

DEFRA Consultation on Environmental Principles and Governance after EU Exit

CIBSE response

Submitted 2nd August 2018

Introduction

What is your name?

Name: Julie Godefroy

What is your email address?

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

Email: JGodefroy@cibse.org

Are you responding as an individual or on behalf of an organisation?

- Individual
- Organisation – Chartered Institution of Building Services Engineers (CIBSE)

If you are responding on behalf of an organisation, please enter your organisation below

Organisation type:

- Academic Institution
- Business
- Farming
- Industry Body
- Local Government
- Non-Governmental Organisation/ Charity
- Professional Institute
- Public Body – arm's Length Body
- Public Body – Other
- Statutory Undertaker
- Trade Body
- Other

If you selected "Other" please state what this is below

Where do you currently reside?

- England
- Northern Ireland
- Scotland
- Wales
- Republic of Ireland
- Europe
- Other – CIBSE's headquarters are in England but CIBSE operate globally

Would you like your response to be confidential?

- Yes
- No

The respondent is **The Chartered Institution of Building Services Engineers (CIBSE)**.

The Chartered Institution of Building Services Engineers is the professional body that exists to:

'support the Science, Art and Practice of building services engineering, by providing our members and the public with first class information'

CIBSE members are the engineers who design, install, operate, maintain and refurbish the energy using systems installed in buildings, including homes, and are specifically trained in the assessment of heat loss from building fabric and the design of energy using systems for the provision of heating and hot water, lighting, ventilation and cooling and small power distribution in homes. Many CIBSE members work in the public sector in general and in higher education in particular.

CIBSE has over 20,000 members, of whom around 75% operate in the UK and many of the remainder in the Gulf, Hong Kong and Australasia. Many are actively involved in the energy management of commercial buildings for larger businesses, and so this consultation is highly relevant to us and to our members.

CIBSE is the sixth largest professional engineering Institution, and along with the Institution of Structural Engineers is the largest dedicated to engineering in the built environment. Our members design, install, manufacture, maintain, manage, operate and replace all the energy using systems in buildings as well as public health systems.

As an Institution CIBSE publishes Guidance and Codes which provide best practice advice and are internationally recognised as authoritative. The CIBSE Knowledge Portal, makes our Guidance available online to all CIBSE members and is the leading systematic engineering resource for the building services sector. Over the last twenty-one months it has been accessed over 200,000 times, and is used regularly by our members to access the latest guidance material for the profession. Currently we have users in over 170 countries, demonstrating the world leading position of UK engineering expertise in this field.

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CONSULTATION QUESTIONS

EXECUTIVE SUMMARY

We welcome this consultation and the opportunity to contribute to shaping the UK's future environmental framework.

We have responded to the questionnaire. However, for the interest of clarity and as a number of our comments are general points of principle which cut across various questions, we have also produced the following summary of our comments and recommendations.

The proposals fall short of the public promises committing the government to replacing the current arrangements for the UK as part of the EU, especially in terms of governance.

UK-WIDE COLLABORATION

The consultation proposes that the upcoming environmental Bill and governance body would only apply in England. We note the intention to seek collaboration with the other nations of the UK, however this is a statement of intent only.

We think this is a fundamental area of weakness in the proposals, since the environment does not recognise or respect national boundaries, and "cross border" alignment is therefore essential for effective environmental guardianship, however difficult it may be to achieve that alignment. This in turn offers opportunities for economies of scale, data sharing, better use of resources etc. It is also unclear how variable environmental regulations across the UK might affect the negotiation of future trade agreements.

CIBSE believes strongly that **environmental governance should be developed at a UK level**. The Climate Change Act and associated Committee on Climate Change (CCC) are an example of this being achieved since

devolution and delivering effective UK-wide advice and oversight. A UK wide environmental arrangement should provide the minimum common ground, with each nation free to implement higher standards or more extensive governance should they wish to, as happens with climate change measures.

We of course fully respect the devolution agreements and would stress this must be a collaborative effort, rather than being seen as led by Westminster for the other UK nations to adopt, as also pointed out by the Environmental Audit Committee (EAC)¹. In order to set the tone for future collaboration and increase chances of success, **the devolved administrations should be approached as soon as possible to jointly develop a draft of the upcoming Environment Bill and discuss possible governance arrangements.** The Climate Change Act provides a successful example of what can be achieved by negotiation.

