

2 August 2018

SUBMISSION

Part 1: Environmental Principles

Sustainable Development - a) Sustainable Development:

High Importance

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

In light of amendments to the Withdrawal Act, the government is now committed to enshrining environmental principles in primary legislation. Based on recent communications with Defra, we understand this would include most, if not all, the principles set out in this consultation. However, the amendments to the Withdrawal Act do not make clear whether the principles contained in the EU treaties will be adopted verbatim or whether the general thrust of these principles will be adopted but not the exact wording. We believe the exact wording of the EU principles should be adopted in order to avoid unnecessary divergence in UK policy which could make things complicated for companies doing business in both the EU and UK or affect the EU's willingness to trade with the UK.

It is also worth noting that manufacturers do not want to see a "race to the bottom" on the environment and see considerable value in a predictable policy landscape.

It is the implementation of the principles themselves and therefore the content of the proposed Statutory Policy Statement that is now the live issue. Having specific regard to the precautionary principle, we believe this could be either balanced out with an 'innovation principle' or that the implementation of the precautionary principle should be approached pragmatically and that this should be clearly set out in the Statutory Policy Statement.

Precautionary Principle - b) Precautionary Principle:

High Importance

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

Prevention Principle - c) Prevention Principle:

High Importance

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

Polluter Pays Principle - d) Polluter Pays Principle:

High Importance

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

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

High Importance

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

Integration Principle - f) Integration Principle:

High Importance

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

Other Principle 1 - g) Other Principle 1:

High Importance

Please state what Other Principle 1 is below:

We support proposals for the inclusion of an 'innovation' principle on the face of the Environmental Principles and Governance Bill as this would provide a statutory basis for pragmatic decision making.

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

We take the view that the precautionary principle, whilst an essential aspect of environmental regulation, should be implemented pragmatically whilst maintaining environmental protections. An 'innovation' principle could act as a check and balance where taking a precautionary approach could be seen as disproportionate to the risk. An innovation principle could also operate where innovation could have an overall greater environmental benefit than the environmental risk.

Other Principle 2 - h) Other Principle 2:

Do Not Include

Please state what Other Principle 2 is below:

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

Other Principle 3 - i) Other Principle 3:

Do Not Include

Please state what Other Principle 3 is below:

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

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:

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

Yes

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

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

In light of amendments to the Withdrawal Act, this question is no longer relevant. However, it is reasonable that principles are enshrined in primary legislation in order that they survive successive governments and therefore create a degree of predictability and consistency for business. We note that the Withdrawal Act states "...Ministers of the Crown must have regard to..." the Statutory Policy Statement and its advice on implementing the principles. This is not as strong as the duty in Article 191 (2) of the Treaty on the Functioning of the European Union to "base" its environmental policy "on the precautionary" principle, "rectification at source" principle and the "polluter should pay" principle.

In theory, it is open to the UK government to take an entirely different approach to environmental policy and regulation. But, as noted in answer to Q1, this could affect our trading relationship with the EU and complicate matters for companies operating in both jurisdictions and therefore needs to be managed carefully.

Question 3 Should the Environmental Principles and Governance Bill list the environmental principles that the statement must cover

(Option 1), or should the principles only be set out in the policy statement (Option 2)?

Option 1 - Environmental principles listed on the bill

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

As above

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

As above

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?

Yes, I agree with the assessment in the consultation document

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

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

We agree with the analysis carried out in the consultation document. The overarching mechanism of the proposed governance body could cover any potential governance roles currently undertaken by the EU. Additionally, the overarching approach should provide a degree of predictability for business by engendering more consistent, pragmatic decision-making, based around long-term environmental goals.

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

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

Yes

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

Manufacturers welcome the establishment of an independent statutory body for the environment and broadly agree with the objectives set out in the consultation document. We believe taking an overarching approach to environmental governance will improve consistency in delivering policy, allowing business to operate in a climate of predictability. It is however essential that the independence and impartiality of the statutory body is preserved so that it can assist the government to deliver its policy over the long-term, allowing businesses to plan over successive investment cycles. To this end, there should be a mechanism for ensuring it is properly funded in line with the rules on public money and that this cannot be compromised without proper scrutiny of the consequences.

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

Yes

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

As above.

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

Yes

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

As above.

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

Yes

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

We believe the mandate needs to be clear and strictly limited to ensure the body is effective, adaptable to evolving government architecture and does not begin to encroach on other departments and agencies. However, inevitably the new body will have a role in holding government departments to account and supporting the delivery of government policy. It may therefore have a role in scrutinising the work of government more broadly where this touches on environmental issues.

For business, this could act as a way of ensuring consistency across departments where currently there could be discrepancies or even contradictions. This also happens within the EU where, for example chemicals and waste policy

does not line up with broader circular economy objectives. An overarching governance structure could work to mitigate these issues.

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

Yes

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

The statutory body must have sufficient resources to effectively deliver its remit. Without proper resources it will lack the 'teeth' to hold the government to account despite technically having the power to do so. For business, this could lead to inconsistent policy delivery meaning an unpredictable regulatory landscape and that environmental standards could be eroded to the detriment of business.

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

Yes

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

We broadly welcome the Government's intention to balance environmental protection against other priorities. For manufacturers, this must include international competitiveness.

In the event that economic activity is significantly compromised as a result of the implementation of new or existing environmental rules, a risk assessment exercise should be conducted to ensure legitimate economic activity is not hampered where environmental protections can be preserved or achieved in a different way.

Other objectives - g) other objective not listed:

No

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

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

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

Yes

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

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

Yes, the new body should act as a mechanism for ensuring the government meets its existing environmental obligations, and also that it minimises divergence from existing and new EU environmental regulations without due cause.

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

Environment Plan?

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

Environment Plan:

Yes

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

This is an essential part of the body's role in ensuring the government delivers a consistent and predictable long-term regulatory structure for the environment.

Business requires pragmatic long-term targets if it is to invest and these must be seen to have a degree of certainty about them. Where the government does not deliver on aspects of its 25 Year Environment Plan, the body should be able to take measures (including litigation if necessary) to hold to government to its commitments.

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

Yes

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

We cannot see any reason to disagree with this idea. However, the body itself will need to be properly resourced with technical and policy expertise, or at least have access to the necessary expertise to properly advise government.

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

Yes

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

Whilst the new body could respond to government consultations, its primary role should be advising on the delivery of long-term targets. It is also that the individuals and organisations the governance body may rely on for technical and policy expertise may already have responded to any given consultation.

Other - d) Other response:

No

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

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

Question 8 Should the new body have a remit and powers to respond to and investigate complaints from members of the public about the alleged failure of government to implement environmental law?

Yes

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

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

This proposal would need careful consideration, particularly as it goes beyond the European Commission's role and could quickly become an onerous task. If several complaints were received a day, the body would require significant expert staff in order to investigate those complaints. Moreover, the existing court process offers a route to resolve disputes if necessary and although the potential costs of this can be high, it is likely to deter vexatious complaints where on the other hand the environmental body would potentially have no such filter.

Question 9 Do you think any other mechanisms should be included in the framework for the new body to enforce government delivery of environmental law beyond advisory notices?

Binding notices - a) Binding notices:

Include

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

Whilst this suggests the new body would have teeth to hold the government to account and a clear route to escalation from an advisory notice, the route to appeal for the government is not clear from the consultation document. This appears to be a unilateral decision making process and clarity is needed as to how this mechanism would work in practice.

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

Partially, include but with amendments

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

The body should be able to intervene in legal proceedings by becoming a party to proceedings or acting as an expert policy witness in ongoing proceedings.

Undertakings - c) Agree environmental undertakings:

Include

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

Undertakings have proven to be an effective mechanism for the Environment Agency and other regulators to enforce permit provisions against private businesses without the need for expensive litigation. This proposal would allow the same enforcement to be implemented where the government has not met its obligations.

Civil sanctions are also generally less expensive than litigation and would ensure that any escalation in action from the body is considered in the context of the overall cost to the taxpayer.

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

No

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

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

Question 10 The new body will hold national government directly to account. Should any other authorities be directly or indirectly in the scope of the new body?

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

No

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

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

The new environmental body should be responsible for holding government to account for meeting targets and policy ambitions. This would indirectly ensure scrutiny of other regulators and other authorities in any event. As noted above, the mandate should be kept as straightforward as possible to prevent mission creep, keep it up-to-date and avoid overlap with other bodies.

Local authorities - b) Local authorities:

No

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

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

Other public authorities - c) Other public authorities:

No

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

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

Other - d) Other response:

No

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

Question 11 Do you agree that the new body should include oversight of domestic environmental law, including that derived from the EU, but not of international environmental agreements to which the UK is party?

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

Include all

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

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

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

Include all

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

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

Oversight International - c) International environmental law:

Exclude

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

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

International obligations should be built into the government's long-term targets and so by scrutiny of them, the new governance body would indirectly hold the UK government to account on international obligations. This is not an area where the European Commission holds governments to account and we are concerned about making the mandate of the new body too broad. However, the committee could perhaps have a right to comments on the integration of international obligations into long-term targets.

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

Climate change - Climate Change:

Other

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

Climate change out of scope.

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

We believe there are sufficient mechanisms in place regarding international climate change agreements and the Climate Change Act.

Agriculture - Agriculture:

Don't know / No Opinion

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

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

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

Don't know / No Opinion

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

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

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

Don't know / no opinion

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

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

Part 3: Overall environmental governance

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

Please explain below:

Following the UK's departure from the European Union, it is essential that a robust governance structure for the environment is put in place largely replacing the roles currently carried out by the European Commission and the European Court of Justice. This would ensure the government delivers on its long-term strategy and targets as set out in the 25 Year Plan for the Environment.

However, there is still a lot of detail to be discussed in relation to the structure of the new environmental governance arrangements, including coordination with the devolved jurisdictions and the long-term objectives of the 25 Year Plan. We therefore look forward to further prompt engagement with the government on the proposed Environment Act, Policy Statement, 25 Year Plan (including its metrics) and the structure of the governance body.

Make UK

Make UK champions British manufacturing. We are powerful voice at local, national and international level for small and medium sized businesses and corporates in the manufacturing and engineering sectors.

We're determined to create the most supportive environment for UK manufacturing growth and success, and we present the issues that are most important to our members, working hard to ensure UK Manufacturing remains in the government and media spotlight.

Together, we build a platform for the evolution of UK manufacturing.

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