

Broadway

INITIATIVE

BLUEPRINT FOR AN ENVIRONMENT ACT

A societywide prospectus for world leading legislation
for the environment after Brexit

26 November 2018



Including an invitation to shape the list of assurances needed by stakeholders for the Act.

This paper has been produced by the Broadway Initiative. The views expressed are Broadway's initial consensus, formulated through dialogue and discussion amongst its members, and does not necessarily represent the views of individual members. Broadway members include senior representatives of organisations from business, NGOs, professional bodies, and policy thinktanks and nationally recognised environmental, legal, regulatory and governance experts.

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INVITATION TO SHAPE A WORLD LEADING FRAMEWORK FOR THE ENVIRONMENT

The invitation

Stakeholders from across the normal interest divides including from business sectors, environmental groups, academics and professional bodies have come together inspired to find common ground in shaping a world leading Environment Act.

Through the vehicle of the Broadway Initiative, they have developed this blueprint for an Environment Act that creates a long term framework for improving the environment while meeting the other social and economic objectives we face in the 21st century. Broadway has subsequently engaged with a much wider circle of over 30 industry groups, 15 environmental groups and over 40 professional bodies, learned societies and thinktanks.

From this engagement Broadway has defined the core set of asks – or ‘assurances’ – that stakeholders need from the Bill to create a framework that works for all sectors. These assurances are set out on page 2.

Please let us know by 14 December of:

- ideas to improve these assurances
- potential unintended consequences to be aware of
- your interest in supporting these assurances

Email: ed@broadwayinitiative.org.uk

Stakeholders have also identified the areas that need more work:

- 1 the objectives and target-setting mechanism to be included in the Bill
- 2 how best to integrate the environment into spatial planning
- 3 whether and how a general duty of care can achieve its purpose without unintended consequences
- 4 how to ensure that robust evidence is available to inform the policymaking process
- 5 supporting all UK nations to help determine where common frameworks are mutually beneficial

Broadway will now focus on these areas in the months ahead. Please let us know if you'd like to be involved.

Background to this blueprint

Most UK environmental policy and law has derived from European Union institutions.

As the UK leaves the EU we are at a crossroads with a choice about how we manage the resource base on which all life, our economy, health and wellbeing fundamentally depend. That choice also has a global dimension, with pressures on natural resources growing across all continents. Societies that learn how to meet human demands and aspirations in the most efficient ways while improving their natural asset bases will increasingly be those that succeed in the 21st century.

We can choose to take control and provide a positive framework that enables all parts of society to play their part in creating a healthy environment while meeting other social and economic needs. One that makes it simpler and more rewarding to improve the environment, gives industry greater certainty for investment and innovation, obtains best value for public and private investment, gives EU and international trading partners confidence of UK performance, and stimulates economic growth and exports.

Or we can ignore that opportunity. The gaps left by EU exit will start to show. The existing problems inherent in the governance arrangements that have evolved over recent decades, that too often leave environmental considerations separate and until the last moment, raising costs and pitting environmental against other economic needs, will get worse. These shortcomings need resolution irrespective of leaving the EU.

All UK nations have made strong commitments to the environment. In England, the Government's 25 year plan for the environment has set out a vision to be the first generation to leave the environment in a better state than the one we inherited. Wales introduced a Well-being of Future Generations Act in 2005 and an Environment Act in 2016. Scotland is developing a bold environmental strategy with an outline vision for 'one planet prosperity', protecting nature and living within the earth's sustainable limits, while building a more prosperous, innovative and successful nation. Northern Ireland has pioneered prosperity agreements for corporate leadership on the environment.

All nations also acknowledge that to make ambition endure and vision a reality requires the right governance structures to be in place. UK nations have already committed to environmental principles and independent oversight as an important starting point.

The Prime Minister has already announced that her government will go further: bringing forward the first Environment Bill for over 20 years to put in place the frameworks needed for the future. UK nations also have the opportunity to collaborate on common or shared UK frameworks or to create their own legislation. This blueprint addresses the wider structures needed improve the environment long term. The general principles in the draft blueprint apply to all UK nations.

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ASSURANCES NEEDED FOR A 'WORLD LEADING' ENVIRONMENT BILL

These draft assurances have been developed through discussions with stakeholders from all sectors. Please give any feedback and ideas for improvement, and let us know of your interest in backing them, by 14 December to ed@broadwayinitiative.org.uk

To enable all parts of society to plan and invest in a healthy environment, the Act must:

1 Define shared objectives for the environment

Reasons are:

- To provide a clear basis for all sectors to plan and invest.
- To avoid 'stranded assets' by avoiding investment in unsustainable activities.

The Act must:

- A** Include long term objectives to maintain and restore the environment so it is healthy, resilient and sustainable for the benefit of people, wildlife and the economy.
- B** Include objectives which are at least comparable to existing legal obligations.
- C** Include a collaborative process for the government to set quantified targets within two years which define the objectives in more detail, with interim targets for 5, 10 and 15 years.
- D** Include the criteria to be considered in setting targets such as those in the Climate Change Act.

2 Contain predictable processes for governments to ensure appropriate policies are in place

Reasons are:

- To make sure policy is long term, planned and collaborative reflecting investment cycles.
- To make sure that responsibility is owned and shared by all government departments.
- To replace EU mechanisms.

The Act must:

- A** Include a duty on SoS and devolved Ministers to ensure appropriate measures are in place to meet milestones, targets and objectives.
- B** Require government to produce a 'plan' every five years to meet milestones, targets and objectives. Plans should be developed collaboratively, be informed by rigorous analysis of environmental challenges and provide system-wide solutions.
- C** Include a duty on the SoS and devolved Ministers to develop a mechanism to set environmental standards.
- D** Require government to develop a set of indicators for the targets and objectives and report against them.

3 Include clear principles for incorporating the environment during policy development

The reason is:

- To guide individual policies to reflect the environment in a way the economy can predict.

The Act must:

- A** Include at least the principles set out in the Withdrawal Act.
- B** Ensure principles are applied intelligently through a policy statement.

4 Provide for a unified spatial framework for achieving environmental objectives alongside other social and economic objectives

The reason is:

- Currently there are lots of single-issue spatial plans for the environment (for example covering floods, water, nature) separate from the main economic plans (including local development plans)

The Act must:

- A** Provide for a single ‘map’ to show the state of the environment and opportunities for improving the environment that operates at different scales.
- B** Include a requirement to develop a framework to integrate the environment into place-based planning [subject to further development].

5 Include clear and stable responsibilities for specified activities

The reason is:

- To enable those activities and organisations best placed to develop solutions from the start in a clear and durable way, rather than government imposing end of pipe solutions late in the day.

The Act must:

- A** Include a duty of care for organisations that materially interact with the environment [subject to finding a design that achieves the purpose without unintended consequences].
- B** Include a requirement for net environmental gain for new development.
- C** Make producers responsible for the post-consumer environmental costs of their products.

6 Provide for independent oversight of progress towards achieving targets and objectives

Reasons are:

- To hold governments to account for meeting objectives and enforcing the law.
- To give the economy and international partners confidence in the system.
- To ensure a level playing field.

The Act must:

- A** Include provision for advice and scrutiny on targets, milestones, plans and action to meet objectives.
- B** Include provision for receiving complaints.
- C** Include provision for enforcing non-compliance robustly including to take legal action before a tribunal or court.
- D** Provide oversight of climate change obligations.
- E** Establish a sufficiently independent and equipped body or bodies accountable to the relevant Parliament/s.

7 Include a common framework at UK level where mutually necessary or beneficial

Reasons are:

- International reputation and ability to trade depends on the UK as a whole; the four UK countries share a natural resource base in different and complex ways.

The Act or the total sum of UK legislation must be co-designed to contain common frameworks that respect devolution for:

- A** for 1, 2, 3 and 6 above.
- B** consulting and co-operating in developing policies that may have cross-border implications and in setting the UK’s position on relevant international agreements.

1 WHY ACT AND WHY NOW

The global context for a new direction

Creating the right conditions

The prize

Why now

THE GLOBAL CONTEXT FOR A NEW DIRECTION

Global pressures on the natural environment are intensifying. Countries that take early action to provide the frameworks for business and society to manage and build natural capital and become more resource efficient will improve quality of life and resilience at home and create opportunity for economic growth.

UK governments have already signalled bold action to manage natural resources sustainably, for example through England's 25 year plan and Scotland's Greener Strategic Objectives. The global context, including the UN sustainable development goals, helps explain the imperative to back up political commitment with credible legal frameworks – noting that Wales has already introduced pioneering legislation for the environment in the context of EU membership.

