attention. This could be achieved by using a definition similar to that of ‘environmental information’ in the Environmental Information Regulations 2004, which would cover any legislation affecting (or likely to affect) a variety of environmental factors.
65. The body’s remit should be reflected in its overarching statutory purpose. This should be ‘to act on behalf of nature and ecosystems, recognising that humans form an integral component of natural systems’.
66. The body should have strong and clear relationships with existing bodies, including Parliamentary ones. It is vital that the body works with existing bodies in order to properly perform its own functions. For instance, the body may need to rely on data collected by other bodies in order to assess implementation and compliance.
67. Unnecessary and confusing overlaps must be avoided and important functions should not be inappropriately allocated to existing bodies. For example, the consultation document notes that existing Ombudsmen which can launch investigations in response to complaints “are not specifically focused on environmental issues and do not have technical knowledge for complex environmental issues”. As such, they should not assume the function of receiving complaints which would be better dealt with by the new body.

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

68. **Yes:** The body’s resourcing must allow it to deliver a strong, world-leading system of governance which better protects our natural world.
69. In order to deliver its remit, the body must be empowered to provide an authoritative and influential voice that can speak on behalf of the multiple, diverse and frequently, from a legal perspective, voiceless beneficiaries of environmental laws.
70. Given the cost to the economy of environmental harm (for instance, the Natural Capital Committee has estimated that poor air quality costs £20 billion each year), a well-designed body would represent extremely good value for money.
71. As well as budget, the funding source is also important. The NAO, which receives its funding directly from Parliament, provides a strong model as indicated by many (including Michael Gove in evidence to the EAC inquiry). In order to provide even greater independence and scrutiny, the body should be funded by the four parliaments of the UK. If the body is to be funded by Government departments, this should be spread over more than one department to improve independence.
72. The body must be composed of a range of experts who are able to provide insightful analysis of environmental and legal matters. This will require lawyers, but expertise from other disciplines such as ecology, sociology and planning will also be necessary. An

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interdisciplinary methodology that respects different forms of power and knowledge will improve the body's ability to be insightful and ground-breaking.

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

73. **Partially, but with amendments:** It is vital that the body operates clearly and transparently, enlisting open, accessible and deliberative processes. The body must recognise that environmental law works in the interests of both the public and nature and it should operate to further its overarching purpose (to act on behalf of nature and ecosystems, recognising that humans form an integral component of natural systems).
74. It is also worth noting that sometimes strong legal action will be the most proportionate response to recalcitrant breaches of the law.
75. However, the role of this body is not to balance environmental protection against other priorities, but rather to ensure that Government and public bodies are meeting their legal duties. It is the responsibility of Government to make sure that it is conducting this balancing appropriately. Though complying with its legal obligations (both domestically and within international law) will clearly always be a very high priority for Government, the body will ensure that environmental commitments remain visible and relevant across departments.
76. In EU law, the general principle of proportionality requires that EU action does not exceed what is necessary to achieve Treaty objectives. Achieving environmental objectives must be established as a legitimate Government objective in the new Bill. Government decisions and policy-making should be assessed in the light of these objectives, ensuring that proportionality is not used to undermine environmental protections for the sake of prioritising other matters. Rather, the UK's legal system must be designed so that the legality and desirability of environmental protection measures are affirmed by appropriate new legislation.

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

77. **Yes:** The body's primary function should be to oversee compliance with and enforce environmental law. However, in order to conduct this enforcement effectively, it will also need to scrutinise and advise with respect to that law at earlier stages in the process.
78. For instance, the body should be able to conduct Thematic Inquiries in areas where compliance is generally and systemically poor in order to raise the political profile of issues and improve practice by producing guidance and recommendations. These must have legal weight behind them (normally binding public authorities) akin to the status of the Welsh Future Generation Commissioner's recommendations under s22 of the Well-being of Future Generations (Wales) Act 2015.
79. It may also prove useful for the body to critically assess and report on the measures taken (or not taken) and the implications these have for legal compliance. The body should therefore produce annual Progress Reviews that assess Government compliance. Government and public authorities should produce reports that consider what state the

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environment is in; the watchdog can then look at why the environment is in that state, and how it can be improved.

