

# IEMA Response to the DEFRA Environmental Principles and Governance consultation

## Summary

1. We are supportive of the Government's intention to fix the environmental 'governance gap' which will be left when the UK leaves the EU, and we welcome the opportunity to respond to the Government's proposals.
2. The requirements regarding environmental principles and the new environmental watchdog which are set out in the European Union (Withdrawal) Act will, when transposed into the new Environment Act, address many of the initial concerns we had on the proposals.
3. In relation to the principles in the European Union (Withdrawal) Act, we believe that these should be strengthened to include an innovation principle, and that Ministers should be required to "act in accordance with" the National Policy Statement.
4. We support the new environmental watchdog being an independent body having a range of powers for ensuring that environmental laws are complied with. We believe that these powers should apply to all government departments and non-departments bodies. Parliament should be responsible for allocating resources and ensuring independence in the appointment of the Chair of the new body.
5. We recognise that some aspects of the environment cross national boundaries, and that there are some aspects which might more effectively be managed at a UK level. We would urge that Government works with all home nations of the UK to (i) establish a framework of co-operation (ii) provide a platform for ensuring high environmental standards, and (iii) ensure the implementation of international agreements on the environment.

## Greater Ambition is Needed

6. The Government's intention is to leave the environment in a better state over the next 25 years than it is currently; we support this overall goal and believe it is essential to put in place a governance framework which will ensure the restoration and enhancement of the UK's natural assets.
7. We therefore believe that the ambition for an environmental governance framework must be set at a higher level than it is today; legislating to maintain the status quo won't provide the underpinning legal framework we need to achieve long-term environmental goals. We therefore welcome the Prime Minister's commitment for an ambitious Environment Act.

8. To meet the Prime Minister’s ambition, the forthcoming Environment Act needs to provide, as a minimum, a framework for the following:
  - i. Legally binding goals supported by numerical targets, milestones and metrics for key environmental outcomes such as biodiversity, freshwater quality and availability, air quality and soils;
  - ii. Five-yearly updates to the 25 Year Plan aimed at achieving the goals and targets, based on independent advice;
  - iii. A fully funded and resourced five-year programme of activity that will deliver actions to meet targets and milestones;
  - iv. Improved monitoring and reporting on the state of the environment using mapping and modelling that is more accessible and understandable to the public;
  - v. An overarching “duty of environmental responsibility” on public and private activity affecting the environment that changes the default so that e.g. government departments, public bodies, businesses and potentially others have a basic duty to act responsibly towards the environment, or to take account of the environment in making decisions;
  - vi. Cross-Whitehall regulation, incentives and taxation designed to protect the environment and stimulate genuinely sustainable development and economic growth;
  - vii. Effective, place-based governance and resourcing to allow communities and local and regional bodies to work together to protect and enhance the environment at a meaningful scale.

## About IEMA

9. IEMA is the professional body for those working in environment and sustainability. We welcome the opportunity to provide written evidence to the Committee’s inquiry into the Government’s Environmental Principles and Governance proposals.
10. IEMA’s membership of over 14,500 sustainability professionals work at the interface between organisations, the environment and society to create long-term value and minimise risks. They guide and lead the changes that will be required for a sustainable future.
11. IEMA members provide assurance and confidence that environmental and social risks are being effectively managed, that public health and the environment are being protected, and that opportunities for improvement are being capitalised on. A core part members’ work is to manage and ensure that organisations comply with environmental laws and regulations.
12. IEMA members work for all types and size of organisation, in all economic sectors.

## Introduction

13. In formulating IEMA's response to the Government's consultation, we have engaged extensively with IEMA members and other stakeholders. This has included:
  - a. Providing a briefing and initial position on the proposals to test our ideas, sharing this widely with others.
  - b. Workshops in London, Bristol, Birmingham and Newcastle to provide an opportunity for members to discuss the proposals in-depth;
  - c. A webinar with 178 attendees, including live polls to test views on key questions;
  - d. IEMA Brexit Group of leading professionals from business;
  - e. Collaboration with the Environmental Policy Forum (EPF) – a group of likeminded professional bodies and learned societies;
  - f. Broadway Initiative, including a roundtable with Defra officials;
  - g. Participation in one of the workshops hosted by Defra;
  - h. Written submission to the Environmental Audit Committee inquiry into the consultation;
  - i. Other events, including the Edge debates.
14. We have structured our response against the three major themes of the consultation as follows:
  - a. How should the environmental principles be embedded into law?
  - b. How should the new environmental body hold the government to account?
  - c. Overall environmental governance – focused on the 25yr Environment Plan.
15. We would be happy to discuss our response with Defra officials or provide additional information, if that would be helpful.

## Part 1: How should the environmental principles be embedded into law?

16. IEMA set out its views on what environmental principles should be embedded into law in our Brexit and Beyond paper<sup>1</sup>. We are pleased to see that the following principles, set out in the European Union (Withdrawal) Act, mirror closely our proposals:
- a. the **precautionary principle** so far as relating to the environment
  - b. the **principle of preventative action** to avert environmental damage
  - c. the principle that environmental damage should as a priority be rectified at source  
**[proximity principle]**
  - d. the **polluter pays principle**
  - e. the **principle of sustainable development**
  - f. the principle that environmental protection requirements must be **integrated** into the definition and implementation of policies and activities
  - g. public access to environmental information,
  - h. public participation in environmental decision-making, and
  - i. access to justice in relation to environmental matters.”
17. We do not see the European Union (Withdrawal) Act as setting a ceiling or restriction on what principles could be included in the proposed Environmental Principles and Governance Bill. Rather, it sets out a minimum requirement. As such, we believe that an **Innovation Principle** should be included, with a focus on new environmental technology and ways of thinking to make environmental progress and deliver better environmental outcomes.
18. The environmental principles established in the Treaty on the Functioning of the European Union frame the development of EU environmental policy and law, which subsequently covers the whole of the UK. To ensure that there is no governance gap when the UK leaves the EU, we therefore believe that it is important for all parts of the UK to apply the Environmental Principles to the development of environmental policy and law in the future. We believe this is essential to provide an overall consistent approach to environmental policy development, while recognising that implementation might differ in different parts of the UK.
19. We support the development of a National Policy Statement to set out how the Environmental Principles will be implemented in practice and believe that it is essential that they are subject to parliamentary scrutiny.

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<sup>1</sup> IEMA (2017) Brexit and Beyond: IEMA Core Principles for the Environment – [available here](#)

20. We recognise that the **integration principle** (the principle that environmental protection requirements must be integrated into the definition and implementation of policies and activities) will be crucial to ensuring cross-government application of environmental thinking in policy development. Given that the Treaties are unambiguous in how the principles are considered (i.e. EU policy on the environmental shall be based on.....) we believe that Ministers should have a duty to act in accordance with the environmental principles and NPS, not simply have regard to them.
21. We also believe that multi-level and multi-sector stakeholder engagement, accountability and empowerment should underpin environmental policy development; and that local level buy-in and participation should guide the design of local solutions. This should be clearly reflected in the approach to applying the environmental principles to policy development set out in the NPS.

## Part 2: How should the new environmental body hold the government to account?

22. IEMA agrees with the Government's assessment of the Governance Gap that will be created once the UK exits the EU. IEMA also agrees with the proposed objectives for the establishment of the new body and agrees with the three key functions proposed.
23. As with the environmental principles in the context of the EU Treaties, the role of the European Commission in holding member states to account applies to the whole of the UK. To ensure that there is no governance gap when the UK leaves the EU, we therefore believe that it is important for all parts of the UK to have an appropriate level of scrutiny and oversight, and for citizens across the UK to have an opportunity to raise complaint about the alleged failure of government to implement environmental law.

### ***Scrutiny and advice***

24. IEMA considers that the scrutiny and advice function should cover: existing (extant) environmental law; proposals to significantly change environmental law; and scrutinise, advise and report on the delivery of key environmental policies, such as the 25 Year Environment Plan.
25. IEMA agrees with the Government's proposal that the new body could be tasked with conducting and publishing an independent, annual assessment of national progress against the delivery of the ambition, goals and actions of the 25 Year Environment Plan, and that this could follow a government report on its implementation.
26. IEMA also agrees that the new body could provide advice and recommendations to government on the development of policy and legislation across Whitehall, in so far as they relate to the ambition, goals and actions referred to in the 25 Year Environment Plan and the application of the integration principle.

27. We consider that there is significant benefit in providing the body with the function of advising and recommending on relevant policy and legislation across Whitehall. For example, the proposed Resources and Waste Strategy could be enhanced by receiving expert advice on the dependencies between the natural environmental and the economy, such as around resource security and resource effectiveness. Similarly, the extent to which new transport infrastructure is contributing to environmental net gain of natural assets.
28. IEMA agrees that any recommendations to government could be required to be laid in Parliament for the government to respond to within a reasonable timeframe.
29. However, IEMA is concerned that there is still a narrative from Government, as expressed at times in the consultation document, that there is a need to trade-off the economy and environment and that a "proportionate approach" would lead to better economic outcomes at the expense of environmental outcomes. This assumption is outdated, unfounded and unhelpful. Long-term economic growth relies on good environmental stewardship and innovation to resolve sustainability challenges.

***Responding to complaints***

30. IEMA considers that existing domestic arrangements will not be sufficient to provide the same opportunities to submit complaints and concerns as currently exists under EU governance arrangements. We therefore consider it essential that the proposed new body be given the remit and powers to respond to and investigate complaints from members of the public about the alleged failure of government to implement environmental law. We are also concerned to ensure that everyone in the UK has an equal opportunity to do so.
31. IEMA broadly agrees with the information set out in the consultation document around how this could work. For example, we agree that the new body would need to have powers to conduct investigations and require the provision of information. Like the current ombudsmen, it would need to be able to give recommendations which would be expected to be strongly persuasive, and therefore (we hope) would be likely to be implemented in most cases, even if the new body chose not to exercise its potential legal powers to require compliance. We agree that the new body could make its recommendations to the government, publish them and report on findings and recommendations to Parliament.
32. IEMA also agrees that the new body would need to consider all valid complaints received but should have discretion to exercise its powers to act in appropriate cases, rather than have a duty to act in response to all complaints.
33. However, IEMA's support for such discretion is dependent on the body being sufficiently resourced, both financially and in terms of expertise, to be able to carry out all investigations that are necessary to effectively fulfil its duty to protect the environment. There is a danger that funding will be seen as more fluid or discretionary if there is no mechanism (to Parliament) to investigate complaints as appropriate.

***Enforcing government delivery of environmental law***

34. IEMA agrees that advisory notices will be an effective first step in enforcing environmental law. However, if they were to be the only enforcement power granted to the proposed new body, this would be wholly inadequate, and a significant weakening of environmental protection compared to the status quo. This would clearly not meet the Government's promise not to weaken environmental protection and would bring a lie to the notion of a world leading environmental body.
35. There are two reasons why stronger powers are needed. Firstly, while most environmental complaints taken on by the European Commission are resolved through an advisory notice, IEMA considers that a major reason why this is the case is because of the potential of stronger enforcement action, should no satisfactory resolution be proposed by a Member State.
36. Secondly, a number of serious environmental threats have only been averted once stronger action has been taken. In both cases, the very real threat of significant and ongoing fines is likely to have been the main driver.
37. IEMA therefore welcomes the House of Commons amendment requiring that the new body be given the power to take proportionate enforcement action that would allow for cases to be escalated and act as a stronger incentive for Government to comply when advisory notices are given.
38. The consultation paper proposes binding notices (subject to appeal). IEMA considers that this is one approach that may be effective.
39. The consultation proposal is, however, missing one vital tool that should be available to the new body. Namely, the power to issue fines to Government and public bodies for non-compliance when other avenues have been exhausted. Table 1 of the consultation document infers that this power is not necessary because Parliament provides scrutiny of government's compliance with court rulings and NGOs can apply pressure in Parliament and initiate further legal action if needed. We do not believe that this is equivalent, nor is it likely to drive a culture of compliance.
40. Finally, IEMA supports the proposal for the new body to be able to intervene in legal proceedings that have been brought by others. As noted, this mechanism is in place in Austria and Hungary. It is also a key power held by the New Zealand Department of Conservation. In many cases this can introduce a much stronger evidence base and more robust legal argument to an existing case.
41. Crucially, in the above International examples, those bodies also have powers to initiate legal proceedings. This is important as it does not rely on a third party to identify, initiate and fund a legal case.

***Scope of the new body***

42. The Government has a preference for the new body to oversee central government departments only, in a similar manner to the way that the European Commission operates. IEMA agrees that this is the closest equivalent power to the status quo.