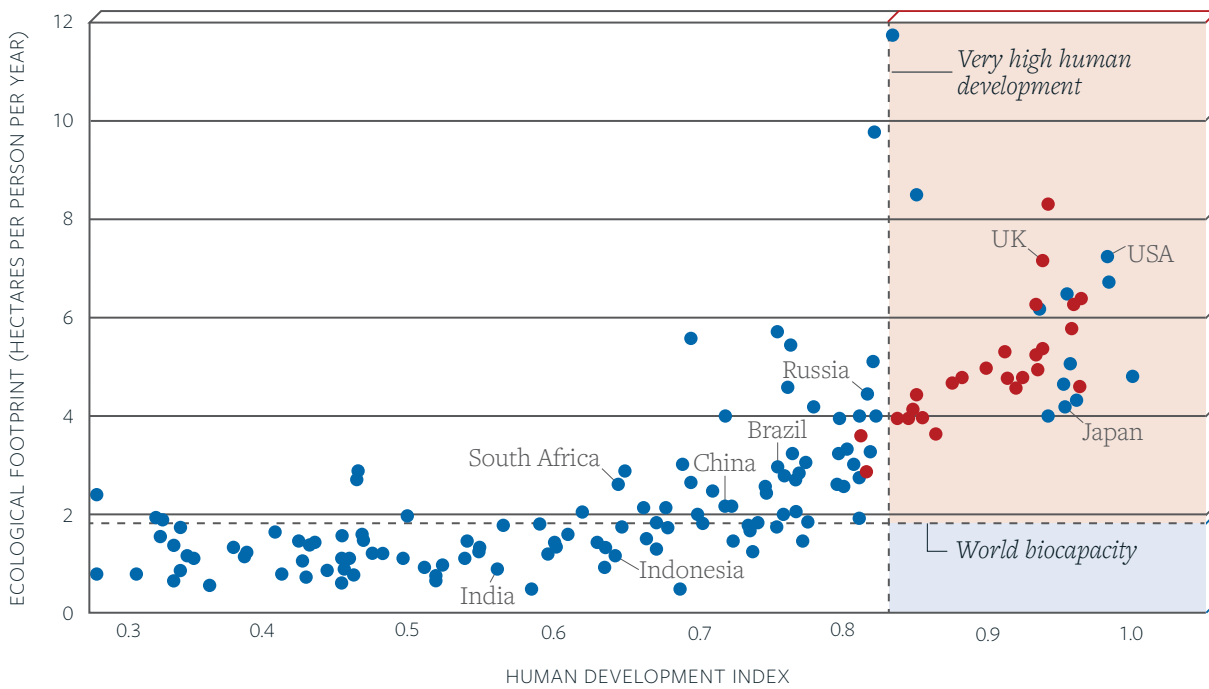
Pressures on the UK's immediate natural resource base are already a public and government concern and are intensifying. The 25 year plan and associated strategies document the impacts for example of droughts, floods, poor air quality on the instances of major diseases, soil degradation, plastics in the marine environment, poor access to greenspace in some parts of the country and wildlife decline. In the UK, 210,000 new households are projected to form every year until 2039. In parallel there is a projected decline of 10% to 45% in deployable output of water in England by 2050.

At the same time global pressures on natural resources are increasing. At global level energy demand is projected to increase by 30–40% over the coming 20 years (IEA, 2013), water demand will increase by 30% by 2030, demand for food will increase by 50% by 2030, demand for materials is projected to double again by 2030 (SERI, 2013) and material waste to quadruple by 2100. This will be caused not only by global population growth

(expected to rise to 9.6 billion in 2050 and 10.7 by 2100 from 7.6 billion in 2018) but also from increasing urbanisation and consumption – 67% of global population is expected to live in urban areas.

Countries like the UK will also become more vulnerable to these global pressures as the 21st century progresses. The UK relies heavily on other parts of the world to meet demand for resources. 62% of the UK's total water footprint (4645 litres per person per day) comes from other countries' water systems. Over 60% of timber is imported. We import 36% of the energy we directly use, which does not capture our total energy footprint. 58% of metal ores consumed in the EU-28 in 2013 are imported. The World Economic Forum (WEF) has identified ten global risks of the highest concern for business. Four of these — concerning water, food, climate change responses and extreme weather events — relate directly to the environment. In total the Global Footprinting Network estimates that the UK is currently using resources as if there were 2.85 planets. Most developed nations are using resources well above one planet (see diagram below), but that trend will become more problematic with much greater competition for resources with rapid economic growth in developing countries.

Figure 1: The UK will be increasingly vulnerable as global resource pressures intensify



Source: *Global Footprint Network, 2012; UNDP, 2014a. National footprint accounts 2008 and Human Development Index (HDI)*

Solving these problems in all countries will account for an increasing share of the global economy. The low carbon and environmental goods and services sector is already a rapidly growing £3 trillion industry. The UK's sector could grow by 11% per year between 2015 and 2030 – four times faster than the rest of the economy and could be responsible with the right conditions for £60bn to £170bn of exports sales by 2030. Business strategists predict that the 4th industrial revolution will transform how all sectors of the economy, radically improving efficiency and helping to regenerate the natural environment through better asset management.

A clear, coherent, forward-looking and pro-innovation domestic policy framework would not only help secure quality of life and economic resilience domestically but also position its industries to be competitive in this next industrial revolution and not be left behind.

CREATING THE RIGHT CONDITIONS

To take that opportunity, government needs to create the right conditions for society and the economy to improve the environment, bearing in mind the long term nature of environmental challenges and their solutions and the interconnected nature of environmental, social and economic systems.

Society and the economy shapes the state of our environment

Solving these problems in any fundamental way means recognising that ultimately society and the economy shape the state of our environment through the way it meets its needs and aspirations. The environment is shaped by how societies:

- build houses and infrastructure
- design products and services
- produce energy
- reuse and recycle materials through the economy
- produce food and supply and treat water
- travel and communicate
- produce food, timber and other products from natural resources
- supply and treat water
- make daily choices about how we live our lives and what we buy

Government's central role is to create the conditions for society to meet needs and aspirations in a way that achieves a healthy environment

Policies need to be:

- **long term and predictable** – so people can plan, invest and collaborate.
- **clear on who is responsible for what** – so people can start to think for themselves about how to solve problems.

- **outcome focussed and technology neutral** – so people can innovate and find the best solutions for their circumstances.
- **responsive to changing circumstances** – so we can adapt as the environment, society and the economy, or understanding of them, changes.
- **incentivising** – so it is simpler, quicker and cheaper to be environmentally friendly and hard and costly to fail.
- **user centric** – so policies are proportionate and designed for users rather than having separate administrative regimes for each element of the environment.
- **credible, fair and robust** – so everyone is confident that rules will be enforced and no one can profit from degrading the environment..
- **internationally aligned** – so they enable UK businesses to trade with the world and access markets for UK solutions.
- **evidence based** – so decisions are taken in full knowledge of the facts, aiming to avoid predictable or unintended consequences

Box 1: Planning horizons and their implications

There are at least four relevant types of planning horizon:

1 Strategic planning horizons. This refers to the lifetime over which organisations commit to a direction or set of activities, often governing how money is spent, sometimes with contractual commitments. It constrains the degree of change an organisation can easily make within the timescale.

Examples include:

- 5 year water investment period
- 6 year flood programmes
- 5 year local authority plans
- 1, 3 or 5+ year corporate business plans
- 7 year waste collection contracts

2 Lead in times. This includes the time it takes to build or develop a new product, service or asset or change from one state of the world to another. It constrains how quickly environmental benefits can be realised.

Examples include:

- 3 years to switch to organic farming
- 5+ years for housing or commercial development
- 10–20 years to develop offshore wind projects
- 3000–5000 years for peat to regenerate
- 10 years to revert from arable to wildflower meadows

3 Design and production cycles. This is the cycle from beginning of design to product discontinuation and constrains how easy it is to adopt new design features at short notice.

- 2–3 years for packaging product lines
- 2–4 years for software
- 5–7 years for cars
- 1–10 year crop rotation

4 Operational lifecycles for assets. The costs of changing products or business models outside these cycles will generally be higher and some might be constrained by payback periods and financing agreements.

- 10–35 year tractor life
- 7 year waste trucks
- 8 year vehicle lifetime
- 15+ years manufacturing infrastructure
- 60 years for buildings and 120 years for infrastructure

Governance should reflect two time horizon issues

- **the length of planning cycles** – which constrain in various ways how quickly action can be taken. These constraints combine where systemic change is needed for example in the resource economy where there is an interplay between planning cycles of producers, consumers, authorities and waste companies. More radical innovation generally requires longer planning timescales.
- **the tragedy of the horizon** – that societies tend to defer problems until they become critical by which time it is harder to solve them. This is both because paths are locked in and because impacts take many years to arise, for example: the impacts of greenhouse gases on climate change, the speed at which contaminants travel through land or the speed at which bioaccumulation of contaminants in the body cause cancer.

Therefore policy to solve environmental problems generally requires early and stable commitment to outcomes for people to plan in improvements cost effectively. It also requires a trust by policy-makers in the evidence-based predictions and risk assessments of scientists and modellers, if a particular policy is to be shaped with prevention of future consequences in mind.

A successful governance framework also relies on understanding the interconnected nature of environmental, social, economic and governance systems

Governance should reflect:

- **the interconnected nature of the environment.** Dealing with issues such as water quality, soils, floods, water quantity, air quality, and biodiversity through separate legal regimes and administrative arrangements increases tensions between objectives, costs and complexity and reduces the ability for people to implement effective and coherent solutions. England's 25 year plan recognises this, treating the environment as a system that supports human wellbeing and the economy in complex ways.
- **the interconnected economic and social systems that shape and depend on the environment.** For example, resource use depends on decisions taken within sometimes complex value chains for example by designers, manufacturers, retailers, consumers, local authorities and resource and waste companies. All activities ultimately depend on natural assets for raw materials for example farming's dependence on soil productivity.
- **the role required by policies across government.** For example, the environment is strongly influenced by policies on infrastructure, planning, fiscal, farming, industry, education, skills, community and local authorities and trade. A healthy environment contributes to: health, the economy and business, culture, sport, tourism and strong and resilient communities. Successful, de-conflicted and cost effective policy therefore depends on taking a coherent approach across government.
- **the different spatial scales at which the environment operates.** Environmental issues vary in terms of the geographical scale at which the environment is shared and the level at which action is best taken. To make effective policies we need a common and enduring understanding of whether action should be taken for example at global, national, devolved or subregional levels, with the right levers and empowered decision-makers at each level.