80. Parliament should have time scheduled to debate these Reviews. Furthermore, Government should be under a duty to respond to the body's Reviews, in particular responding to any recommendations made and explaining the reasons behind any failure to follow those recommendations.
81. Finally, whilst the body could have a role in commenting on the sufficiency of extant environmental law, it should not normally make detailed recommendations for legal reform.

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 of national progress against the delivery of the ambition, goals and actions of the 25 Year Environment Plan

82. **Yes:** The body's key function should be to ensure compliance with and, where necessary, enforce environmental law.
83. The best way for the body to scrutinise delivery of the 25YEP is for legal obligations to report on the Plan to be established. In the first instance, government departments and responsible delivery agencies must be required to produce annual assessments of implementation of, and progress against, the 25YEP. The new body should ensure compliance with these reporting obligations.
84. However, reports produced by Government and delivery agencies alone are not enough. These reports must be analysed, evaluated and critiqued by the new body including through the annual Progress Reviews described above. These Reviews will allow the body to monitor progress against Government and other delivery agencies' plans to deliver key environmental policies in line with their obligations.
85. In addition to review of the Government's annual 25YEP reports, the Progress Reviews should assess the likelihood of achieving compliance with targets set under the 25YEP. These Reviews would provide an early stage at which the body can assess and review Government policy, seeking to identify and enable the correction of any potential compliance or delivery issues before they occur.

Provide advice when commissioned by government on policies set out in government strategies and other published documents and how they are being implemented

86. **Yes:** The new body's primary role must be in relation to monitoring compliance with environmental law and enforcing against non-compliance. Therefore, it should advise Government in relation to the development and implementation of its policy across different sectors and departments, where this policy has implications for environmental law obligations.

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87. However, the body's exercise of its functions must not depend on having been invited by Government to comment on policy, law or otherwise. Consistent with its core role of ensuring compliance with environmental law, the body must be able to provide advice, issue recommendations and commence enforcement actions of its own volition where it believes that new Government policy will lead to a breach of environmental law or will frustrate Government's ability to meet its environmental commitments.
88. Regardless of the catalyst for the body's advice, Government must be under a duty to consider and respond to the advice and any recommendations it makes within a reasonable period.

Respond to government consultations on potential future policy

89. **Yes:** There is value in the body being able to engage in Government consultations and with other stakeholders in relation to environmental law and policy. Therefore, the body should submit evidence to Government consultations and to relevant Parliamentary Committees during inquiries and as new laws pass through Parliament, in this way communicating its advice to MPs and Peers.
90. Government departments should engage with the body at the earliest possible stage when considering the development of new policy and legislation in order to ensure that it will be compatible with existing commitments.
91. Taking into account the advice of experienced experts is a crucial element of the development of new environmental law and policy. However, it may be that some of these forward-looking functions would be better exercised by a separate body which is not also responsible for ensuring compliance with existing law. Thus, the establishment of more than one new body may be necessary for the UK to develop a truly world-leading environmental governance system.
92. These functions need not be limited to responding to consultations – another new body adequately resourced could play a useful role by actively recommending reform. As well as improving the effectiveness of (environmental) law, this evaluation would help to normalise consideration the environmental (legal) implications of new law and policy. The body will act in accordance with the integration principle by raising environmental concerns, increasing their political traction and improving their treatment as an integral component of policy-formation.

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?

93. **Yes:** Under current arrangements, citizens and civil society organisations can make free complaints to the European Commission about failures by Government and other public bodies to comply with EU environmental law. The new body must replace (and improve on) this mechanism. The complaints procedure must ensure recourse to a free, accessible and relatively quick procedure which can address issues of merit.

