

Response ID ANON-WE4J-HE3A-U

Submitted to **Consultation on Environmental Principles and Governance in Scotland**

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Section 1: Environmental principles

1 Do you agree with the introduction of a duty to have regard to the four EU environmental principles in the formation of policy, including proposals for legislation, by Scottish Ministers?

Yes

Please explain your answer. :

Currently, the EU environmental principles have profound effect on environmental governance in Scotland, helping guide and direct approaches and inform legal frameworks. RTPI Scotland supports at least an equivalent level of environmental protection and governance to what currently exists in the EU after Brexit. This is important when considering, for example, any future trade relationship with the EU, which may depend on demonstrating sound principles of environmental governance. Therefore RTPI Scotland is of the view that the UK and devolved governments, should establish a common set of agreed environmental principles and a duty placed upon Ministers in each of these administrations to have regard to them. In failing this RTPI Scotland supports the intention to provide a strong environmental framework by Scottish Government, with the four identified environmental principles applied to every devolved matter without exception. There is concern however, that the obligation for Scottish Ministers to 'have regard to' the proposed environmental principles in the production of policy and legislation is not sufficiently compelling, potentially deprioritising considerations of the environmental principles when weighed up against, for example, economic considerations. Stronger formulations could be considered e.g. 'to act in accordance with' or 'to further the principles', coupled with an obligation on Ministers to explain their actions in relation to the principles.

2 Do you agree that the duty should not extend to other functions exercised by Scottish Ministers and public authorities in Scotland?

Yes

Please explain your answer. :

It is hoped that through restricting the duty to Ministers, local authorities can avoid dealing with the complex interplay between the environmental principles and the range of other duties placed on them. This would provide for a more consistent approach therefore decreasing opportunities for legal challenge on individual decisions. The European Commission currently does not extend the duty to other functions exercised by Scottish Ministers and public authorities in Scotland. If the body is enabled to do this there is a risk that Scottish ministers could avoid responsibilities by arguing that other bodies have failed to act.

3 Do you agree that a new duty should be focused on the four EU environmental principles?

No

If not, which other principles should be included and why?:

We recommend all of the principles in Section 16 of the Withdrawal act should be established including the integration principle and sustainable development principle. If a consensus agreement cannot be achieved across governments in the UK, cross-border principles may also have to be introduced. This would include, for example, a principle of non-transboundary harm and a principle of enabling engagement in environmental decision-making in cross border scenarios. If this does not happen, RTPI Scotland would support a new duty focused on the four EU environmental principles for Scotland. Article 191 TFEU defines both principles and objectives of EU environmental policy. Therefore RTPI Scotland would support the inclusion of comparable high-level objectives to which the principles and the National Performance Framework can be connected.

4 Do you agree there should be an associated requirement for a policy statement which would guide the interpretation and application of a duty, were one to be created?

Yes

Please explain your answer.:

RTPI Scotland believes it important that such a policy statement is prepared to have assurance that environmental standards are being applied clearly and effectively.

Section 2: Environmental governance arrangements

5 What do you think will be the impact of the loss of engagement with the EU on monitoring, measuring and reporting?

What do you think will be the impact of the loss of engagement with the EU on monitoring, measuring and reporting?:

RTPI Scotland welcomes the acknowledgement that there may be significant loss of the expertise and independence from the EU institutions as a result of Brexit. Our recently published research

(<https://www.rtpi.org.uk/briefing-room/news-releases/2019/january/rtpi-study-opens-debate-in-post-brexite-environmental-planning/>) shows that most planning practitioners are generally supportive of the way that EU legislation has instituted firm environmental goals and targets, and reinforce their implementation, and are keen to see this continue. RTPI Scotland supports the intention to "clarify and consolidate reporting requirements" in the context of the ongoing wider review of the domestic monitoring framework. However RTPI Scotland is concerned that potential divergences in data collection between Westminster and the devolved governments is not discussed. This could result in uneven and inconsistent access to environmental information across the nations and potentially undermine attempts to monitor and protect the environment. For example, current mechanisms for cooperation and decisions making across nations enacted through the Joint Nature Conservation Committee, rely on jurisdictions sharing a common set of environmental standards.