THE PRIZE

There are a number of economic, as well as environmental and social, dividends from establishing world class governance arrangements.

Setting a clear and coherent basis for managing the environment in the decades ahead would secure the vision for a healthy environment for its intrinsic value and for its benefits for health, wellbeing, community cohesion and economic resilience. This in itself contributes to objectives across many parts of government: health, communities, welfare, business and public finance. But it would also, if carefully designed, bring wider economic benefits, including to:

- make policy more predictable for industry to be able to plan, collaborate and invest, especially as we leave the EU.
- give the EU and other trading partners assurance of UK environmental performance, this could also help ensure our markets are not flooded with products produced with low standards.
- meet goals in a cost effective way, through finding the best solutions across all government policies, giving time to adjust and space to innovate and avoiding locking in unsustainable paths, storing up economic, social and environment costs for the future.
- reduce unnecessary bureaucracy, progressively making policy more user friendly.

- get value for public investment giving clearer long term direction especially for post CAP land management investment, but also for all other public expenditure on the environment, as well as through joining the environment up and avoiding duplication.
- stimulate export growth through giving our industries and services a competitive advantage in solving environmental and resource challenges which increasingly preoccupy all countries.

The Netherlands, Sweden, Australia and New Zealand have all successfully introduced Environment Acts that set the societywide goal of a healthy environment. We can adapt the best elements of each to design a world leading framework to put ourselves on a path to improving the environmental and economic foundations of our society.

WHY ACT NOW

There is a unique set of circumstances that are unlikely to recur in the foreseeable future. Delay will raise costs and lower benefits.

‘Unfrozen moment’

The fundamental conditions and argument for progressive governance for the environment and a new Act exist irrespective of EU exit. However Brexit gives us an ‘unfrozen moment’. There are of course risks if EU governance arrangements are not replaced at all – see the 21 horizontal governance activities that the EU performs in the annex to this blueprint – but this is also the moment of opportunity to set the UK on a path to improve the productivity of our resource base.

In addition:

- the benefits of legislating are likely to reduce, and costs increase, if the provisions suggested here are not implemented now. For example, now is the opportunity to set credible direction for the 25 year plan and for the new environmental land management scheme and to reassure the international community of UK commitment to the environment.
- there is unlikely to be another ambitious direction setting Environment Act in the timescales required. The last environment-wide one was in 1995.
- there is political leadership and commitment to set bold direction.

2 THE PILLARS OF GOVERNANCE

The pillars for successful environmental governance

The existing landscape is both less effective and more complex

Objectives, targets, milestones and metrics

Principles

A process for plans at national level

Maps and plans for the place-based environment

Clear responsibilities for key actors

Aligned incentives

Effective enforcement

Purpose driven feedback loops

Independent oversight

THE PILLARS FOR SUCCESSFUL ENVIRONMENTAL GOVERNANCE

Before immediately deciding how to design legislation, we should reflect first on what architecture is needed, as a whole, to govern the environment effectively long term, meeting the challenges in the previous section. We also recognise that cross-party political support is necessary for effective environmental governance. An initial view is that the following nine pillars are essential.

A Strategic direction, through:

1 Objectives, targets, milestones and metrics – to give everyone interested a clear long term view of society’s aims for the environment a whole and the trajectory necessary to meet them.

2 Principles – that signal how government must take the systemic nature of the environment into account in policymaking.

B Frameworks to translate aims into plans, policies and responsibilities, that are both collaborative and predictable, through:

3 A process of plans at national level – to work out how society as a whole can best solve long term environmental challenges collectively in the most cost effective way, and what policies are needed.

4 Maps and plans for the ‘place-based’ environment – to give relevant activities or sectors an integrated and clear basis to plan and collaborate for achieving objectives that require place specific action.

C Mechanisms that secure action in a rewarding and unbureaucratic way, through:

5 Clear responsibilities for key actors – to put responsibility on those best placed to act in a clear and stable way, rather than relying on government to prescribe solutions from a distance.

6 Aligned incentives – to ensure that sufficient carrots and sticks are in place to achieve required action, including minimum standards and prescriptive regulations where the circumstances clearly require it. This includes making sure there is adequate funding and that best value is secured from all sources. It also includes ensuring that mechanisms are enabling, coherent and user centric.

7 Effective enforcement – to give everyone confidence that failure will be detected and dealt with robustly, and that it isn’t possible to profit from being irresponsible.

D Information feedback and accountabilities to make sure and give confidence that sufficient and timely action is being taken.

8 Purpose-driven feedback loops – so the right information is in the right hands at the right time to inform action and early intervention where people fail.

9 Independent oversight – so there are independent and respected arrangements to advise, scrutinise and hold government to account for taking adequate action to meet goals and for enforcing laws.

Section 2 expands on the rationale for and ideal design for each of the pillars.

THE EXISTING LANDSCAPE IS LESS EFFECTIVE AND MORE COMPLEX

In fact most advanced economies, including UK nations, already have arrangements for most if not all of these pillars. However, in UK nations, not unusually, these arrangements have been put together piecemeal over time rather than by design and are not fit for the challenges ahead.

Therefore as many of these arrangements fall away when we leave the EU, there is a huge opportunity to improve on them.

The current situation in England

- 1 Objectives, targets, milestones and metrics** – Patchwork of objectives, some in EU laws or strategies, some at UK level. Makes it unclear who is committed to what, reducing certainty for innovation and investment.
- 2 Principles** – The main principles are in the EU treaty and will not apply after EU exit.
- 3 National plans** – 861 policy papers online with no consistent processes for developing policy, 95 spatial policies in Government. Perception that decisions are taken late in the day for political reasons, increasing costs.
- 4 Maps and plans for the ‘place-based’ environment** – These need to be integrated and durable to improve the environment yet there are currently 34 different types of environmental plan which fragments funding and creates volatility and complexity.
- 5 Responsibilities** – No general responsibility to avoid harm. A few very narrow and poorly enforced duties of care.
- 6 Incentives** – There is a complex patchwork of 2155 rules specifying what to do when. 98 different types of permission granted by 11 agencies. Fiscal instruments used rarely and inconsistently. Funding is piecemeal with no overall prioritization. Environment is largely excluded from industrial strategy sector planning. Engagement is piecemeal and inconsistent. Instead of being a strategic business opportunity, environmental policy is often seen negatively as solely a legal compliance issue where only larger organisations can navigate the patchwork.
- 7 Enforcement** – Fragmented landscape of 1704 offences and 673 sanctions and disproportionately low financial penalties. Makes enforcement challenging.
- 8 Feedback loops** – Monitoring is very siloed and overlapping but no regular integrated assessment of the environment. Compliance assurance is largely based on piecemeal reporting, making it hard to detect non-compliance and failure to achieve outcomes.
- 9 Oversight** – The main oversight arrangements are at EU level but will fall away after EU exit.



OBJECTIVES, TARGETS, MILESTONES AND METRICS

Why have long term policy objectives

To govern the environment in the most cost effective way, government needs to set clear and credible policy direction that enables all involved to plan, invest and collaborate across sectors to achieve multiple goals coherently, beyond the life of single parliaments. Objectives also help:

- focus policies on their purpose
- hold responsible parties to account for progress
- anticipate early on where changes in direction are necessary, rather than wait until problems are locked in

Developing national objectives becomes more critical as the UK leaves the EU and its collection of goals which, although arguably inconsistent and fragmented, has provided the economy with a level of stability for action and investment which has driven improvements in the environment. Objectives and a credible architecture for introducing policies to achieve them are also essential to assure the EU and other international partners of the UK's environmental performance and retain and expand access to markets.

The architecture of objectives

Structurally, effective objectives generally need the following elements:

- **a top level public-facing, resonating 'one-liner'** – see box 2 for what makes good objectives and box 3 which shows the 25 year plan goals. These objectives need to be developed to provide clear long term direction through legislation. Broadway will help with this as a next focus.

- **metrics** – so everyone has a common understanding of how to measure progress towards the objective. The design of metrics is covered under pillar 8.
- **a sufficiently defined target** – so everyone who directly or indirectly shapes or invests in the environment knows what end state society is aiming for by when.
- **interim milestones for making improvement** – so there is an agreed pathway to achieve targets so government doesn't defer action and everyone knows what is required by when. Milestones might for example be set 5, 10 and 15 years ahead to provide line of sight on future requirements.

This works well for the Climate Change Act, with an overall goal to avoid dangerous climate change, a long-term objective of reducing greenhouse gas emissions by at least 80% of 1990 levels by 2050, with legally-binding 'carbon budgets' acting as 5 yearly targets towards the 2050 objective.