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94. Not only should the body respond to and investigate complaints from members of the public, but it should also continue to involve the complainant(s) and other relevant stakeholders throughout any follow-up procedures. The body's processes should be transparent, deliberative and iterative – seeking to build consensus and develop solutions with wide buy-in. If the body proposes not to pursue a complaint at any stage, the complainant should receive a formal notification of this with a chance to respond. As well as being directly valuable, stakeholder involvement will help to enrich people's sense of belonging within their local environments and improve the perception of environmental law as a public good.
95. More generally, the body should continuously and iteratively engage and work with relevant stakeholders to identify, analyse and develop its strategies, priorities and ways of working.
96. Whilst this form of complaints model would improve the public participation in the enforcement of environmental law, it is crucial to note that it cannot replace providing proper access to justice for citizens and civil society. The body must complement, rather than replace, improved measures by the UK to comply with the Aarhus Convention.
97. Importantly, and as addressed further in response to Question 10 below, the body must also be able to launch investigations of its own initiative.

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

98. **Include:** The body should be able to issue Binding Notices that legally require or prohibit certain acts from the authority in question and a written response from the authority within a specified timeframe. These Notices should have legal effect with courts empowered to issue orders requiring authorities to comply with them. Failure to comply with a court order is a criminal offence and appropriate sanctions and remedies must be available in this event – the new body should be able to make recommendations in this regard.
99. Whilst improving compliance through conciliatory approaches should be the body's initial method, recourse to legal action must be available for when such measures prove ineffective. This ability is crucial if the UK is to establish a 'world-leading' watchdog which succeeds in its mission to ensure compliance with environmental law. At the very least, the ability to threaten an increase in pressure will add weight to the body's words and act as a deterrent.
100. Where the body suspects that a public authority is (potentially) in breach of a duty, it should initially seek remedy through dialogue and collaboration. This could be done through the development of agreed and normally binding Action Plans setting out the steps required to achieve compliance and appropriate timeframes. Where this fails, a series of escalating notices will be needed, with legal action the last resort.

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101. The body's enforcement mechanisms must be designed specifically for its remit and scope and the environmental law context of its operations. They should involve stakeholders and allow for the merits of decisions taken by Government and public bodies to be assessed.

Intervention in legal proceedings

102. **Partially, but with amendments:** The body should be able to intervene as a third party in legal proceedings that are relevant to its functions and purpose. Its role in such interventions should be to provide expertise and advice, whilst looking to protect and promote the interests of nature and the environment. The body should also be able to assist individuals or groups involved in legal proceedings relevant to its purpose.

103. It is crucial that the body also has the power to initiate proceedings where appropriate. The Withdrawal Act now requires that the Bill establishing the body provides that the body will have this ability. Given the general limitations of the existing judicial review procedure (including the intensity of review a court can undertake, insufficient remedies and expense), this power to launch judicial reviews alone cannot replace the body's own bespoke compliance resolution mechanisms (as detailed above). However, standing to initiate and participate in judicial reviews will provide the body with the opportunity to use this route if it considers it appropriate and necessary to do so.

Agree environmental undertakings

104. **Include:** The body could also be empowered to enter into environmental undertakings with central Government and public bodies in breach of environmental law. These undertakings could include similar steps to those that could be set out in Action Plans or Advisory or Binding Notices including, for instance, provision of information; rescission of licences; remediation orders; ceasing certain practices and entering into conservation covenants.

105. Again, these undertakings must be enforceable including through the courts in order to encourage remediation of harm including working with local groups to solve issues.

Other powers not listed above

106. **Include:** In summary, the body must have at least the following powers with respect to enforcement:

- the power to undertake Thematic Inquiries into areas where compliance with the law is systemically poor;
- the power to issue guidance and recommendations, which public authorities must be under a duty to normally follow;
- the power to initiate Formal Investigations into public authorities where it has reason to believe there is a (potential) breach of the law;
- the power to agree a binding Action Plan with a public authority on steps required to achieve compliance; and
- the power to issue a series of escalating Notices to compel compliance with the law. These Notices should set out the steps required to achieve compliance and should ultimately be enforceable in a court of law.