The continued trade relationship with the EU may differ depending on the demonstration of sound principles of environmental governance. Loss of engagement with the EU on monitoring, measuring and reporting therefore may affect environmental outcomes and market access to the EU. The potential for different approaches being adopted in the different UK administrations, and the possibility of greater divergence of legislation within the UK, as well as between the UK and the EU, will also be an important factor in practice. Potentially this could result in a 'race to the bottom' where jurisdictions legislate for the minimum environmental standards in response to trade negotiations, potentially manifesting in 'pollution tourism' whereby waste is dumped in areas with lower environmental standards for economic gain. This issue highlights possible concerns that the UK Government will be able to conclude trade deals whilst potentially omitting the considerations of the devolved nation's environmental frameworks. In the EU context, requiring Member States to report on environmental policy implementation to the EU was an important vehicle for policy learning and improvement. Without the re-institution of comparable reporting requirements in the UK, it becomes more difficult to drive improvement in governments.

6 What key issues would you wish a review of reporting and monitoring requirements to cover?

What key issues would you wish a review of reporting and monitoring requirements to cover?:

As it is likely that the UK will have to adopt enhanced domestic and enforcement mechanisms, this will depend very much on the shape of a future "watchdog" set up by the UK Government or the Scottish Government. From a citizens' rights (and an environmental) perspective what replaces the EU should be of equal value to what we have now, which crosses boundaries. We note that Section 16 of the EU Withdrawal Act requires the UK Secretary of State to establish a body. We believe that this should lead to the establishment of a single transnational body. Without the collaboration and cooperation between the UK Government and devolved nations, enactment of environmental legislation and trade negotiations will be undermined.

The key issues RTPI Scotland would wish to highlight in a review of reporting and monitoring requirements are:

1. Creation of a single, independent, transnational watchdog - structures which are set by individual national parliaments/assemblies would be much easier to alter with changes of government in any of those forums: structures agreed across the UK would endure much as those agreed across the EU have. Therefore the RTPI believes there should be a UK wide framework on environmental matters which applies across all nations in the UK and it should be supervised by a single body, with a presence in each nation, arising from agreement by unanimity between the 4 nations and capable of holding all the governments to account. If a transnational framework and overarching body is not established RTPI Scotland supports the proposals in the consultation for the creation of an Environmental Commissioner, based on a similar structure to the Scottish Information Commissioner, to deal with complaints from the public, monitoring and enforcing environmental law.
2. Commitment to non-regression - Any review of reporting and monitoring requirements should focus on establishing a non-regression commitment. This would ensure that the Scottish Government will strive for the existing levels of protection, with the likelihood of further environmental degradation reduced.
3. Specific commitments on general principles and substantive provisions – backing any non-regressive commitment.

7 Do you think any significant governance issues will arise as a result of the loss of EU scrutiny and assessment of performance?

Yes

Please explain your answer. :

In spatial planning, the loss of EU oversight provides an opportunity to bring the Scottish spatial planning system more firmly within the ambit of any new environmental watchdog. Its role could include holding the UK and devolved governments to account for the design and policies of the planning system, as the EC did so in 2005, ruling that the UK Government had failed to apply the Habitats Directive to plan making (in all UK jurisdictions). It could furthermore advise on new planning policy, retaining and reinforcing the status of environmental goals in the making of development plans and development decisions.

8 How should we meet the requirements for effective scrutiny of government performance in environmental policy and delivery in Scotland?