PART 1 - ENVIRONMENTAL PRINCIPLES

We understand a number of questions in this consultation have been superseded by the European Union (Withdrawal) Act 2018, in particular Section 16, which requires the inclusion of environmental principles in an Act rather than in a policy statement. We warmly welcome this. We would however note that the Withdrawal Act requires “Ministers of the Crown” to “have regard to” these principles. We think the proposed Environment Act should expand this to **all public authorities (and statutory undertakers, such as water utilities)**, and that they should be required to **“have special regard to” the principles and “act in accordance with” the policy statement.** This would make legislation more effective and less open to interpretation. It would also more clearly deliver the promises made by various members of the current government to maintain levels of environmental protection after the UK leaves the EU. A statutory commitment to do so would also increase certainty in business and commerce around future environmental standards, which in turn will have a positive impact on business planning.

We would also recommend the inclusion of the following principles:

- principle of **non-regression**
- principle of **high environmental protection**
- principles already included in EU and international law.

In addition, we would note that the environmental principles listed in the Withdrawal Act are largely focused on democratic and policy processes and on environmental protection rather than on achieving **progressive improvement to environmental regulations and outcomes.** These improvements are required if government is to meet its stated intention to leave the environment in a better state than it inherited it, and if the 25 Year Environment Plan is to be delivered in practice. In general we think there is value in clear and specific measurable targets, alongside monitoring and regular reporting; this focuses action and public awareness, as exemplified by the Climate Change Act and carbon budgets; however, we are also aware there is no widespread consensus yet on how this could easily cover a wide range of environmental issues. We would therefore recommend the following:

- Government should publish **measurable targets that reflect the ambitions of the 25 Year Environment Plan**, against which progress could be monitored by a new independent body;
- In parallel, Government should consider options for how the proposed Environmental Principles and Governance Bill could require **progressive improvement** of environmental regulations and/or outcomes. It is possible that this could be covered by a “net gain” principle, however we cannot comment on this until proposals for the definition of “net gain” are published for consultation, which is expected later this year. As a minimum and in the immediate term we would recommend a requirement for regular reviews of how the requirement for improvements could be enshrined in statute (e.g. every 5 years).

Altogether, these principles would reflect the UK’s stated ambitions and commitments to demonstrating world leadership in environmental standards, and offer significant **export opportunities** to the UK and UK actors, as is already the case for example in the field of climate action and as acknowledged by BEIS themselves².

¹ EAC, *The Government’s 25 Year Plan for the Environment*, Eighth Report of Session 2017–19, 24th July 2018

² “The UK’s International Leadership and Actions to Reduce Emissions Overseas”, in *Clean Growth Strategy*, page 27, October 2017 with April 2018 amendments

We would also stress the associated benefits of environmental protection and enhancements, including **public health benefits**. There are numerous and well-documented synergies in this domain, including for example (but by no means limited to) **air pollution, water quality**, and the **proximity to green space and the natural environment**. These in turn offer potential improvements in productivity and **cost savings**, as well as significant potential savings on **health and social care costs**.

PART 2 – ACCOUNTABILITY FOR THE ENVIRONMENT

Powers of the proposed new independent environmental governance body

The consultation states that the *“new Environmental Principles and Governance Bill is designed to create a new, world-leading, independent environmental watchdog to hold government to account on our environmental ambitions and obligations once we have left the EU”*. CIBSE strongly supports the creation of such a body. However, whilst the consultation contains this headline statement, the more detailed proposals fall short of what is required to genuinely hold government to account.

They also fall significantly short of the requirement of Section 16 (1) c) of the European Union (Withdrawal) Act, which requires government to bring forward, by mid January 2019, *“provisions for the establishment of a public authority with functions for taking, in circumstances provided for by or under the Bill, proportionate enforcement action (including legal proceedings if necessary) where the authority considers that a Minister of the Crown is not complying with environmental law (as it is defined in the Bill)”*.

The following comments provide a more detailed explanation of our expectations of the public authority. They also serve to help demonstrate that the requirements of Section 16 (1) are very much “running entirely with public opinion” and that it is clear, as stated by Lord Deben in the House of Lords “the public wants proper protection, the public wants to make sure that their children and their grandchildren live in an enhanced and better world.”

Enforcement is the most significant and important role to fill in order to match, and improve on the current EU arrangements once the UK leaves the EU. Enforcement mechanisms, including the potential for sanctions if necessary, are crucial to ensure proper and effective application of the law, and this is known to be particularly the case in environmental law.

The stated preferred option in the consultation is for the body to have advisory powers. We strongly consider that this is not sufficient, and **falls very far short of the government’s very public commitment to ensure at least the same level of environmental protection** as currently afforded by the European Commission and Court of Justice. We agree that a conciliatory approach should always be preferred first, including co-operation and advisory notices. **However, the proposed body must have effective, proportionate and dissuasive enforcement powers**, for example the power to initiate Judicial Review and the power to issue binding notices that are enforceable in court³. The use of fines should also be considered, as it can be a powerful deterrent (we note there are circumstances where fines may not be the most suitable approach, for example when lack of funds is a likely reason for non-compliance in the first place); the funds generated should also be ring-fenced for environmental protection and improvement projects,

Enforcement powers should apply to **central government as well as all public bodies and statutory undertakers**. In the large majority of cases we would expect enforcement in the form of advisory or binding notices, with central government ultimately held to account if stronger enforcement was needed.

We agree the proposed body should be **stable, well-funded, and must be independent from government, reporting to Parliament**, for example with similar funding, appointment and reporting arrangements as the National Audit Office (although the NAO does not undertake enforcement action). It is fundamental that if the proposed body is to regulate public authorities and government departments it must be independent of ministerial oversight.

We think that, beyond enforcement powers, there is also a **need to ensure strategic long-term direction of environmental policy**, a role currently provided by the EU Commission. We are aware this may conflict with

³ For a detailed review of options, we would refer for example to ClientEarth, “A New Nature and Environment Commission”, May 2018

enforcement powers, and would recommend government to consult with experts in this field to ensure these functions are maintained once the UK leaves the EU, whether through a new body or through extending the remit of an existing one. The CCC offers a good model to consider.

Scope of the body

We have two main areas of concern about the scope of the proposed body:

1 - Climate change is currently excluded from its remit, on the basis that it is already looked after by the Climate Change Act and CCC. As pointed out by the CCC and its Adaptation Sub-Committee (ASC) themselves⁴, the separation of climate change from other environmental issues is artificial; there would also be serious limitations with leaving climate change action to the CCC alone post-Brexit:

- The CCC only has an advisory and scrutiny role. While government has so far met its carbon budget obligations, and we very much welcome this, there may in the future be the need for enforcement measures to ensure the UK meets its 2050 target⁵.
- The CCC's scrutiny role ultimately only applies to UK carbon budgets; as pointed out by the CCC and ASC themselves, a number of climate-related policies are currently enforced at the EU level e.g. those related to the EU Energy Performance of Buildings Directive and Energy Efficiency Directive⁶. Filling this enforcement gap once the UK leaves the EU is particularly important since progress in reducing emissions from the building sector, especially the existing building stock, is now urgently needed if the UK is to meet its carbon reduction targets⁷.
- Excluding climate change from the body's remit would miss opportunities for synergies and neglect the two-way interactions between the natural environment and climate change: in particular, the environment's capacity to adapt to climate change is intrinsically related to its current state. The proposed separation would also risk presenting government with conflicting advice due to lack of joined-up thinking; for example, it would be possible that one body would advise on the use of biomass on carbon reduction grounds, without taking account of environmental impacts such as air quality and biodiversity. We think that, without encroaching on the work of others, the new body could collaborate with and use the advice of other bodies, in particular that of the CCC's ASC^{19,21}.

