



## **Response to Consultation from Defra on environmental principles and accountability for the environment**

The Open Spaces Society (OSS) was founded in 1865 and is Britain's oldest national conservation body. It campaigns to protect common land, village greens, open spaces and public paths, and people's right to enjoy them.

### **Question 1: Which environmental principles do you consider as the most important to underpin future policy-making?**

Since the launch of the consultation the European Union (Withdrawal) Act 2018 (EUWA) has received Royal Assent (26 June 2018). The Secretary of State is required, within six months to publish a draft bill to include a set of environmental principles. We support inclusion of the principles listed in sub-section (2), but would urge that the UK go beyond the current EU requirements rather than just maintaining the status quo, to ensure the environment and public access to it are protected for future generations.

It is a concern that in paragraph 40 of the consultation there is a '*need to balance environmental priorities alongside other national priorities, such as economic competitiveness, prosperity and job creation to provide sustainable development overall*'. We consider the environment should be top priority.

This appears to be a weakening of the principles and more akin to the National Planning Policy Framework, which is developer friendly.

### **Question 2: Do you agree with these proposals for a statutory policy statement on environmental principles (this applies to both Options 1 and 2)**

It is not clear why the options state the policy statement should apply only to central government policy making and not to all public bodies. It must surely be a requirement for planning authorities and bodies with public functions to be bound by the policy statement, otherwise there will be a lack of consistency in environmental practice.

In addition the government (paragraph 33) only has to '*have regard to the statutory policy statement*'. It is doubtful that this would be sufficient to ensure the principles are upheld.

**Question 3: Should the Environmental Principles and Governance Bill list the environmental principles that the statement must cover (Option 1) or should the principles only be set out in the policy statement (Option 2)?**

Q3 has been overtaken by events to a large degree as section 16 of the EUWA requires the principles to be included in the draft legislation. However as the bill will only apply to England there must be urgent discussions to ensure devolved administrations are involved in developing UK-wide environmental principles.

The Bill should also include a duty on all public bodies to apply the environmental principles.

**Question 4: Do you think there will be any environmental governance mechanisms missing as a result of leaving the EU?**

Paragraph 45 makes clear that the creation of a new body is to hold government to account in order to *'realise the government's goal that this should be the first generation to leave the environment in a better state than that in which we inherited it'*.

However as highlighted in paragraph 53, there are already national bodies, such as Natural England and the Environment Agency, undertaking enforcement, monitoring and guidance roles in relation to environmental governance. It is essential that account is taken of the existing domestic bodies and whether further powers (and resources) could be given to them (for instance on enforcement) before consideration is given to the scope, remit and future of any new environmental body.

There is no doubt that there would be a gap because at present the Court of Justice of the European Union is essential for holding member states to account.

Paragraph 69 is incorrect in stating that judicial review to challenge decisions of public authorities is *'fast, effective and powerful'*. There have been significant changes in the law which have undermined the process and accessibility of the judicial review system. Time-limits have been reduced to six weeks (planning), fees have been increased and the Criminal Justice and Court Act 2015 has introduced a new *'significant difference test'*. The powers proposed for the new body are limited to issuing non-binding advisory notes to central government departments.

However the society welcomes the wording in Section 16 of the EUWA Act 2018 which provides that draft legislation (to be published within 6 months of Royal Assent) must include provision for the new body to take legal proceedings.

**Question 5: Do you agree with the proposed objectives for the establishment of the new environmental body?**

In order for the objectives set out in paragraph 79 to be satisfied the new body must be able to investigate and take action against all public bodies, not just central government. The new body must be truly independent and adequately resourced. However the last bullet point '*operate in a clear, proportionate and transparent way in the public interest, recognising that it is necessary to balance environmental protection against other priorities*' raises alarm bells about the remit of the new body and how its powers will be implemented.

The environment should be the top priority.

**Question 6: Should the new body have functions to scrutinise and advise the government in relation to extant environmental law?**

Yes the new body should have functions to scrutinise and advise government in relation to extant environmental law. Guidance issued by the new body, on which there should be consultation, could be a useful tool.

**Question 7: Should the new body be able to scrutinise, advise and report on the delivery of key environmental policies, such as the 25 Year Environment Plan?**

Yes the new body should have powers to scrutinise, advise and report on the delivery of key environmental policies such as the 25 year Environment Plan, but only if its powers are not given to existing bodies.

The new act (as required by section 16 EUWA) should include the development of the 25 year plan ambitions with legally binding targets to improve public access to the environment and ensure that public access is defined as a '*public good*'. In addition, there should be a mandatory '*net gain*' for public access and the creation of open spaces in new developments, so that the public health benefits proposed by the 25 Year Plan can be achieved.

**Question 8: Should the new body have a remit and powers to respond to and investigate complaints from members of the public about the alleged failure of government to implement environmental law?**

Yes the new body should have a remit and powers to react to and investigate complaints from members of the public.

It would need a remit that covers the current role undertaken by the European Commission.

**Question 9: Do you think any other mechanisms should be included in the framework for the new body to Enforce government delivery of environmental law beyond advisory notices?**

Yes other mechanisms should be included in the framework for the new body to enforce government delivery of environmental law beyond advisory notes and this should be extended to its holding to account other public bodies.

As stated above, the society welcomes section 16 EUWA that the new body will be able to take legal proceedings.

**Question 10: The new body will hold national government directly to account. Should any other authorities be directly or indirectly in the scope of the new body?**

As above, if the body is only allowed to hold government rather than other public bodies to account, the aims of the 25 Year Plan will be undermined and it is unlikely that the environmental principles will be robustly upheld.

**Question 11: Do you agree that the new body should include oversight of domestic environmental law, including that derived from the EU, but not of international environmental agreements to which the UK is party?**

International environmental agreements to which the UK is a party should fall within the remit of the new body.

**Question 12: Do you agree with our assessment of the nature of the body's role in the areas outlined above?**

If the remit of the new body is to enforce environmental law then the objectives under the Climate Change act should be included.

**Question 13: Should the body be able to advise on planning policy?**

The society agrees that the focus of the new body should be to ensure the correct application of relevant environmental law within the planning system. The body should be consulted on any revisions to, for instance, the National Policy Planning Framework and advise on the environmental impacts and aspects of planning policy.

**Question 14: Do you have any other comments or wish to provide any further information relating to the issues addressed in this consultation document?**

We submit that Natural England could take on much of this new role, provided it is given the powers and resources and is made sufficiently independent of government (which should be the case in any event). Even if Natural England does not take on any of the new role, the creation of the new body should not result in any further diminution of NE's powers, resources and independence from government.