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107. The body must have the ability to seek redress in the courts with effective, dissuasive sanctions and remedies available. In summary, these sanctions and remedies should include:
- the ability to issue fines where appropriate;
 - court orders requiring compliance with the steps outlined in the watchdog's Action Plans and/or Notices;
 - court orders requiring remediation work;
 - removal of relevant powers and duties from a public authority;
 - requiring key staff to appear before a public inquiry to explain failure to comply;
 - suspension or removal of key members of staff;
 - a 'special measures' procedure requiring working with experts (including the watchdog) to improve implementation measures and organisational practices; and
 - criminal sanctions for contempt of court.
108. The body's powers must be backed up by the courts which should be empowered to issue Specific Mandatory Orders requiring that the steps set out in an Action Plan or Notice are taken. In this way, the body's initial merits review would form the basis for a legally binding remedy. There may also be times where it is possible and desirable to rectify environmental damage caused by a breach by a public authority. In such instances, the courts should be able to require clean-up activity, with costs incurred by the body responsible for the illegal activity.
109. The political and legal pressure to comply accruing from the body's inquiries, investigations, Action Plans and Notices may not suffice to secure compliance. The EU fines system is a well-known deterrent for government infraction and, where appropriate, the new body should be able to issue fines for non-compliance. The revenue raised could be used to support projects that further charitable objectives relevant to the body's overarching purpose provided that such revenue is ring-fenced and is allocated in addition to other funding sources.
110. However, fines may not always be the most appropriate sanction. For instance, they may not be the most effective way of improving compliance by an already underfunded public agency, and so they must be issued wisely and strategically. In other cases, more fitting sanctions that are better targeted at improving compliance with the law may be needed. These could include the requirement to take preventative measures, relocation of powers and duties from a public authority, a 'special measures' procedure, suspension of senior staff, or even criminal sentences for contempt of court.

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?

Non-Ministerial Departments (NMDs) and Non-Departmental Public Bodies (NDPBs)

111. **Yes:** NMDs and NDPBs should fall within the direct scope of the new body's functions.

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

112. The preferred approach contained in the consultation document and reflected in the Withdrawal Act – that the new body’s functions will be directed at central Government only – is inadequate. If the new body is to be truly world-leading, its scope must be sufficiently broad to allow it to investigate potential non-compliance with, and enforce against breaches of, environmental law by all public authorities and actors exercising public functions. Michael Gove recognised this in evidence to the EAC when he indicated that the new body should have "the capacity to take the Government **or any other relevant body** to court" (emphasis added).
113. Whilst the broader scope does technically extend further than the powers of the European Commission, it would be inappropriate to design the new domestic body to replicate exactly the remit and processes of a supranational institution without careful consideration of whether its ways of working best fit the national context. As recognised in the consultation document, this presents an opportunity to “set a gold standard for environmental protection.” Whilst, generally, this must include replication of the functions currently carried out by EU institutions, it is also important to critically assess these functions and, where appropriate, develop enhanced approaches at the domestic level.
114. The inability of the EU institutions to engage directly with UK public authorities is a result of its limitations as an international body. There is no need to artificially replicate this limitation within the domestic context, as evidenced by bodies such as the EHRC and ICO, which have direct jurisdiction over all public bodies.
115. Furthermore, whilst the body may be more closely involved with the work of environmental agencies and departments, it is not only those which have responsibilities towards the natural world. Better understanding of environmental duties across Government is necessary if environmental concerns are to be taken more seriously. As such, the effectiveness of the new body should not be curtailed by limiting the public authorities over which it has supervisory and enforcement powers.
116. Provided it has sufficient expertise from a broad range of backgrounds to help make informed and effective decisions about its activities, having a broad scope will not necessarily impede the body’s ability to operate strategically and direct its resources to those issues which are most serious.
117. As such, all NMDs, NDPBs and ALBs should fall within the direct scope of the new body’s functions. As recognised in the consultation document, “ALBs have important national responsibilities for implementing environmental law”. Whilst the operations of some ALBs have a more obvious nexus with environmental obligations (for instance, the Environment Agency and Natural Resources Wales), it is important that the new body has the ability to hold to account any ALB which is failing to comply with environmental law.