How should we meet the requirements for effective scrutiny of government performance in environmental policy and delivery in Scotland?:

For effective scrutiny of government performance a newly established watchdog should be independent, clear in its remit, durable and statutory replacing the oversight mechanisms and expertise provided by the EU institutions. The body needs to be able to collaborate across the four UK nations to survive a change in Environment Secretaries in every administration, the four UK Governments, and its own chair. In order to ensure the principle of durability is maintained in operation, the establishment of a UK-wide body would be beneficial. In failing this, RTPI Scotland supports proposals to have the potential Environmental Commissioner connect with and funded by the Scottish Parliament to ensure its independence from Scottish Government. A set of formal and ambitious environmental goals, targets and standards should be pursued, linked to clear time frames, against which implementation could be monitored and, if required, enforced.

As discussed previously RTPI Scotland supports regulating environmental matters in the wider context of other governance and policy frameworks. Therefore whilst environmental principles may only apply to Ministers in the formulation of policy, the consideration of the wider context of National Performance Framework and other national strategies and policies such as Scottish Planning Policy and the National Planning Framework, that promote the of integrative approaches to sustainable development is encouraged. Currently there are no environmental targets within the National Performance Framework, therefore in order to ensure environment is considered in the broader policy environment, RTPI Scotland wishes to seek assurance from Scottish Government that they will include targets within new legislation.

9 Which policy areas should be included within the scope of any scrutiny arrangements?

Which policy areas should be included within the scope of any scrutiny arrangements?:

RTPI Scotland support the policy areas listed in the consultation document, in particular the proposed inclusion of climate change. Noise pollution can have a harmful impact on human and animal life and therefore should be included in the scope of arrangements. RTPI Scotland wishes clarification of how far planning falls within these arrangements, as discussed in Q7, there is an opportunity to further hold the UK and devolved governments to account for the design and policies of the planning system.

10 What do you think will be the impact in Scotland of the loss of EU complaint mechanisms?

What do you think will be the impact in Scotland of the loss of EU complaint mechanisms?:

This depends on how effectively a new watchdog can hold the Scottish Government to account in terms of compliance. Consideration to obligations under the Aarhus Convention also need to be made, with less precision and certainty in compliance arrangements in international law than EU law. In Scotland the expenses rules currently do not ensure that relevant private law claims can be covered by Protective Expenses Orders. Furthermore, the understanding that costs can be varied upwards from the default level means that neither the required certainty nor the guarantee against prohibitive expense is provided for potential litigants.

11 Will a new function be required to replace the current role of the European Commission in receiving complaints from individuals and organisations about compliance with environmental law?

Yes

Please explain your answer.:

n/a

12 What do you think the impact will be in Scotland of the loss of EU enforcement powers?

What do you think the impact will be in Scotland of the loss of EU enforcement powers?:

There is considerable evidence to show that the actual or potential threat of EU enforcement action, including fines, has pushed UK governments to more fully deliver on their environmental obligations. It is far from clear that any replacement domestic enforcement mechanism will have similar dissuasive effect, especially where meeting environmental goals may challenge business as usual.

13 What do you think should be done to address the loss of EU enforcement powers? Please explain why you think any changes are needed?

What do you think should be done to address the loss of EU enforcement powers? Please explain why you think any changes are needed?:

The watchdog should be able to impose fines on the UK Government and devolved Governments. This has proved during the UK's membership of the EU as one of the powerful levers to secure action from governments. The proposed Environmental Commissioner appears to lacking in fee levying powers. Any proposed replacement to the EU fine levying mechanisms need sanction powers to ensure effective compliance. There is also a read-across to measures the UK may be required to introduce to meet the requirements of the Withdrawal Agreement such as instituting sanctions which are effective, proportionate and dissuasive and have a real and deterrent effect. The Joint Nature Conservation Committee presently decides on disputes but there may be a case for a specialist environmental dispute resolution mechanism to provide sufficient expertise.

About you

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

RTPi Scotland

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Very satisfied

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Very satisfied

Please enter comments here.: