

Response ID ANON-WE4J-HE45-G

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

Submitted on **2019-05-10 15:16:50**

Section 1: Environmental principles

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

Yes

Please explain your answer. :

Yes, subject to the following comments.

1 We assume that the "new legal duty" (para 29) will require primary legislation, so the Scottish Government should introduce an Environment (Scotland) Bill in this Parliamentary session. This would place the new duty on a clear statutory footing and thereby ensure that the current Scottish Government's positive intentions are secured over the long term, irrespective of any future constitutional or political changes which may occur.

2 A duty to "have regard to" the four principles is too weak. The wording should preferably replicate the EU Treaty wording "shall be based on"; other preferable alternatives might include "act in accordance with", "seek to further" or "ensure the application of".

3 The legislation should require a regular report on the application of the principles to be presented to and scrutinised by the Scottish Parliament.

4 At present, the objectives of Scottish Government policy on the environment are set out in a wide range of policy documents. The legislation required to ensure that EU environmental principles and governance are maintained should therefore also place the forthcoming overall Environment Strategy on a statutory basis, by including a requirement to produce and update an Environment Strategy which sets clear objectives, targets and indicators.

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

No

Please explain your answer. :

The EU environmental principles currently apply to all EU institutions and to all their functions; the same approach should be adopted in Scotland. The duty to base policy on the EU environmental principles should therefore apply to all public bodies and to any function of those bodies which may impact on the environment. The wording of the biodiversity duty in the Nature Conservation (Scotland) Act 2004 provides a good precedent: "It is the duty of every public body and office-holder, in exercising any functions, to further the conservation of biodiversity".

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

Yes

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

However, three other principles should also be enshrined in legislation:

1 A right to a healthy environment, as recommended by the First Minister's Advisory Group on Human Rights Leadership

2 A commitment to sustainable development, as set out by the United Nations

3 A commitment to implement the highest standards in environmental law and policy, whether based on those of the EU, the rest of the UK or other parts of the world

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

Yes

Please explain your answer.:

Such a policy statement will be necessary, so the legislation establishing the duties should require its production and should require Ministers and public bodies to have regard to it when complying with the duties. Legislation should set out a statutory process for the preparation, consultation and formal adoption of the statement. This approach might be based on that required to produce for example the National Planning Framework or the Scottish Outdoor Access Code, and should include formal consideration by Parliament and a requirement for Ministers to report on how they have incorporated Parliament's comments and, if not, why.

Section 2: Environmental governance arrangements

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

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

The loss of this engagement is likely to be damaging to the environment, through decisions being less well informed. Scotland should therefore seek to continue as much international co-operation and co-ordination as possible regarding monitoring, measuring and reporting on the implementation of environmental principles.

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

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

Such a review should cover, but not be limited to, biodiversity, protected areas, invasive non-native species, air and water quality, waste management and environmental assessment. All data should be published openly to ensure full transparency.

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

Yes

Please explain your answer. :

The various forms of EU scrutiny, such as reporting on implementation of Directives, investigations into individual decisions, or reference to the European Court of Justice, all need to be replaced by different or complementary domestic mechanisms.

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

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

Scrutiny of the performance of the Scottish Government and its agencies should be carried out by a body which is wholly independent from government. Options could include the Scottish Parliament, Audit Scotland or a new body, which will also be required for the consideration of complaints and the investigation of specific cases. Additional resources will be required for this additional remit whichever of these options is selected.

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

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

The scope of the new scrutiny arrangements should extend to any law, policy or decision with the potential to affect the environment, for example those listed in Regulation 2 of the Environmental Information (Scotland) Regulations 2004, specifically including effects on landscapes, cultural sites and built structures.

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

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

This will have a significant negative impact. While used relatively infrequently, the power to seek investigation or redress via the EU rests as much in its theoretical availability as in its actual use or application. It provides a mechanism for accountability, contributes towards ensuring access to justice and encourages public bodies to engage effectively with stakeholders at an early stage. There is no equivalent Scottish mechanism; Parliamentary inquiries generally address wider policy matters, while Judicial Review is expensive and cannot address the merits of a particular case, only the procedure which was followed.

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

Yes

Please explain your answer.:

If the Scottish Government is serious that it wishes "to maintain or exceed EU environmental standards" it is essential that a new function to replace the EU complaint mechanism is established, probably requiring the creation of a new body; the UK Government and Parliament have already come to the same conclusion. There is a need for a new independent 'watchdog' body to administer and investigate complaints. It must be genuinely independent of the Scottish Government, so must be established by and accountable to the Scottish Parliament.

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

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

It seems likely that in the absence of these powers future governments and public bodies may be more tempted to give lower priority to beneficial environmental actions, or to favour activities providing short-term political benefits at the expense of one or more aspects of the environment.

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

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

There is a need for a new independent 'watchdog' body, with powers of last resort to refer alleged non-compliance to a Court. However, giving a new body the right to refer an issue to a Sheriff Court or the Court of Session would not sufficiently replicate the current EU compliance mechanisms. A new Environmental Court is therefore required. It must be fully compliant with the Aarhus Convention, in that it must not be prohibitively expensive and must be able fully to consider the merits of each case. It must also have powers of appropriate remedy, including the ability to quash unlawful decisions and to order remedial actions.

About you

What is your name?

Name:

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

The Association for the Protection of Rural Scotland

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

Publish response only (without name)

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

Yes

Evaluation

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

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

Slightly satisfied

Please enter comments here.:

The more important matter is whether we will be satisfied with the decisions the Scottish Government takes as a result of the responses to the consultation rather than with the consultation itself.

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

Slightly satisfied

Please enter comments here.:

It seems effective and straightforward. It would be useful to be able to format the text, eg by use of bullets or underlining. We assume that we will be sent a transcript of our response so that we can circulate this to our Trustees and anyone else interested.