Pillar 3 shows more detail on the cyclical process of setting targets and milestones. The blueprint in section 3 suggest that the objective might be in legislation, with a legislative process to define targets, milestones and metrics. The Dutch Environment and Planning Act (see box 4) describes the scope of environment to which it refers and the objectives that apply to that scope – including a safe and healthy environment, and then provides for Government to translate the objective into numerical targets (or 'values').

Box 2: What makes good objectives?

To succeed, objectives should be:

- **framed to include a clear end point** – so they can be translated into more specific targets.
- **unarguably desirable now and in the future** – so everyone – from the Cabinet, through the media, to the public – buys into them, cannot resist them and we reach societal consensus about purpose quickly. This shifts focus onto the ‘how’ and what is the most beneficial pathway to achieving them.
- **meaningful for individuals and at a local level** – so people and places can easily see how they can contribute to the objectives.
- **consistent** – so they can be handled together where it makes sense to do so.
- **internationally linked** – meet UK commitments to achieve at least equivalent outcomes to those embedded in EU requirements and be set at a level that is aligned or consistent with the international direction of travel and takes account of the opportunities for stimulating exports and any other impacts on competitiveness.
- **stable, enforceable and credible over the long term (‘long, loud and legal’)** – so people can plan and invest with confidence. This is also about the governance and status of the goals, making them difficult to overturn and having a predictable and evidence based process to make necessary adjustments.

Box 3: England’s 25 year environment plan goals

- Clean air.
- Clean and plentiful water.
- Thriving plants and wildlife.
- A reduced risk of harm from environmental hazards such as flooding and drought.
- Using resources from nature more sustainably and efficiently.
- Enhanced beauty, heritage and engagement with the natural environment.
- Mitigating and adapting to climate change.
- Minimising waste.
- Managing exposure to chemicals.
- Enhancing biosecurity.

Linking environmental objectives with other societal needs

It is essential to consider how environmental objectives fit with and sit alongside other societal needs, such as to produce food, supply water and energy and build houses. The danger in not recognising these needs and how they fit together, is that other policy areas in turn treat the environment as separate and an afterthought. To meet environmental needs alongside other societal needs they need to be considered together. See the Dutch Act example in box 4, which also incorporates land use planning.

The Blueprint in section 3 suggests what government would need to take into account in setting targets and milestones, including how to take account of evidence and social and economic factors.

Box 4: Objectives and targets in the Dutch Environment and Planning Act

The Dutch Act:

- explains what is covered by the environment
- sets 2 high level goals for the environment:
 - A** to achieve and maintain a safe and healthy physical environment and good environmental quality,
 - B** to effectively manage, use and develop the physical environment in order to perform societal needs.
- requires government to set ‘values’ for achieving that objective



PRINCIPLES

Environmental principles have been central to the development of EU policy on the environment and are included in the Treaty on the Functioning of the EU.

UK nations have already committed to retaining environmental principles. For England, the government has already committed to publish a draft Bill by December 2018 that includes a set of principles (below), a duty on the Secretary of State to publish a policy statement on how the principles should be applied and interpreted and a duty on Ministers to have regard to them when making policy.

- the precautionary principle so far as relating to the environment,
- the principle of preventative action to avert environmental damage,
- the principle that environmental damage should as a priority be rectified at source,
- the polluter pays principle,
- the principle of sustainable development,
- the principle that environmental protection requirements must be integrated into the definition and implementation of policies and activities,
- public access to environmental information,
- public participation in environmental decision-making, and
- access to justice in relation to environmental matters.

The policy statement will be vital in making sure that these principles are followed in a way that empowers intelligent judgments about how best to achieve the outcomes.



3 PROCESS FOR PLANS AT NATIONAL LEVEL

Once the objectives are in place, a governance architecture is needed that:

- provides an adequate set of incentives for government to identify and tackle problems early, even where it means taking difficult decisions, and to enable society to incorporate solutions into their planning cycles cost effectively. Costs and harm will generally be higher and problems harder to solve where action is postponed.
- makes the whole of government responsible for creating the right conditions to keep society on track to meet the goals in the most cost effective way.

Strategic policymaking processes to consider the environment regularly and across all policy domains are currently at EU level and will be lost on leaving. Yet there is an opportunity to establish a new architecture that more genuinely incorporates the environment into policymaking across government. The arrangements envisaged here should be overseen by the independent body – see pillar 9.

Collaborative policymaking process

Partnership working and stakeholder engagement should form the basis for:

- **A duty on government to keep on track to achieve the goals.** This would need to be accompanied by a mechanism to ensure whole of government responsibility (covered in more detail below). Government should give further consideration as to how to achieve this.

- **State of the environment and systemic assessment report.** A goal-based approach requires regular feedback on the changing reality on the ground. This is covered in pillar 8. As well as continuous flows of information to inform action on the ground, a regular snapshot of the state of the whole environment will enable government to focus strategically on gaps and be held to account for taking the right action. This should also include a rigorous assessment of environmental challenges, emerging trends and future threats. That assessment should be systemic to understand the key drivers of environmental quality and performance across all environmental challenges and sectors of the economy.
- **Clear mechanisms for independent advice** on targets, milestones and standards. These must also be based on the best scientific advice, for example by engaging the best subject-specific expert scientists on focused areas through the office of the government's Chief Scientific Adviser, also taking into account social and economic factors.
- **Regular collaboratively produced plans.** These should include the measures needed to stay on track to meet objectives, milestones and targets. They should take a systemic approach across outcomes and sectors. These plans should ideally incorporate, or at least be co-terminus with, all relevant government plans such as for all parts of natural capital (including e.g. water and flooding), and resource use and carbon. This is not only to ensure proper join up of substantive issues, but also so that people and businesses can play their parts more easily.

- **Sector plans should be developed** for those sectors that influence the state of the environment either to accompany the national plans, unless there is an opportunity to incorporate the objectives more powerfully into mainstream government plans, such as the current sector deals.
- **Independent scrutiny of plans** with the ability to take enforcement action where necessary, taking account of proportionality and social and economic factors. This would then make the government accountable for the goals rather than simply for enforcing existing laws.
- **Independent annual progress reports.** Government would need to respond to the reports within three months.

Ideally there would then be (see figure 2):

- a 5 year cycle whereby: the government publishes its state of the environment report; the independent body would provide its advice; within 12 months the Government would publish its plan; the independent body scrutinises the plan.
- an annual cycle where the independent body reports on progress and the government responds within three months.

This cycle should ideally encompass all relevant decision-making and investment cycles, for example: resources, water programmes, flood programmes, land management programmes and air quality programmes. It should also align with the timings of the Climate Change Act. This will enable a coherent and cost effective approach across natural capital, resource use and climate change.

Whole of government responsibility

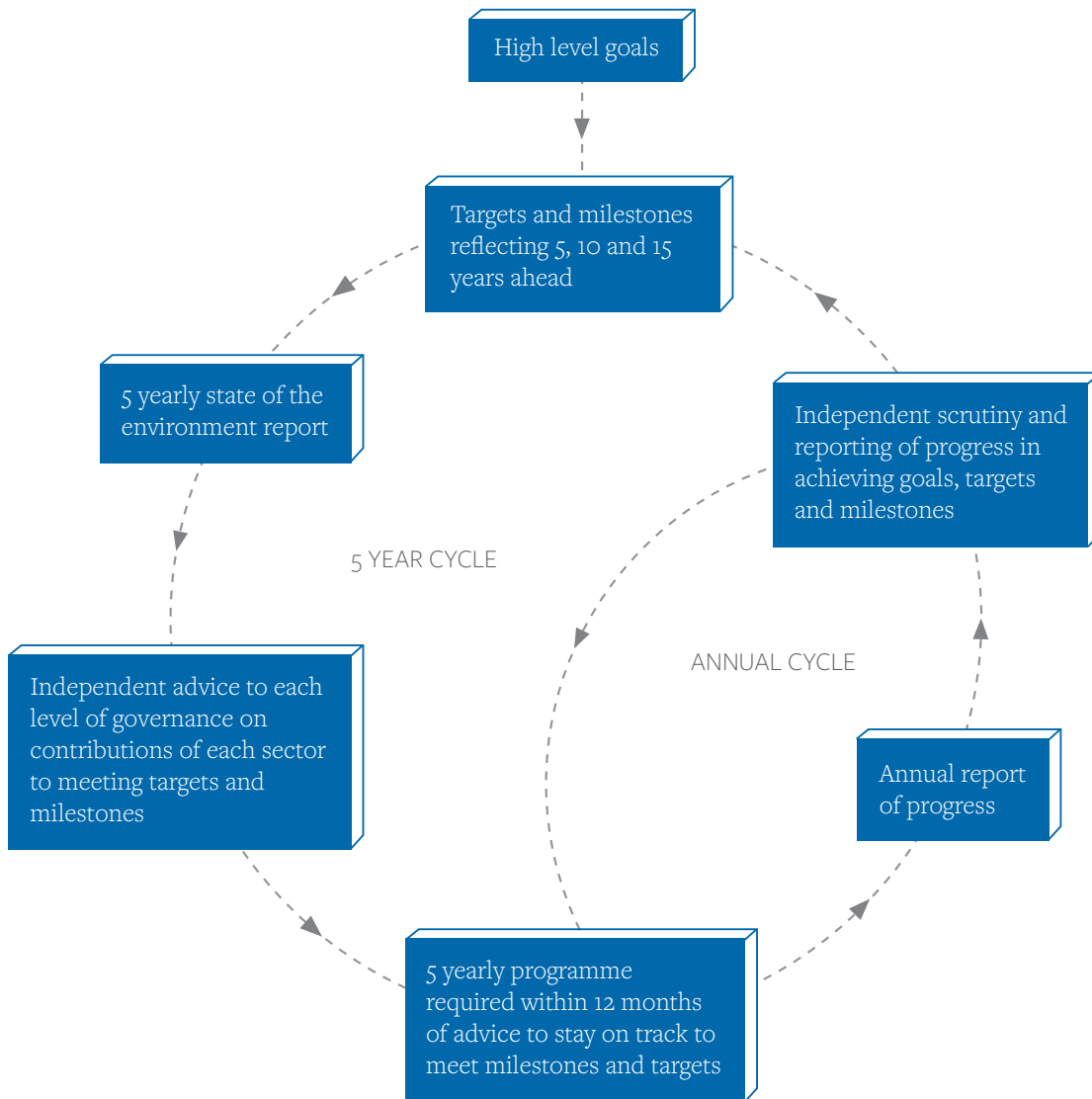
Until now, while the EU has been the primary originator of environmental policy, environment ministries have largely adopted a vertical role to implement EU legislation. This has often set, for example, Defra in conflict with other government departments where the environment has been seen as a block to rather than part of or supportive of other government objectives, not least because acting alone Defra only has powers to use often narrow regulation or funding to achieve goals. This has constrained the ability to create the conditions across all government activity to achieve environmental goals in a coherent and cost effective way.