Please give any reasons for your answer

118. As recognised in the consultation document, “[a]ctual delivery of policy measures and laws ... is more commonly performed by responsible authorities such as the Environment Agency, the Forestry Commission, the Marine Management Organisation [and] Natural England...” Given this, the ability to hold such bodies to account is crucial to the body’s

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success. As detailed above, whilst EU institutions are unable to engage directly with UK public authorities as a result of their supranational status, there is no need to replicate this limitation within the new body.

119. Making ALBs directly answerable to the new body will not undermine the rights and responsibilities of departmental ministers, as suggested in the consultation document. Where the body suspects that an ALB is failing to comply with environmental law, it is that ALB which should be subject to investigation, that ALB which should have the ability to engage with the new body and that ALB which should ultimately be held to account. In contrast to the consultation document's position, to limit the body's scope to central Government only would undermine the rights and responsibilities of ALBs and other public bodies which have obligations in relation to environmental law.
120. The consultation document refers to the need to manage the risk of overlap and duplication in the scrutiny of ALBs. Alongside this need, it is essential that functions related to the oversight and enforcement of environmental obligations which would be best exercised by the new body are not inappropriately conducted by existing bodies.

Local authorities

121. **Yes:** Local authorities should fall within the direct scope of the new body's functions.

Please state which local authorities should be directly in scope below

122. All local authorities should be directly within scope. Whilst including local authorities will have implications for the body's costs, staffing requirements and workload, a well-designed body with a sufficiently broad scope would represent extremely good value for money, given the economic cost of environmental damage (as noted in response to Question 5).
123. In addition, the body must have the ability to determine its own strategic approach to oversight and enforcement by identifying issues and choosing when to pursue non-compliance. The body will not be obliged to follow-up on every potential problem.

Please give any reasons for your answer

124. As recognised in the consultation document, "[l]ocal authorities have responsibilities for implementing a wide range of environmental laws." Given the significant role that local authorities play in the implementation of environmental law at a local level, it is vital that the new body is able to monitor their activities and take enforcement steps where appropriate.
125. The responsibilities of local authorities for the implementation of environmental law are extensive and varied. They range from determining the level of risk associated with activities regulated under the Local Authority Integrated Pollution Prevention and Control regimes to the requirement to inspect land from time to time in order to identify contamination and enable the designation of special sites (s78 Environmental Protection Act 1990). Given this, the new body's scope must extend to local authorities.

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Other public authorities

126. **Yes:** Other public authorities should also fall within the direct scope of the new body's functions.

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

127. In accordance with the integration principle, environmental considerations must be taken into account within all policy areas, including those areas which, perhaps initially at least, seem somehow apart from the environment. In line with this, it is crucial all public authorities (including other actors exercising public functions) fall directly within the scope of the new body.

Please give any reasons for your answer

128. As reflected in the consultation document, some environmental law assigns functions to public authorities beyond central Government, ALBs and local authorities. For instance, under the NERC Act, all public authorities are under a duty to have regard to the purpose of conserving biodiversity.

129. Given the potential impact of the functions of all public authorities on our natural world, their activities must fall within the scope of the new body.

130. The new body should act as a 'critical friend' of environmental departments and agencies: whilst working to improve their performance, it can support their efforts to achieve compliance with environmental law and increase their status within intra-governmental negotiations for resources and political priority. In addition, the new body should work with the authority in question to identify barriers to compliance and the steps needed to meet legal requirements. For example, where local authorities do not have access to in-house ecological experts, the body could assist by providing this technical expertise.

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?