43. However, there are clearly strong arguments to improve upon the current regime and allow for more timely and direct intervention with a wider range of regulators and actors. IEMA therefore recommends that the new body be able to exercise its functions directly over a broader range of public bodies and authorities, for example non-departmental public bodies such as the Environment Agency and Natural England.
44. The Government has proposed that the new body be given broad remit to scrutinise and advise on environmental issues and that this scope should be relatively unconstrained. IEMA agrees with this approach and particularly supports the inclusion of important areas such as agriculture and fisheries.
45. However, the investigative and enforcement functions are proposed to be much narrower. For example, they will not cover climate change or the UK's obligations under international law that are not implemented through domestic legislation. IEMA does not agree with this narrow approach and is not convinced by the arguments put forward in the consultation.
46. Climate change is a key driver of environmental harm. Unless and until the Committee on Climate Change is given equivalent compliance and enforcement powers or is more fully integrated into the body, this will weaken existing environmental protection. IEMA broadly supports the points raised by the Committee on Climate Change in their open letter<sup>2</sup>.
47. IEMA agrees that the EU does not hold Member States to account for many of their international environment commitments, this is a political decision and should not constrain the UK Government from developing its own world leading environmental body that will support the delivery of its international environmental obligations.
48. On planning policy, IEMA agrees that the new body should broadly have an advisory role, with a focus on the functioning of the planning regime as a whole. This would include being consulted on national policy frameworks and government strategic plans. However, there are strong arguments for the new body to be able to initiate or join legal proceedings where strategic plans appear to be in breach of environmental obligations or are unlikely to achieve the environmental objective of the planning regime.

***Moving beyond procedural inadequacies***

49. There is a strong logic that the proposed body should be able to investigate and hold to account public bodies for decisions, plans and strategies that, while lawful from a procedural point of view, are nonetheless likely to detrimentally affect the environment. This is very pertinent to both the planning regime and to broader schemes such as agricultural payments. IEMA therefore considers that some form of legal challenge based on merit, as well as procedural failure, should be considered. There is international precedent for this approach, as set out in Appendix E of the discussion document. It is also regarded as successful and beneficial as applied in New Zealand.

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<sup>2</sup> <https://www.theccc.org.uk/publication/ccc-writes-to-michael-gove-about-proposed-environmental-watchdog/>



50. Such an approach would require a new legislative body or judicial process to be implemented, as currently the Courts are unable to make decisions based on merit.
51. One possible option to support this approach would be to create a legal duty of care to the environment that public bodies would be required to follow when making decisions. This would be particularly beneficial where decision-makers have a considerable amount of discretion over the extent to which environmental considerations need to be taken into account.

## Part 3: Overall environmental governance

52. IEMA considers that the consultation is a missed opportunity to create a better environmental governance framework for the UK. This is because, even with the strong protections afforded by the EU, our environment is in decline. Based on current trajectory we will continue to lose important biodiversity and habitats and further degrade a large number of our ecosystems. We consider that the 25 Year Plan has the potential to turn around these declines, but it will only be successful if it has a strong legislative underpinning.
53. We also recognise the consistent failure to spot longer-term environmental problems which result in large social and economic impacts, and have high cost to put right (e.g. air quality, climate change, plastics) – we need systematic and comprehensive ‘horizon-scanning’ to spot potential problems early and take appropriate action.
54. In broad terms, environmental policies have evolved based on a default that anyone can do anything as long as you can navigate and stay in compliance with the legal framework and other specific requirements (i.e. unless a regulation prevents you from doing something, you can do anything). This culture/approach is now beginning to be questioned. The duties to protect the health, safety and welfare of workers set out in the 1974 Health and Safety Act have helped bring about a culture change towards H&S responsibility; a similar approach should be considered for the environment.
55. IEMA is therefore advocating that the new Environment Act be much more ambitious and far-reaching than outlines in the consultation; indeed, this will be required to meet the Prime Minister’s commitment to an ambitious new Environment Act. Our initial thinking is that the Act should act as a framework for the following:
  - Legally binding goals in the Act, supported by a process for developing numerical targets, milestones and metrics for key environmental outcomes such as biodiversity, freshwater quality and soils
  - Five-yearly updates to the 25 Year Plan aimed at achieving the goals and targets, based on independent advice
  - A fully funded and resourced five-year programme of activity that will deliver actions to meet targets and milestones

- Improved monitoring and reporting on the state of the environment using mapping and modelling that is more accessible and understandable to the public
- An overarching “duty of environmental responsibility” on public and private activity affecting the environment that changes the default so that e.g. government departments, public bodies, businesses and potentially others have a basic duty to act responsibly towards the environment, or to take account of the environment in making decisions
- Cross-Whitehall regulation, incentives and taxation designed to protect the environment and stimulate genuinely sustainable development and economic growth
- Effective, place-based governance and resourcing to allow communities and local and regional bodies to work together to protect and enhance the environment at a meaningful scale

56. We will be developing these ideas with others over the coming months and will provide early sight to Defra and stakeholders as part of our approach to building widespread support.

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