2 - Overall remit: it is not clear from the current consultation proposals whether the proposed body's remit would be limited to the implementation of the 25 Year Environment Plan, DEFRA policies, or overall government policy. This is quite inconsistent with the publicly stated commitments to maintain the same levels of environmental governance across all areas, with no exceptions. Unfortunately there is a significant gap between recent headline pronouncements and many of the detailed proposals set out in this consultation. We strongly recommend that **the remit of the proposed body should not be limited to the 25 YEP nor indeed to DEFRA policies alone**. In particular, it must be able to advise on and if necessary take action related to all policies that can impact on environmental outcomes, in particular extending it to cover policies from **BEIS, MHCLG and the Department for Transport**, all highly influential departments in the delivery of environmental objectives in practice, for example:

- Flooding risk is influenced by a number of factors including site location of development and the planning of green infrastructure from local to regional levels, which in turn can deliver other environmental objectives such as air quality, water quality, and biodiversity;
- Transport patterns, with associated air pollution, noise, and carbon emissions, are dependent upon infrastructure and planning decisions from the regional to local planning level, such as site allocation, density, and mixity of uses.

Interaction with planning: we would not expect the body to intervene in individual planning decisions, as this could duplicate existing functions and would require significant resources; however, we would expect it to:

⁴ Letter from the CCC and ASC to Secretary of State, 30th May 2018

⁵ as recommended for example by the recent report "10 Years of the UK Climate Change Act", by the Centre for Climate Change Economics and Policy (CCCEP) and the LSE's Grantham Institute, April 2018

⁶ Letter from the CCC and ASC to Secretary of State, 23rd July 2018

⁷ CCC Annual report, June 2018

- Be able to advise on strategic matters and relevant policy, including the National Planning Policy Framework;
- Carry out investigations as it saw fit, including on local authorities and other public bodies; for example, it may identify systemic issues through the review of planning policies or decisions in the whole (without reviewing individual cases);
- Take appropriate enforcement action if required.

PART 1: ENVIRONMENTAL PRINCIPLES

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

	High Importance	Medium Importance	Low Importance	Do Not Include	Other	Don't know / No opinion
a) Sustainable Development	✓					

Please give any reasons for your answer (Please limit to 250 words)

This principle is now required to be included in a draft Bill, as per Withdrawal Act (§16 (2) (e)).

The UK has signed up to the UN Sustainable Development Goals, and sustainable development should be an overarching goal of policy-making, rather, maybe, than a principle.

We would highlight the recent report on the UK’s progress on the UN SDGs⁸, which concludes that “out of 143 relevant targets, the UK is performing well on 24%, with **57% where there are gaps in policy coverage or performance is not adequate, and 15% where there is little or no policy in place to address the target or the performance is poor**”. We would recommend this is reviewed alongside the upcoming environment Bill, as it may offer opportunities to fill some of the gaps identified. Examples from the assessment of environmental issues include:

- SDG 6 – Clean water and Sanitation – “Water-related ecosystems are not widely considered to be in a ‘good’ status of health under the Water Framework Directive and significant further work is required to balance the needs of the environment with those of population, development and agriculture”.
- SDG11 – Sustainable Cities and Communities - “Socially vulnerable people face disproportionate risk from a variety of factors, including natural disaster. Two thirds (67%) of the population living in flood risk areas are classed as “socially vulnerable” raising the issue of protection for those at increased risk of environmental disaster”.
- SDG 11 - Sustainable Cities and Communities – “Access to public green space is under threat, with 59% of councils likely to lose parks and green spaces or transfer their management to others”.

Given this assessment, it seems very valuable to enshrine the SDGs in statute, and to ensure their implementation is enforced by the new body.

Government should also review the impact of the Welsh Future Generations Act and whether England would benefit from similar primary legislation on sustainable development and inter-generational equity.

	High Importance	Medium Importance	Low Importance	Do Not Include	Other	Don't know / No opinion
b) Precautionary Principle	✓					

Please give any reasons for your answer (Please limit to 250 words)

This principle is also now required to be included in a Bill, as per Withdrawal Act (§16 (2) (a)).

The precautionary principle is a highly important principle in environmental protection as well as in public health, helping to avoid unintended consequences from the application of new processes, technologies, and materials. There are numerous examples in the built environment where the health and/or environmental consequences of new applications are only known in the long-term, leading to potentially severe hazards and to costly and complex remediation (if indeed remediation is possible) – for example, the use of asbestos, which has claimed thousands of lives from various respiratory diseases, including cancer, and where remedial treatment was not possible.