To avoid this situation persisting, the new Act would need to make it a duty of government as a whole to create the conditions to achieve environmental objectives. This could be framed for example as

“environmental goals to be considered and addressed across government as a whole in determining the most effective, integrated approach to resolving collective environmental problems”

This for example would mean the 5 year environmental statements would need to be government-wide. Public bodies could have a duty to cooperate with central government in exercising its duty. There is a recognised tension between top-down objectives and how these are contextualised at a local level – this is the subject of additional work through the Broadway Initiative.

Figure 2: Illustrative cycle for plan-making.





MAPS AND PLANS FOR THE PLACE-BASED ENVIRONMENT

Why

The state of the environment is largely experienced in specific places whether the natural infrastructure in cities, towns and around housing, communal green spaces, air quality, wildlife, the quality of water in situ or for drinking, freedom from waste crime or the effects of climate change such as flooding. It requires a spatial understanding of how the environment interconnects and how it interacts with human activity. Its state largely depends on action implemented spatially whether those decisions are taken for example by: local government, various arms of central government, housing and infrastructure developers, community or neighbourhood groups, water companies or land managers.

Enhancing natural resources while increasing productivity and efficiency

To release capacity, enable planning, increase value from public and private investment and make sure that the whole is greater than the sum of the parts, there needs to be a more coherent and durable approach. This should include:

- 1 **A single or unified 'map'**, accessible at relevant geographical scales that shows at a spatial level:
 - the current state of the environment based on agreed metrics
 - objectives for the place-based environment alongside social and economic needs and goals
 - the worthwhile opportunities for improving the environment including to enable positive planning for nature's recovery

2 **A framework to integrate environmental objectives into spatial planning alongside other social and economic objectives, enabling:**

- consideration by all local partners of environmental objectives alongside social and economic objectives
- a unified basis for prioritising and agreeing environmental plans informed by natural capital assessment approaches
- the ability to pool money for improving the environment from both public and private sources and aligning it with the goals
- assigning clear roles and accountabilities for implementation
- duties on those who have a major influence on the local environment to take reasonable and proportionate action to co-operate to agree plans to achieve place based goals, backed by a power for the regulator to require co-operation

The future approach should be far more coherent and user friendly than the existing approach, incorporating and replacing many existing maps and plans.

It should also enable all relevant activities to incorporate environmental objectives by design rather than introduce environmental constraints late in the day in a way that conflicts with other social and environmental needs.

Shortcomings of place-based maps and planning in England

Currently, the governance of place-based environment is

- **siloes, fragmented and overlapping** – with 20–40 different types (depending what’s included) of spatial environmental map or plan making it hard to act on – or even engage in discussion with – the environment coherently. These environmental plans are also separate from the plans that determine what economic activity should take place.
- **over-complicated, prescriptive and constraining** – one leading water company started with 5 objectives for their catchment areas, but were then given over 1000 local requirements, removing any ability to work strategically.
- **unstrategic and volatile** – meaning it is hard to plan to make the long term investments or to access funding over periods that are sufficient to make a difference.
- **lacking in accountability** – with a confused picture of who is accountable for what.

These constraints will limit the ability to meet the goals of the 25 year plan or to improve value from public and private investment in the environment unless early action is taken to resolve them.

The 25 year plan commits to integrating local environmental governance and government is already taking steps to encourage more integration. However, past experience suggests that because of the numbers of different players and because plans change with changing leadership, a more integrated, coherent and durable approach is only possible if it is mandated through legislation.



CLEAR RESPONSIBILITIES ON KEY ACTORS

Responsibility as the new default

Until now there has been a responsibility vacuum for the environment. Unlike other assets where property rights are clearly defined in advanced democracies, the default position is that by law no one has any responsibility for environmental assets, unless there is a specific provision imposed.

Over time we have introduced rules and policies as we have learnt, issue by issue of the environmental, social and economic impact of failing to be responsible for the environment. This has given rise to a situation today whereby we have an unnecessarily prescriptive, compliance driven, reactive (rather than strategic) and complex approach to the environment. For example, large waste companies typically have over 500 items on their inventories of environmental legislation that potentially apply to them.

Nevertheless this approach has gaps, is poor at anticipating new issues and has not been capable of reversing environmental decline, with some parts of society pursuing unfair and short term economic gain at the cost to our long term prosperity.

Securing goals in a systemic, integrated and cost effective way requires everyone to know their responsibilities so they can plan, invest and collaborate factoring the environment into their activities. Environmental responsibility should therefore be a cornerstone of our future approach to the environment.

Furthermore, the culture towards the environment has changed substantially since much of the body of environmental policy was introduced and there are now many more drivers for environmental performance beyond regulation. See box 5 below. The changing context for policy is also further explored in pillar 6.

There is therefore potential for a paradigm shift towards responsibility for the environment. An initial view is that there are two main elements:

- A duty of care for the environment for all organisations with material interactions with the environment.
- Activity specific responsibilities, including responsibility of 'net gain' for developers, extended producer responsibility and the potential to introduce responsibilities for other activities where it is proven to be the most cost effective way to achieve outcomes.

Duty of care for the environment

A duty of care could be the basic foundation for a societal shift towards responsibility for the environment and for a more enabling approach to government policy. In effect, it puts responsibility where people are best placed to act and resolve problems early and at source, rather than government making rules reactively and at a distance. As confidence grows in this approach, it should replace prescriptive rules where the outcomes are better secured by the duty. Specific policies would then focus on where environmental improvements require prescriptive approaches or additional carrots or sticks. This idea is not new – and is for example already required in Queensland and – see box 5 – the Netherlands.

Box 5: Drivers of environmental performance beyond regulation include:

- Cost saving
- Long term resilience for businesses that depend on environmental resources
- Business model changes e.g. from selling resources to services or platforms
- Business competitive edge – provides innovation and potentially a benefit for the business
- Brand reputation
- Customer preferences
- Retailer requirements up the supply chain
- Finance requirements
- Internal corporate regulation
- Industry body eligibility criteria
- Global corporate environmental performance indices
- Local community relations
- Employee preferences and satisfaction
- Duty of care to the environment

Box 6: Duty of care in the Dutch Environment and Planning Act which is as follows:

Article 1.6 (duty of care for every party)

Every party shall take sufficient care of the physical environment.

Article 1.7 (activity with adverse effects)

Every person who is aware or who may reasonably suspect that his/her activity may have adverse effects upon the physical environment, shall be obliged:

A to take all measures that may reasonably be expected of him/her in order to prevent those effects.

B in so far as those effects cannot be prevented: to limit or remedy those effects as much as possible.

C if those effects cannot be sufficiently limited: to refrain from that activity in so far as that may reasonably be expected of him/her.

Article 1.8 (relationship to specific rules)

The obligations referred to in Articles 1.6 and 1.7 shall be fulfilled in any event in so far as specific rules are laid down by a statutory regulation or decree for the purpose of achieving the objectives of the Act, and those rules are complied with.

Environmental policy statements

The first big question is how to operationalise the duty so it is legally clear and appropriate and proportionate to the circumstances of any particular activity.

The most powerful, appropriate and proportionate way is probably through organisations and implementing an environmental policy to take account of the environment in carrying out their activities. This would include through their day to day operations, their procurement and supply chains and their products and services. This goes with the grain and supports how the most environmentally responsible companies are already working and respects the individual circumstances and scale of any organisation's operations.

If organisations apply this requirement intelligently and proportionately to their operations, it could be a profitable activity for many. Defra research carried out in 2011 found that there were £23 billion of resource efficiency measures that could provide a net financial return with 2 years and £56 billion with longer paybacks.

