

## **Response to the Consultation on the Environmental Principles and Governance after the United Kingdom leaves the European Union**

I am Professor of Environmental Geography and Planning at Northumbria University, a chartered member of the RTPI and a knowledge exchange fellow funded by the Natural Environment Research Council (NERC) 2017-2020. I have over 30 years' experience in the built environment sector with successful funding amounting to over £2.5 million from government and research councils, 40 peer review publications and 2 games on spatial planning matters. My interdisciplinary research focuses on environmental governance fusing spatial planning and ecosystem science theory into improved policy and decision-making in practice and makes me ideally placed to comment on the consultation relating to the efficacy of environmental governance and associated Principles after the United Kingdom leaves the European Union.

In general I welcome and commend the comprehensive coverage in the document of past, present and proposed future governance arrangements as well as some international comparisons. I also acknowledge the Government's determination, frequently repeated, "to be the first government to leave our environment in a better state than that which was inherited". However, this ambition needs to be strengthened with specific indicators and metrics to capture what a better state actually means as currently it is open to very wide interpretation and trade-offs. **Perhaps the use of net environmental gains across all key ecosystem services** might be more helpful.

### **Areas not fully covered under the consultation questions.**

There is one fundamental weakness in the proposals in **that it does not treat the UK as a whole**. Environmental issues do not recognise boundaries and given it is the UK that is leaving the EU it should really be the UK post Brexit which has an environmental watchdog covering all areas of responsibility. I feel strongly that environmental governance should be managed and delivered from a UK perspective. There is a need to fuse Scottish, Welsh and Northern Ireland into this body to help join up the rather disunited kingdom that Brexit now presents. The process by which this happens is crucial and trying to shoehorn Northern Irish, Welsh and Scottish perspectives after the body's formation seems wrong and likely to generate significant resentment.

**There is no review of past environmental regulation and governance** to examine the drivers and pressures that have led to the ongoing decline of nature despite new initiatives where, in particular, the growth of natural capital and ecosystem science approaches (Scott

et al., 2018<sup>1</sup>) have mushroomed yet do not halt loss. The complexity of our own environmental governance arrangements and our tendency towards disintegrated development (Scott et al., 2013<sup>2</sup>), where we create separate sectoral silos to diagnose and treat issues in isolation (e.g. local nature partnerships vs local enterprise partnerships), are key governance problems that need to be addressed in the way environmental governance is mainstreamed and delivered post-Brexit. Furthermore, the complexity of the existing set of environmental regulation as delivered through EU Directives etc; all of which have been transposed in various ways into our existing legislation, **will require simplification but not dilution in the post Brexit period**. This particularly applies to the system/role of designations which is totally baffling to anyone not fully immersed in them and impact assessments which are seen as hurdles to overcome rather than as tools to improve policy and decisions.

Another weakness in the document is the **framing of the environment as something in competition with economic and social interests**. Under the core principles of the ecosystem approach humans are an integral part of nature where a healthy environment is a prerequisite to a healthy economy and a healthy population rather than competing between different interests as implied in some of the wording. This should change the way conflicts between the social, economic and environmental are managed. Here the use of natural capital accounting helps address some of the current limitations in traditional cost benefit analyses e.g. Treasury Green Book (HM Treasury 2018<sup>3</sup>). Building on the wording in the BEIS (2017) Industrial Strategy *“Our measures to achieve this [moving towards a more circular economy] will include: an approach to infrastructure investment that aims to regenerate natural capital...”*, highlight the need to take a more positive regenerative approach within a circular economy. Additionally this could be strengthened by implementing the mandatory goals of net environmental and biodiversity gains, to improve conflict management by producing a level playing field (or perhaps hay meadow if an environmental pun is to be allowed here).