⁸ UKSSD, “Measuring up: How the UK is performing on the UN Sustainable Development Goals”, July 2018 <https://www.ukssd.co.uk/measuringup>

The application of the precautionary principle should be accompanied by guidance in the national policy statement to ensure it does not bluntly prevent innovation, but instead sets a high standard for responsible innovation, with guidance points such as:

- Use of best available scientific knowledge, as is already required, for example, in the Paris Agreement;
- The use of proportionality in its application;
- Examples of measures allowing the careful and responsible application of new potential solutions even without full scientific certainty on their impact; this could include: limiting their application to less sensitive environments (both in terms of the natural environment, avoiding for example SSSIs, and of human populations, avoiding for example exposure to the elderly, infants, and healthcare environments); monitoring the environmental and health effects of early pilots before widespread use; and, in the case of products and buildings, ensuring a record of chemicals and materials used so that they could easily be identified in the future should new knowledge come to light which would warrant their containment or removal⁹.

	High Importance	Medium Importance	Low Importance	Do Not Include	Other	Don't know / No opinion
c) Prevention Principle	✓					

Please give any reasons for your answer (Please limit to 250 words)

This principle is now required to be included in a Bill, as per Withdrawal Act (§16 (2) (b)).

Prevention is a fundamental principle of environmental protection and public health. It offers significant benefits in reducing the likelihood of damage and therefore avoiding the complexity, efforts and costs of remediation should damage occur, if indeed remediation is even possible.

For example in the field of water quality, the Drinking Water Inspectorate already highlights the difficulties and costs of water treatment associated with industrial and agricultural pollution incidents, and the need for better prevention at source¹⁰.

Another example relates to the multiple impacts of transport on health and the environment: transport vehicles create noise and air pollution; these impact the natural environment, with few measures available to mitigate this; the impact on human populations can be to some extent reduced through building design, for example building layout to reduce exposure, buffers to attenuate noise, mechanical ventilation to avoid opening windows, filters to reduce pollutant levels indoors; however, these measures typically have design and construction costs, are only effective to a certain extent, and can have potentially negative impacts, including energy consumption and carbon emissions associated with mechanical ventilation and filtration. By contrast, there are multiple systemic benefits in reducing the need for transport through built environment and infrastructure planning.

Recent work by the Institution of Civil Engineers has quantified the very high levels of waste generated in infrastructure projects, with the associated environmental impacts around its handling, further processing and disposal. This would fall firmly within the scope of this principle and has the potential to yield significant cost benefits.

	High Importance	Medium Importance	Low Importance	Do Not Include	Other	Don't know / No opinion
d) Polluter Pays Principle	✓					

Please give any reasons for your answer (Please limit to 250 words)

⁹ This could be seen as an extension of Environmental Product Declaration, for example using Health Product Declarations or similar <https://www.hpd-collaborative.org/>

¹⁰ http://www.dwi.gov.uk/about/annual-report/2016/Drinking_water_2016_Public%20_water_supplies_England.pdf

This principle is now required to be included in a Bill, as per Withdrawal Act (§16 (2) (d)).

The “polluter pays” principle is powerful and useful in many ways:

- it acts as a deterrent and encourages responsible action from individuals and organisations who may otherwise exercise less care to avoid environmental damage; in doing so, it also helps put businesses on a level-playing field, without undue advantage to those less observant of the law;
- it releases funds for remediation, where damage occurs, without overly affecting public finances;
- it helps ensure public buy-in for environmental programmes, as they become less dependent on public financing.

	High Importance	Medium Importance	Low Importance	Do Not Include	Other	Don't know / No opinion
e) Rectification at Source Principle	✓					

Please give any reasons for your answer (Please limit to 250 words)

This principle is now required to be included in a Bill, as per Withdrawal Act (§16 (2) (c)).

Rectification at source offers significant benefits in containing damage and the costs of remediation. Addressing the original cause will help limit the need for complex solutions, with less risk of unintended consequences and lower overall **systemic costs**. For example, and as noted in our response to c), costly and complex water treatment solutions are often related to agricultural or industrial pollution incidents; avoiding these incidents (i.e. prevention) and limiting their duration and extent once they have occurred (i.e. rectification at source) can reduce reliance on these expensive complex treatment systems.

	High Importance	Medium Importance	Low Importance	Do Not Include	Other	Don't know / No opinion
f) Integration Principle	✓					

Please give any reasons for your answer (Please limit to 250 words)

This principle is now required to be included in a Bill, as per Withdrawal Act (§16 (2) (f)).