There should be an obligation, at least for larger organisations with more staff and more complex structures, to name a senior individual responsible for implementing the policy. There should also, again for larger organisations, perhaps those with more comprehensive accounting obligations to report on how they have implemented the duty and to what effect.

Design considerations include:

- **Scope of environment.** The duty could apply to the definition of environment in legislation, or for example used for ISO 14001 which has the advantage of putting our requirements in line with international obligations.
- **Objective of duty.** Does the duty need an objective? Should it be framed only in terms of avoiding harm or could it extend to taking account of the goals in carrying out activities? Or are there some specific situations where organisations should be required to leave the environment in a better state (see next subsection). It is also

important to recognise it often takes investment and pro-active work to maintain the status quo.

- **Scope of activities or parties it applies to.** The duty could apply to all organisations whether public or private, profit or non-profitmaking. In principle, the duty could also apply to citizens to help shift culture towards responsibility for the environment and as an added driver for corporate responsibility. However, it would be better to introduce it for businesses first and review in due course whether and how it would apply more widely.
- **Avoiding disproportionate requirements on those with minimal interaction with the environment.** A potential concern is that this requirement would simply introduce an administrative burden for those who have little or no interaction with the environment, especially conscious of the smallest businesses. Consideration therefore needs to be given to 1) how to ensure that this obligation does not unintentionally become disproportionate 2) how to ensure the right support (see advice and guidance) is available, and 3) how to frame any exemption based for example enabling organisations to self-elect in report and accounts that they have no material interactions with the environment. Legislation could include a provision allowing government to apply an exemption for certain activities until satisfied that it is proportionate to apply it.
- **Advice and guidance.** As for the health and safety duty of care, it could be supported by approved codes of practices for common problems and activities. Or it could be supported by trade or professional organisations who could provide specific templates, training or guidance for specific activities.
- **Avoiding double jeopardy.** The duty could contain a provision to avoid double jeopardy, as in the Dutch Act's article 1.8 above.
- **Enforcement.** The duty would need to be backed up by credible, fair, risk-based and proportionate enforcement with deterrent civil or penal sanctions. The offence should only be triggered, at least for small businesses who have relatively less

capacity to adapt at the same pace, by a 'grievous' breach of the duty. It would also need to be backed by a more targeted and intelligence led approach to enforcement. This could include a published enforcement policy, building on those already used by regulators, setting out the duty will be enforced.

Environmental net gain and leaving the environment in a better state

'Environmental net gain' is a way for specified activities that strongly influence the state of the environment to be responsible for making a positive impact on the environment. This is, in a sense, a microcosm of the national commitment to leave the environment in a better state. The government has already agreed to apply this responsibility to developers. In principle it could apply to other activities that own, manage or control land or have a material impact on the state of the environment. There could be a case to apply it to other entities such as water and energy companies.

In time applying this responsibility to a wider range of activities could create a self-generating force for achieving a better environment in aggregate. The quid pro quo, with the appropriate safeguards in place, is greater autonomy and flexibility to achieve more ambitious outcomes in ways that work better for the specific circumstances both of the specific environment and the specific organisation. In principle, organisations could have the option to adopt a net gain obligation, in return for more flexibility about how that obligation is applied.

Activity specific responsibilities

Finally, there may be other activities that are well placed to take on responsibility for particular environmental challenges and government should be able to introduce duties where it is the most effective and cost effective way to achieve outcomes. An example is extended producer responsibility where the government will make producers responsible for the costs their products incur after use by consumers. By doing so, producers are incentivised to work out how to design, manufacture and sell products in a way that will limit environmental impacts.

The advantage of assigning responsibilities is achieved where:

- particular groups or activities are best placed to tackle identified problems (normally because they are responsible for them) and can therefore incorporate the solutions to them in their strategic plans, and as a result achieve the goals in the most cost effective way
- responsibilities are introduced in law and early with adequate time to adjust. Where it is not clear how a responsibility should be framed this could be achieved through a negotiated agreement that is then put into law
- responsibilities are stable so people have the confidence to invest for the long term
- responsibilities are incorporated into cross-governmental sector plans such as the Industrial Strategy sector deals
- level playing field, international competition affects and innovation effects are considered

The Government should identify through the proposed 5 yearly plan process where assigning responsibility to sectors is the most cost effective approach.



ALIGNED INCENTIVES

Ensuring the right mechanisms are in place to achieve goals

Once the pillars above are in place, it will be necessary, over a period of time, to review whether the right and adequate mechanisms and incentives are in place to put society on course to meet objectives, targets and milestones. This includes more robust and consistent analysis of which combination of approaches such as the following are most appropriate to incentivise action, given the incentive structures and capacity of the various groups in question:

- Partnership and facilitation approaches
- Sectoral agreements backed by enforceable sanctions
- Responsibility backed by enforcement
- Authorisations
- Minimum standards
- Funding and taxes
- R&D support
- Informational support

That analysis should include consideration of whether incentives are sufficient to achieve objectives but also where mechanisms are no longer necessary or distort the market or competition.

Moving to more enabling, coherent and user centric policies

This process of review should also consider how to make the policy and implementation landscape enabling, coherent and user centric from the perspective of those whose action is required to achieve outcomes. The context for environmental policy has substantially changed since the great body of policies were put in place (see boxes 5 and 7) and more enabling approaches should now increasingly be used that encourage innovation in for example material, process or product development. This includes to make sure that collectively society gets the best value from all sources of funding.

Box 7: The shifting context for environmental policy

The right approaches in future should also be considered against the backdrop in which environmental policies operate. This has and continues to change since the bulk of environmental policy was implemented, in particular:

- **Environmental challenges are now more complex and diffuse.** While progress was previously possible by targeting major sources of harm, problems like habitat deterioration, poor air and soil quality and over use of resources are now caused cumulatively in time and space by the actions of millions causing a net deficit. In combination environmental regulators probably regulate approximately 20,000 sites and the vast majority of regulated sites are at full compliance.
- **Environmental norms, culture and awareness have changed.** This is reflected for example in the 8m memberships of environmental groups or that 75% of the Federation for Small Business members think it's important to do the right thing for the environment. At the same time, environmental quality is increasingly seen as important to other policy areas, such as health.
- **Capacity for environmental management has grown by orders of magnitude.** From the 1980s when it is said that environmental professionals all knew each other by name to now when there are tens of thousands of environmental professionals in the UK. Equally the public sector now has far greater capacity to understand the science behind the environment, as reflected in Defra's 27 science advisory committees.
- **There are now many powerful drivers for high environmental performance.** Some of the benefits of environmental action accrue to those who take that action. Traditionally environmental policy has focussed on correcting where the benefits of action are enjoyed by others, largely through regulating or taxing external costs, or by paying directly for public goods. Increasingly there are wider drivers that motivate people and organisations to look after the environment, especially in more rational use of resources (see box 5 above). This creates opportunities in the next decades for new approaches to securing outcomes.
- **Environmental technologies are rapidly developing.** A £3 trillion global environmental goods and services sector makes constant advances in how environmental problems can be solved and goals met.
- **The move from paper to digital and data innovations have profound implications for the way society interacts with government.** Many regulatory arrangements were based around the need for regulators to manage information about the regulated through paper trails on behalf of the public. The power to connect people with information instantly through hand held devices and vastly more powerful data tools and analysis creates the potential to completely rethink what information is needed by whom, how and when.



EFFECTIVE ENFORCEMENT

The right systems to reliably detect and robustly deal with failure are essential to make environmental policy work and retain the confidence both of the public and of those who manage the environment. Without those systems, policies are undermined. There are also economic gains from better enforcement, for example of up to £5.60 for every £1 invested in waste crime enforcement. There are already concerns across all stakeholders about the consistency of regulatory enforcement and yet enforcement will become more pivotal with a move to greater focus on results and responsibility. Rethinking information flows (pillar 8) will be essential to give society assurance that people are complying with their obligations.

An early view suggests that the core elements of successful future compliance assurance and enforcement is likely to include:

- flexibility and mandate for the regulator to intervene where it judges necessary to target high risks, which would require flexibility in terms of how funding is used
 - clear and incentivising sanctions
 - adequate funding to be able to enforce effectively and secure society and the business community's confidence that failure is robustly dealt with
- clear accountability for overseeing risks to the environment and public
 - a more tailored system of routine compliance that better levers drivers of performance
 - focusing on the real problems with greater and smarter use of data and all forms of intelligence to identify potential risks early on and to understand the reasons for environmental change.
 - a more powerful, coherent and integrated system of environmental monitoring – see pillar 8 on feedback loops
 - understanding and seeking to correct the systemic causes of failure



PURPOSE-DRIVEN FEEDBACK LOOPS

Achieving long term outcomes and milestones, while tackling complex and systemic issues, moving to more mature approaches and retaining the confidence of business and society requires a vastly more responsive approach whereby it is essential to have:

- **a consistent set of indicators** underpinned by trusted and robust science, so we know if we are on track or not, nationally and subnationally.
- **the right information in the right hands at the right time** so that whoever's responsible knows sufficiently quickly, depending on the issue, whether more action is needed, or so we can intervene whether that's the independent body holding government to account, government holding another part of government to account, or for regulators to hold businesses to account. Information flows also help those providing solutions to environmental problems to spot opportunities.