**We would therefore recommend that the Proportionality principle is reworded** to reflect a Natural Capital and Ecosystem Science approach in the objectives for establishment of the new body:

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<sup>1</sup> Scott, AJ; Carter C., Hardman, M. , Grayson, N. and Slaney T (2018) Mainstreaming ecosystem science in spatial planning practice: exploiting a hybrid opportunity space Land Use Policy 70 232-246

[https://authors.elsevier.com/sd/article/S0264-8377\(16\)30642-1](https://authors.elsevier.com/sd/article/S0264-8377(16)30642-1)

<sup>2</sup> Scott, A.J., Carter, C.E., Larkham, P., Reed, M., Morton, N., Waters, R., Adams, D., Collier, D., Crean, C., Curzon, R., Forster, R., Gibbs, P., Grayson, N., Hardman, M., Hearle, A., Jarvis, D., Kennet, M. Leach, K., Middleton, M., Schiessel, N., Stonyer, B., Coles, R. (2013) Disintegrated Development at the Rural Urban Fringe Disintegrated Scott (2011) : Re-connecting spatial planning theory and practice Progress in Planning 83 1-52

<sup>3</sup> HM Treasury Green Book update (2018)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/685903/The\\_Green\\_Book.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685903/The_Green_Book.pdf)

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

Proposed: *Operate in a clear, proportionate and transparent way in the public interest, recognising that a healthy environment underpins successful economic development and health and wellbeing.*

## Consultation Questions

**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,

Option 1 is preferred and I support the idea that the environmental principles would be listed in the Environmental Principles and Governance Bill, with a statutory policy statement under that legislation to explain how they should be interpreted and applied. **I do feel however that there is a need to do this as an integrated bundle rather than as a discrete set of principles which are cherry picked and even put in order of priority. I find this an anathema. I feel the framing of the standard survey consultation response document neglects this by separating them for assessment.**

### Part 1 – Environmental Principles

We welcome the setting down of the principles in one place and incorporating them into British law. We also would welcome the adoption of them across the United Kingdom so there in consistency of approach in the devolved nations. However this point goes to the heart of the body as well.

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

**All principles listed are important and should not be seen as individual but rather as a bundle that underpin sustainable development. This should not be seen as a popularity contest. I have added others to the table that are important**

- Sustainable Development
- Precautionary Principle
- Polluter Pays Principle
- Integration Principle
- Proportionality Principle
- (Aarhus) Public Participation and access to environmental information.

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

I welcome the retention of the Habitats Directive, the Birds Directive and the Marine Strategy Framework in UK law and we also need the SEA and EIA directives as well as measures to scrutinise designated sites including SSSIs/SAMS. We also need to incorporate the Aarhus Convention which although not EU has been under their scrutiny.

I also question whether we can fully rely on a national body, albeit independent from government, to hold us fully to account in this area, given the experience with air pollution where the EU has sanctioned several member states and also where Defra has consistently challenged the court rulings. **It seems critical here than any watchdog has both a bark (voice) and teeth (fines and sanctions) to ensure that it is not a paper tiger.**

## **Part 2 – Accountability for the Environment**

### **The proposed new Independent and Statutory Environmental Body**

We strongly approve of the proposal for a new independent body but argue that it needs to be transnational. It is essential that it is genuinely independent and has real authority and sanctions from the UK national government bodies down. However, it must not be seen simply as a Defra body. Hence my first argument to incorporate and involve all other devolved UK countries. Secondly the new HM Government 25 year environment plan (25YEP) was signed up to by all government departments and thus the body must have an explicit cross government remit which doesn't confine it to the 25YEP.

Further clarity is needed on its ability to hold the Government and various departments to account in both the process by which policy is developed and the delivery and outcomes of interventions. A set of key indicators should be established for this. Furthermore, it **should become a statutory undertaker in planning developments** with consultations on all proposals that have a likely significant environmental impact. **This is important as it needs to be a proactive body to stop environmental harm happening rather than simply a retrospective body that acts after damage has been caused.** In terms of sanctions it does need to be seen as a body that can levy punitive fines and other sanctions.