EU environmental law retained under the EU (Withdrawal) Bill

131. **Include all:** The new body must have oversight functions and enforcement powers in relation to all environmental law which has been retained under the Withdrawal Act.

Domestic environmental law not based on EU legislation

132. **Include all:** The new body must have oversight functions and enforcement powers in relation to domestic environmental law which does not have its origins in EU law. As reflected in the consultation document, the body's remit should cover both existing environmental legislation and future law which may be developed during the life of the body.

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133. In addition, it is important that there is no distinction between retained EU law and domestic law. The Withdrawal Act confirms that EU-derived domestic legislation continues to have effect in domestic law and incorporates direct EU legislation into domestic law upon exit. As such, any distinction is artificial and likely to be unhelpful.

International environmental law

134. **Other response:** International law is an important source of environmental obligations and, as reflected in the consultation document, the UK is party to various multilateral environmental agreements (MEAs) which will persist following the UK's exit from the EU.

135. Whilst the body and, by extension, the UK courts could not 'enforce' international law in the sense of issuing Binding Notices or reaching determinations in relation to compliance, the body should have an oversight role in relation to international environmental law. It could, for instance, assess compliance with MEAs and, where necessary, make complaints to the relevant MEA committee or make non-binding recommendations with respect to MEAs with which there is an obligation to comply.

136. In addition, the body could support citizens' efforts to ensure compliance with international environmental law by providing information and advice about relevant international complaints and enforcement procedures, improving public participation and access to environmental justice.

137. We agree that where domestic law has been developed in order to implement international obligations, the domestic provisions must fall within the remit of the new body as with any other domestic legislation.

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

Climate change

138. **Disagree:** The new body should have a role in relation to climate change legislation.

139. Whilst the Committee on Climate Change (CCC) and the Adaptation Sub-Committee (ASC) have important advisory functions in relation to the implementation of the Climate Change Act 2008 (CCA), they do not have oversight of other important climate change legislation, nor are they empowered to enforce the CCA. The CJEU currently plays an important role in enforcing climate change targets – over half of greenhouse gas reductions are subject to CJEU enforcement – but this mechanism will be lost following the UK's exit from the EU creating a serious risk that the UK will miss its targets due to a loss of oversight mechanisms.

140. It will be crucial to carefully determine the role of the new body in relation to climate change and its relationship with the CCC and the ASC in order to benefit climate law and avoid overlapping functions.

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141. At a high level, the CCC and the ASC should continue to be responsible for advising the UK Government and the devolved administrations on setting and meeting emission targets and preparing for and adapting to climate change. And the body should clearly have an enforcement role in relation to climate change legislation other than the CCA.
142. With respect to enforcement of the CCA, the new body will need to carefully balance its powers and duties with the CCC. An enforcement role in this regard will be of most value if the body's enforcement powers have specific novel features (such as those detailed in our responses above), which would not otherwise be available under existing means such as JR.
143. In addition, the new body should be empowered to request information from Government bodies – a function the CCC does not have. This would enhance transparency and accountability in relation to climate change obligations.

Agriculture

144. **Agree:** The remit of the new body should include all UK law and policy in so far as it intersects with environmental issues.
145. As acknowledged in the consultation document, agricultural activities affect our natural world. In turn, so does the law and policy which regulate and direct these activities. As such, the new body must have a role in relation to the oversight and enforcement of agricultural law and policy.

Fisheries and the Marine Environment

146. **Agree:** Again, the remit of the new body should include all UK law and policy in so far as it intersects with environmental issues.
147. The new body must have a role in relation to the oversight and enforcement of law and policy related to fisheries and the marine environment – an area that has significant implications for our marine and coastal ecosystems.

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

148. **Yes:** Given the relationship between development and the environment, the new body must be able to advise on planning policy and its implementation by evaluating both the sufficiency of and compliance with existing law and policy.
149. However, the body's role should go further than this. In order to properly ensure compliance with environmental law throughout the planning system, the body should be empowered to assess individual planning decisions and challenge those which raise material issues and risk conflicting with relevant environmental obligations, such as Regulation 9(3) of the Conservation of Habitats and Species Regulations 2010 which requires authorities to have regard to the requirements of the Habitats Directive in the exercise of their functions.
150. To avoid being unnecessarily overburdened, the body should develop protocols to identify planning decisions in which its intervention would be strategically beneficial. Its interventions could take multiple forms including direct intervention in applications with

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significant environmental impacts and statutory appeals where the body considers that a planning decision breaches relevant environmental law. This function would not amount to a “case-by-case review of decisions” but would allow the body to ensure the correct application of relevant environmental law within the existing planning system.

151. In addition, the body should be a statutory consultee in relation to plans of a strategic nature or which will potentially have a significant environmental impact.

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?

Additional comments in relation to the new Environment Bill

152. In July 2018, the Prime Minister committed to introducing a new Environment Bill which will deal with a range of issues. We welcome the Government’s recognition that new legislation which goes beyond principles and governance is required in order to properly protect our natural world.

153. The scope of the Environmental Principles and Governance Bill should be extended to include new legal mechanisms that guarantee that the current pattern of environmental deterioration is halted, instead setting a course towards improving the state of the natural world and our relationships with it. It should also empower people and communities to play an active and valuable role in the design, implementation and enforcement of environmental law. This needs new environmental rights, duties and legally-binding objectives.

Rights

154. All people and communities have a right to live in a healthy environment, and environmental rights are now receiving significant attention within international human rights law, including through the work of the UN Special Rapporteur, John Knox. The UK should take the lead on this front, by enshrining environmental rights within our domestic legal order.

155. This means building on the best practices identified by Knox and ensuring that all people have at least the following rights respected, protected and fulfilled:

- the right to live in a healthy environment;
- the right to breathe clean air;
- the right to access high quality and natural greenspace;
- the right to environmental education;
- the right to environmental information;
- the right to participate in environmental decision-making;
- the right to have access to justice in environmental matters, including to challenge decisions in conflict with environmental law; and

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- the right to adequate and effective remedies, including injunctive relief as appropriate.

156. Developing a suite of legally binding environmental rights will underline the Government's recognition of the importance of a healthy environment to people's ability to thrive, empowering people to reconnect with their local and global environments.

157. The UK and the EU are both currently in breach of the Aarhus Convention which seeks to guarantee some of these procedural rights. The Government now has the opportunity to improve on the EU's position by fully complying with the Aarhus Convention and providing proper access to justice and remedies for individuals and civil society.

Duties

158. New environmental duties are needed in order to reverse the trend of environmental degradation and to better integrate environmental matters into decision-making by public and private actors. At least the following new duties should be introduced:

- an overarching and enforceable duty on all public bodies to protect and enhance the environment so that it is healthy, resilient and sustainable for the benefit of people and wildlife;
- a duty of environmental responsibility on all public and private actors, ensuring that activities affecting the environment are carried out responsibly and with due diligence; and
- a duty on the Government to co-operate with relevant actors on transboundary and international environmental matters.

159. New duties such as these would form a valuable component of the new Environment Bill. These duties must be meaningful, ambitious and enforceable. They should be accompanied by binding guidance which details exactly who has to do exactly what in order to comply. This includes the creation of specific objectives.

Objectives

160. A set of environmental objectives that the Secretary of State must achieve in order to comply with the overarching duty should be established. These objectives should cover a range of thematic issues, must be time-bound, and must be at least as ambitious as existing commitments under domestic, EU and international law.

161. The objectives should cover a wide range of issues such as meeting World Health Organisation guidelines on air quality, access to greenspace, soil health, climate change resilience, global impact, habitat quality and connectivity and safe use of chemicals.

162. Whilst the environment secretary should be ultimately responsible for meeting these objectives within the specified timeframe, all ministers of the crown should contribute to their achievement.

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Targets

163. In order to meet the objectives in some policy areas, it will be possible and valuable to develop enforceable SMART targets which take into account and build on existing targets as necessary. In developing these targets, it will be important to focus on what is actually environmentally desirable as opposed to what is easy to measure.
164. Clear mechanisms (including appropriate duties, powers and resources) should be put in place to enable the delivery of these targets and objectives. The public should be involved throughout these processes and a range of public authorities involved in ensuring that the objectives are delivered in an integrated and timely fashion.

Additional comments in relation to environmental principles

165. Paragraph 41 of the consultation document notes that the principle of proportionality will apply to ensure that Government action in relation to the environmental principles is consistent with the aim pursued. It is crucial to ensure that this principle is not enlisted to weaken the environmental principles by allowing other “national priorities” to take precedence. The legislation must, at a minimum, enshrine a high level of environmental protection as a legitimate objective, as is currently the case under Article 191 of the Treaty on the Functioning of the European Union.
166. Finally, we support the suggestion in paragraph 42 of the consultation document that the new environmental body should have powers of oversight and enforcement in relation to compliance with the policy statement. However, as reflected in our response to Question 3, this function should extend to oversight and monitoring of all public bodies which should be under duties in relation to the principles themselves and the policy statement.

Additional comments in relation to devolution issues

167. The new body should be established as a UK-wide entity – this would have ecological, legal and operational advantages.
168. It has ecological advantages because natural processes cross-political borders and dealing with environmental problems at the appropriate scale will often require cross-border co-operation. Migratory species management, reduction in waterborne pollutants and waste management are all examples of problems that must be tackled in collaboration with others.
169. It has legal advantages because it helps provide a clear and consistent legal landscape. It also provides a mechanism for the four UK Governments to hold each other to account, making sure that none is undercutting the others.
170. It has operational advantages because, as explored in response to Question 5, a body established by, accountable to, and funded by four parliaments has greater longevity, robustness and independence.
171. The environment is a devolved matter in the UK meaning that the establishment of a UK-wide entity will require a carefully managed process of co-ordination, co-operation and negotiation among the four nations. The new body must genuinely be the result of a four-nation approach and respect the powers and institutions of each nation, however it is not

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clear that there has been sufficient collaboration to date between the Government and the devolved administrations.

172. The development of a single body does not necessarily mean that one uniform set of standards applies across the whole of the UK. Reserved matters, such as customs issues relating to the trade in endangered species, should be treated at a UK level, but each Government should be held to account for the standards and duties it has established. The existence of a UK-wide body does not preclude the possibility of some devolved functions being exercised predominantly at national (or other non-UK) level. This may be particularly appropriate for overseeing laws unique to a particular nation (for instance the Well-being of Future Generations (Wales) Act 2015). However, a single body will help to ensure consistency in the interpretation and implementation of UK-wide policy and legislation providing greater clarity and certainty for citizens and business. The body should be accountable to the relevant parliament when dealing with devolved matters, and local branding may help it connect better with local communities.

173. The (quasi-)federal nature of the UK may help establish a sensible fines system that is comparable to the EU's. On standards and duties that have been agreed across the four jurisdictions of the UK, a centralised fines system may be deemed expedient in the four nations holding each other to account.

174. The devolved administrations have demonstrated their commitment to working collaboratively across the UK in order to improve environmental governance in evidence to the EAC's inquiry into the consultation document. Moreover, the Scottish and Welsh Governments took steps to protect environmental principles in their respective Continuity Bills. These commitments provide a useful context against which to develop proposals for a new UK-wide environmental governance regime.

Conclusion

175. This Government has an exciting and significant opportunity to create a strong legal framework to better protect our environment. By enshrining robust rights, duties, objectives and targets in primary legislation alongside the environmental principles and establishing an authoritative, powerful and world-leading governance body to monitor implementation and enforce compliance, the Government will seize this opportunity, helping to restore our environment and laying the foundations for the continued flourishing of our natural world and its inhabitants for generations to come.

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