Well designed indicators

Indicators should reflect the full range of goals and:

- capture what's important about the goal. This will sometimes mean using a bundle of indicators or sometimes a composite index.
- be relevant and meaningful to those responsible for taking action – so that sectors or entities can measure their own progress where appropriate
- be supported by standardised measurement and monitoring methods
- be measurable at the geographical scale or scales at which action can be taken

- be sufficiently sensitive to pick up problems in time to deal with them
- be adaptable (or able to be changed) as the issues change
- be no more complex than necessary

Broadway is working with Defra to help define the indicators needed to support long term objectives.

Purpose driven flows of information

To be effective, information flows including monitoring, modelling, mapping and reporting need to be:

- purpose driven (i.e. useful and used for the purpose)
- outcome focussed
- integrated across all environment
- represented spatially where relevant
- logical and joined up roles across public, private and third sectors
- open to incorporating citizen science once robust and credible methods become available
- flexible to harness latest technologies
- quality assured and governed soundly
- accessible to those who need feedback, in an appropriate format and in real time where easy or at intervals that reflect needs for information
- achieved in the most efficient way possible

This will require rethinking the current landscape of monitoring and information requirements to ensure the right systems and support mechanisms are in place for the future.



INDEPENDENT OVERSIGHT

Strong arrangements are essential to hold the government of the day to account for long term objectives, especially where short term and long term interests may not always align.

Leaving the EU creates a gap in holding government to account for policies and action on the environment. UK nations have therefore agreed to fill the gap and have proposed arrangements for independent oversight. For example Defra has proposed a new independent body for England to:

- provide independent scrutiny and advice on the implementation of environmental legislation and government policy
- respond to complaints
- take enforcement action (including legal proceedings if necessary) where it is not complying with environmental law

However, given the commitment to improving the environment, the body or bodies would also need to hold governments to account for putting in place the right conditions to meet long term goals, to give the economy sufficient confidence to plan and invest. This would involve similar functions as before but focused on what's needed to achieve goals as well as to comply with existing legislation, i.e.:

- independent advice on the most cost effective means to meet goals
- scrutiny of government's plans to meet goals
- enforcement action where government is failing to create the conditions needed to meet goals

Box 8: The organisational landscape

The pillars above, including the new independent body, imply rethinking government roles including to ensure governance is effective, coherent and efficient. This includes considering the role and interfaces between:

- parliament
- central government
- UK and devolved administrations
- new independent body
- regulatory bodies
- science advice mechanisms/government committees
- local authorities and combined authorities
- public bodies
- the courts
- international bodies
- public, business and third sectors.

It is too early to suggest any specific proposals or changes but some principles in developing the roles and interfaces to meet functions while avoiding overlap are:

- reflect the foundational and systemic nature of the environment and its interactions with the economy and society
- reflect the geographical scale at which the function can be most effectively performed
- reflect whether activities need to be done once, a few times or many times
- reflect the need for environment policy to be informed by the best science
- deal with related issues together
- user facing services should be designed around users
- be independent of those being governed
- involve no more bodies than are needed to achieve the purpose
- have the right skills and be adequately funded
- independent judicial oversight and enforcement should build on the experience of the First Tier Tribunal and combine legal and specialised environmental expertise.

3 BLUEPRINT FOR THE ENVIRONMENT ACT

Implementation strategy

The UK context

Content for the Act

Benefits for sectors

IMPLEMENTATION STRATEGY

Having reviewed what architecture is needed to govern the environment effectively in total, we can now consider what an Environment Act must include to be world leading and enable a consistent and joined up approach to the environment across all sectors.

It would need to include:

1 Substantive provisions for the following:

- **objectives** – because although objectives exist for a number of environmental issues, they have variable status, are currently piecemeal and inconsistent, do not reflect the ambition in the 25 year plan and in many cases expire in the near future. They need to be included on the face of the Act to provide clear strategic direction for all subsequent arrangements.
- **principles** – because these will otherwise fall away after EU exit.
- **responsibilities** – because these are currently unclear, are needed to put responsibility where (and when) the right action can best be determined and need to be set in the context of the scope and objectives of the Act.
- **oversight arrangements** – because these are mainly at EU level and will fall away after EU exit.

2 Processes for the following elements which are highly unlikely to happen in any sustained way without legislation. They need to be framed as processes rather than fixed provisions as they will need to evolve but to do so in a credible and predictable way:

- **setting targets, milestones and indicators** – which will need to evolve as the environmental issues, economic activities science, technology, and socio-economic conditions develop.
- **agreeing national plans for ensuring that mechanisms are fit to secure objectives.** This includes ensuring that not only the mechanisms but also enforcement, feedback loops and the organisational landscape are fit to support the objectives over the long term.
- **developing unified approach to maps and plans for the place-based environment.** The current approach is not adequate to support the objectives. Whilst the precise solution cannot be prescribed in legislation, a legally backed process is needed to make it happen over a period of time.

This section first sets out the context for where a common UK approach is mutually beneficial and then the content required for at both UK and England levels.

THE UK CONTEXT

Environmental policy in the UK is devolved so the four nations of the UK each need to decide how to govern the environment after Brexit, and how best to meet the functions represented by each of the pillars.

However, they also need to consider where and to what extent to pool that sovereignty in their mutual interest. There are several sources of mutual interest. The four UK countries share a natural resource base in different and sometimes complex ways. For example, nearly half of the territory of Wales has shared river basins with England. The international reputation and ability to trade of all four countries depends on how the environment is governed across the UK as a whole. Interfaces with EU and international organisations also become more important and are generally UK level. Many stakeholders operate either both sides or across borders.

Within the context of devolution, the EU had provided the horizontal framework of shared objectives, common policy and administrative frameworks and accountability to enable the four countries to work together. See the 21 functions listed in the annex. In the absence of the EU, thought is needed about which horizontal functions are required at UK level.

Broadway has worked with the academic community across the UK⁷ to identify these sources of mutual interest and develop an initial view of the minimum mutually desirable common framework, including:

- objectives for the environment
- environmental principles
- accountability for meeting the objectives and complying with law
- a duty to consult when developing policies with cross-border implications and to cooperate where needed to achieve objectives

These or other arrangements need to be developed jointly by UK nations. The Environment Act may be the best opportunity to put those in place.

CONTENT FOR THE ACT

The following need to be included in the Environment Act now:

UK content

UK content in shared legislation (or legislation in the four nations with common provisions) should ideally include at least:

Environmental objectives

- 1 A UK commitment to environmental objectives that describe in total what UK countries must achieve. For example, to:
 - safe and healthy environment, healthy ecosystems and good environmental quality
 - protect human health
 - use natural resources sustainably
 - co-operate at international level where necessary to resolve regional or global environmental problems including biodiversity and climate change. This should include complying with existing international commitments.

Environmental principles

- 2 UK commitment to common environmental principles governing the development of policy with a policy statement or statements on how the principles should be applied and interpreted.

Accountability

- 3 Accountability of UK nations to meet environmental objectives and for complying with environmental laws through: advice and scrutiny, complaints procedures and enforcement.

- 4 An independent body or bodies accountable to devolved parliaments for devolved responsibilities and to UK parliament for UK responsibilities.

Consultation and co-operation

- 5 A commitment for UK nations to:
 - consult each other early in the process of developing policies which may have cross-border implications for the environment, people or businesses, including to give the opportunity for taking common approaches
 - cooperate where necessary to achieve environmental objectives

If UK nations do not agree common provisions, then the UK provisions would also be included in England only legislation.

England content for the Act

The following content to apply to England only.

Definition of objectives, targets and milestones

- 6 Objectives should be defined in more detail to meet the 25 year plan ambition for England, for example:
 - a list based on the 25 year environment plan list of goals; or
 - the UK objectives applied to the scope of the environment in the 25 year plan.

The target and obligations flowing from the Climate Change Act should be treated in an integrated way alongside these objectives.

7 Government to set targets, milestones and metrics. These should be set within a given period of the passage of the Act (for example, 12 months).

- Targets should describe in numerical, or objective and independently verifiable terms, the state or change required to credibly attain the goals, and the target date. There should be one or more targets for each goal. Targets should be set for no later than [the 25 year plan date] and preferably earlier taking account of the factors below.
- Milestones should reflect the trajectory needed to meet goals. Milestones should be set, where relevant, to give a trajectory of 5, 10 and 15 years ahead, and further where justified.
- In setting targets and milestones, including target dates, the government should take account of: advice provided by the independent body, the best available advice including the advice of the Chief Scientific Adviser and subject-specific experts, the likely rate of technological development and innovation, the costs and benefits of different improvement trajectories, the time required for business to adjust practices, the views of affected stakeholders and any other relevant social and economic factors.
- Government to develop a set of indicators for the targets and objectives with standardized and agreed measuring and monitoring methods and report against them at the relevant geographical scales.

Duty on government to meet the objectives

8 Duty on government as a whole to meet the objectives for example via a duty on the Secretary of State. In carrying out its duty the Government should:

- tackle environmental issues in a systemic way, setting early direction to resolve long term problems.

- meet objectives in a way that is mutually consistent with meeting other social and economic objectives and explain how trade-offs are made where unavoidable.
- consider and address environmental objectives across government as a whole in determining the most cost effective, integrated approach to resolving collective environmental problems.
- apply the environmental principles.