## **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. Agreed*

*Be independent of government and capable of holding it to account* **Agreed but add “and across multiple scales and sectors”**

*Be established on a durable, statutory basis* **Agreed but substitute resilient for durable**

*Have a clear remit, avoiding overlap with other bodies* **I do not fully agree here as it may weaken the cross cutting aspect of the work it does. It may overlap with other bodies that have an economic remit for example.**

*Have the powers, functions and resources required to deliver that remit* **Agreed. This will be very important as limited staff resources will necessarily impact on its ability to work in what is going to be a very challenging arena particularly Post Brexit. This does raise the wider question as to how the staffing complement will be agreed.**

*Operate in a clear, proportionate and transparent way in the public interest, recognising that it is necessary to balance environmental protection against other priorities* **Do not fully agree As suggested above I recommend changes to “Operate in a clear, proportionate and transparent way in the public interest, recognising that a healthy environment underpins successful economic development and health and wellbeing.**

### **It also needs another enforcement function**

*In so doing the body needs to have an armoury of incentives and sanctions to employ to protect and enhance the environment. These include but are not limited to, fines, revocation, grants, voluntary codes of conduct, criminal prosecution.*

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

A fundamental role for the new body is to have functions to scrutinise and advise the government in relation to extant **and future** environmental law which should also be extended to planning law given its impact on the environment. This must necessary include the NPPF and in particular new planning guidance (NPPG)

Clarity is needed here, however, in terms of who is enforcing what, is it the new Body or is it the existing regulatory bodies? There are considerable grounds for confusion.

Agriculture, fisheries, planning and the marine environment are fundamental aspects of the 25 Year Environment Plan, so the new body should have a key role in overseeing and minimising their impacts on the environment

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

We believe that to be effective and deliver lasting change the 25 YEP should be actively monitored with indicators and feedback mechanisms and strong sanctions for non-compliance. However, the body should also have a remit to ensure that other strategies and programmes are in conformity

(given that they have signed up to it) given that it is a HM Government strategy. Specifically here the NPPF, Clean Growth, Clean Air and the Industrial Strategies should be mentioned.

### **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 the new body has 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, this would give a more preferable option to members of the public seeking judicial review which is very expensive. Here it should also assume oversight of ensuring compliance with the Aarhus Convention<sup>4</sup> which is also about ensuring public has access to environmental information.

### **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 and agreeing environmental undertakings are useful additional mechanisms to be included in the framework for the new body to enforce government delivery of environmental law beyond advisory notices, as these give more strength to the role of the new body. Enforcement does require adequate resourcing though.

Importantly the approach overall should not be perceived as wholly reliant on sanctions and penalties. However these are needed and it is not clear that these are proposed. This is why there should be a toolkit of approaches with attention given to positive incentives, educational measures and “nudge” type efforts to influence cultural norms. Behaviour change research demonstrates these are more effective in bringing about lasting change because motivation is internalised. However as mentioned before a paper tiger will be effectively impotent and it is vital that the body does have powers to fine and prosecute as these act as powerful disincentives.

Non-Ministerial Departments (NMD's) and Non-Departmental Public Bodies (NDPBs) are government bodies that should also be held to account, as they are public authorities that have statutory obligations with regard to environmental law, so these should all be accountable to the new Body

### **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?**

No we disagree.

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<sup>4</sup> Aarhus Convention <http://ec.europa.eu/environment/aarhus/index.htm>

Environmental issues are strongly interconnected so artificial scalar divisions can introduce potential loopholes and disconnects. It is also desirable in terms of clarity and simplicity that the new body has comprehensive oversight even if it may have to refer certain matters elsewhere.

This goes to the heart of scope, structure, powers and budgets of this new body and its relationships with the Environment Agency and Natural England.

## SUMMARY

In summary, this document and the proposed legislation is welcomed and very much needed. It is disappointing that a UK wide approach has not been taken here given that it is the UK that is leaving the EU.

It may be of interest that my NERC knowledge Exchange fellowship<sup>5</sup> looking at how to improve the way nature is mainstreamed into policy and decision making allows me to devote time and expertise to help support the new body drawing on the latest research intelligence across the NERC and wider research communities.

Signed

Alister Scott

*Alister Scott BA PhD MRTPI*

*Professor of Environmental Geography*

*NERC Knowledge Exchange Fellow (Green Infrastructure)*

*Department of Geography and Environmental Sciences*

*Faculty of Engineering and Environment*

*Ellison Building*

*Newcastle*

*NE1 8ST*



**Northumbria  
University**  
NEWCASTLE

T: +44 (0)191 349 5319

M: +44 (0) 07847597652

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<sup>5</sup> NERC Knowledge exchange fellowship <https://mainstreaminggreeninfrastructure.com/index.php>