National level framework for action

9 Government to produce and implement regular plans to ensure policies, including targets and milestones, are fit to meet the objectives. There should be a five-year cycle, whereby the government introduces its plan of proposals and policies. Plans should:

- be informed by a state of the environment report including public census, assessment of where objectives are not being met and of the causes.
- revise targets and milestones where necessary taking account of the listed factors, and to maintain a trajectory of milestones into the future.
- encourage collaboration in their development, including through sectoral plans, and incorporate an effective science advice mechanism.
- progressively incorporate or align all existing national level plans within the scope of the objectives.
- start for example at the third year after assent to the Bill.
- be subject to independent advice and scrutiny.

10 Powers for government to introduce regulations, financial instruments and incentives to meet objectives.

11 Plans should also, again subject to independent scrutiny, make, implement and report on proposals to ensure the legislative, policy and administrative framework is fit to secure environmental objectives cost effectively. This should include the landscape of

- primary and secondary legislation
- requirements and inducements
- regulation and how it is administered including permits
- information monitoring and reporting
- enforcement and sanctions
- government interfaces including public bodies
- tribunal arrangements

The independent body should produce a progress report in the penultimate year of each cycle to which the government must respond, supplemented by an annual report and respond cycle.

Maps and plans for the ‘placed-based’ environment

12 Government to ensure an integrated national system of maps is in place to cover all aspects of the environment requiring place-specific action. For example, it could be based on the Strategic Environmental Assessment Directive and include:

“biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors”.

Maps should be capable of operating at all relevant geographical scales. ‘Maps’ should be interpreted broadly to allow the most appropriate format as information technology develops. Maps should include information, as useful to inform the objectives, on:

- the state of the environment
- where objectives are not being met
- likely future pressures and scenarios
- areas where there are opportunities to make gains to improve the environment including nature

Where possible they should incorporate and replace existing maps and be periodically updated.

13 Government to develop a framework for integrating environmental objectives into spatial planning of activities and investment, alongside other social and economic objectives. The government should determine the geographical scales at which plans operate and how they connect, incorporate or replace existing planning arrangements. The planning function also includes:

- identifying the causes of gaps and potential drivers for improvement
- a consultative process to identify plan objectives and priorities, which in turn become the framework for regulation, net gain and public investment
- a consultative process to identify actions required by all parties to secure objectives
- assessing the residual gap and the reasons and feeding back to the national framework

14 Government to set out a plan for meeting these obligations within a specified period of assent to the Bill.

15 Power to establish a finance mechanism that aggregates public and private funding to improve the environment in accordance with the plan.

Duty of care for the environment via environmental policy statements

16 Duty to take care of the environment and to publish an environmental policy statement on how the duty is to be complied with.

This duty should apply to all public and private, profit and non-profit organisations, subject to any exemptions for organisations with minimal impact on the environment. The definition of the environment could for example follow the ISO 14001 definition (“*surroundings in which an organization operates, including air, water, land, natural resources, flora, fauna, humans and their inter-relationships*”) or the definition in the Act. To meet this duty, organisations must:

- take steps so far as reasonably practicable to prevent negative impacts on the environment where possible, or to limit them where not, and to use resources sustainably.
- have a written statement of environmental policy, stating how they will take account of the environment in their day to day operations, in their procurement and supply chains and in the design and development of their products and services.
- name an individual to be responsible for implementing the policy in the organisation.
- implement the policy.
- for large organisations, for example above the audit exemption threshold, include in their report and accounts how they have implemented their policy into their operations, procurement and products and services, and what impact it has had on their performance.

There should be offences for not complying with the duties to have and implement a policy, name individual and, for larger companies, to report on the duty; and for grievous failures to take account of the environment in their activities. Enforcement should be risk-based, fair and proportionate, based on a transparent enforcement policy, giving reasonable time to adjust where appropriate. Enforcement action should not be taken where an activity is specifically permitted by an authorization or regulation with which the organization has complied. The government shall from time to time do analysis of the causes of systemic problems and make statements about what should be in the enforcement policy, following

discussion with relevant parties and taking account of advice from the independent body.

Responsibilities for other specified activities

17 Responsibility of net environmental gain for land use development activities. Proposals for net gain should:

- unambiguously leave the environment in a better state in total terms, based upon best scientific knowledge and techniques
- be based on integrated assessment of all effects on the environment
- take account of place-based plans
- take account of economic, social and cultural factors
- be pragmatic, with ability to provide additional gain where there is uncertainty about whether benefits will arise.
- be independently audited by a certified assessor.

18 Power for government to introduce via regulations and subject to parliamentary scrutiny responsibilities on other specific activities where:

- those activities are demonstrably best placed to achieve objectives cost effectively.
- the government has assessed the costs and benefits, the circumstances of those carrying out the activities and impacts on competitiveness.

19 Duty on any organisation that has a major influence on the environment at relevant geographical scale to take reasonable action to co-operate with the plan-making process.

Additional accountabilities

20 The independent body should advise on and scrutinize all government duties under the act and where necessary, take enforcement action.

BENEFITS FOR A CROSS SECTION OF SECTORS

These are initial views of the benefits of a coherent framework for governing the environment from representatives of the sectors⁸.

All sectors

- Gives long-term clarity for planning, investment and innovation
- Makes compliance simple and un-bureaucratic



Manufacturing

- Assures trading partners of UK regulatory performance
- Gives time to adjust
- Supports resource productivity, resource security and competitiveness
- Gives assurance on environmental requirements for products



Housing and infrastructure

- Gives early clarity on requirements for environmentally positive and publicly supported schemes
- Encourages effort in proportion to the scale of environmental benefit
- Clear public accountability for standards



Farming and land management

- Makes it easier to develop farm-appropriate solutions
- Makes environmental rules clear, consistent and durable
- Secures better value and more local input for investment in public goods
- Gives a clearer role for science and evidence



Resources and waste management

- Provides the clarity needed to invest in infrastructure
- Enables collaboration with value chain
- Encourages innovative from suppliers
- Enforces waste crime robustly
- Provides conditions to maximise material circulation back into the economy



Small business

- Makes it more profitable to do good for the environment
- Creates more business opportunities from solving environmental problems
- Avoids stranded assets from policy failure (e.g. costs for diesel owners)
- Reflects time needed for business to adjust



Environmental solutions

- Creates opportunities for innovative environmental technologies
- Provides export opportunities based on high UK environmental standards
- Gives confidence for R&D investment



Water and other utilities

- Provides clarity on priorities for investment
- Enables focus on higher value environmental outcomes
- Gives a clear governance framework for decision making



Public sector

- Provides framework for strategic partnerships
- Gives intelligence and flexibility to target problems early
- Simplifies governance and accountability

ANNEX

What is the EU's role on the environment?

The EU's role in governing the environment across the 28 member states is multi-faceted and includes the following horizontal (i.e. as opposed to policy specific) functions:

- 1 Setting principles. The EU treaties establish the general principles for environmental decision-making.
- 2 Horizon scanning. The European Environment Agency and forwarding looking R&D programmes, currently under the umbrella of Horizon 2020, anticipate future trends and environmental issues.
- 3 Developing long term strategy. The periodic European Environmental Action Programme set out future challenges and how they should be addressed.
- 4 Initiating policy proposals. The services of the Commission initiate proposals, sometimes at the request of the Council and Parliament.
- 5 Appraising policy proposals. This task is carried out by the Commission and by an independent regulatory scrutiny board.
- 6 Consulting stakeholders. The Commission consults on specific proposals with engagement from Member States and the European Parliament. The Commission also seeks citizens' views more generally on environmental issues.
- 7 Legal drafting of EU Directives and Regulations. This is done by the legal services of the Commission.
- 8 Brokering political agreement on policy and legislative proposals. This is done through the co-decision process involving the Commission, the Member States (through the Council) and the Parliament.
- 9 Participating in international law. The Commission negotiates, ratifies and reports back on many Multilateral Environmental Agreements on behalf of Member States.
- 10 Incorporating environmental objectives in trade policy. This includes agreements and contributing through various fora to wider trade norms.
- 11 Guiding implementation. This includes working groups, technical and legal fora and issuing EU level guidance.
- 12 Sharing and transferring expertise and best practices. This includes technical assistance, secondments and sharing expertise through technical fora such as IMPEL (EU network for the implementation and enforcement of environmental law).
- 13 Setting standards. Various EU fora and specialized EU bodies set standards for many and various products and activities.
- 14 Authorising specific products. This includes authorizing chemicals and GMOs for the EU market.
- 15 Specific oversight roles. This includes reviewing the designation of Natura 2000 sites and the justifications for projects harming priority sites beyond the legislative exemptions.

- 16 Administering funding. Environmental spending programmes include e.g. rural payments and LIFE.
- 17 Monitoring and assessment. The European Environment Agency and Commission both have functions to monitor and assess the environment and compliance with obligations.
- 18 Evaluation of policies. The Commission carries out cyclical and thematic reviews of policies. The Parliament also reviews environmental policies.
- 19 Proactive scrutiny. The Commission scrutinises legal and implementation arrangements.
- 20 Hearing appeals. The Commission responds to complaints from interested parties about the application of EU law in Member States.
- 21 Enforcement. The EU takes administrative and legal action against Member States and administers fines.



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