This is a principle of high importance due to the inter-connections between various environmental issues and their impact on a wide range of social and economic outcomes: it is crucial that environmental considerations are integrated into all policy areas to ensure coordination between different government departments and public bodies, improving the resource-efficiency and the effectiveness of the law and its associated policies.

For example, we would refer to our recent response to the consultation on the revised National Planning Policy Framework (NPPF)¹¹, which highlighted inconsistencies and misalignment between the proposed revisions (i.e. policies from MHCLG), the Clean Growth Strategy (i.e. policies from BEIS), and the 25 Year Environment Plan (i.e. policies from DEFRA).

The lack of integration and of a joined-up approach has also been highlighted in the recent “Bricks and Water” report¹², which shows the lack of strategic thinking and the fragmented way in which planning authorities, housebuilders and water companies currently work; this limits opportunities for sustainable development and causes concern about future flood risk management as well as water availability.

¹¹ CIBSE response to the consultation on the revised NPPF, May 2018 <https://cibse.org/getmedia/a62a117f-8f16-42ad-93df-c554a6e1eca0/NPPF-Consultation-CIBSE-response.pdf.aspx>

¹² WSBS and Policy Connect, “Bricks and Water: A plan of action for building homes and managing water in England”, June 2018

Other principles required by the Withdrawal Act

CIBSE supports the principles of public access to environmental information, public participation in environmental decision making and access to justice in relation to environmental matters. The public should be able to access information about the environment in which they live, and should have a very clear route to participate in decisions which affect that environment. Access to justice should not be the preserve of the wealthy and of vested interests, but should be accessible to all. And the recent history of judicial reviews of the national air quality strategy clearly demonstrate that this is a real and pressing issue.

On access to justice in relation to environmental matters please also see our response to Question 8.

	High Importance	Medium Importance	Low Importance	Do Not Include	Other	Don't know / No opinion
g) Other Principle 1	✓					

If there are any other environmental principles you would like to provide feedback on, we have provided space to list 3 additional principles below

If you wish to provide feedback on more than 3 additional principles please do so in the free text box at the end of this question.

Please state what Other Principle 1 is below

Principle of non-regression

Please give any reasons for your answer (Please limit to 250 words)

The aim of this principle would be to ensure that the standards of environmental protection do not go backwards. This would match the stated intent of the Prime Minister and Secretary of State, including their statements in support of Brexit negotiations. This has also been recommended by the Environmental Audit Committee (EAC)¹³ and is of high importance.

	High Importance	Medium Importance	Low Importance	Do Not Include	Other	Don't know / No opinion
h) Other Principle 2	✓					

Please state what Other Principle 2 is below

High Standards of Environmental Protection

Please give any reasons for your answer (Please limit to 250 words)

This principle is already in the body of EU law, and therefore its inclusion would follow the stated intent of the Prime Minister and Secretary of State to match or improve on current levels of environmental protection. This has also been recommended by the EAC and is of high importance.

	High Importance	Medium Importance	Low Importance	Do Not Include	Other	Don't know / No opinion
i) Other Principle 3	✓					

Please state what Other Principle 3 is below

Principle of progressive improvement (or other suitable wording to be developed)

Please give any reasons for your answer (Please limit to 250 words)

The environmental principles listed above are largely focused on democratic and policy processes and on environmental protection rather than **progressive improvement to environmental regulations and outcomes**;

¹³ EAC, *The Government's 25 Year Plan for the Environment*, Eighth Report of Session 2017–19, 24th July 2018

these improvements are required if government is to meet its stated intention to leave the environment in a better state than it inherited it, and if the 25 Year Environment Plan is to be delivered in practice.

We have noted in our general remarks that there is a **need to ensure strategic long-term direction of environmental policy**, a role currently provided by the EU Commission. We recommend government to consult with experts in this field to ensure these functions are maintained once the UK leaves the EU, whether through a new body or through extending the remit of an existing one. The Committee on Climate Change (CCC) offers a good model to consider.

In general we think there is value in clear measurable targets, with monitoring and regular reporting; this focuses action and public awareness, as exemplified by the Climate Change Act and carbon budgets; however, we are also aware there is no widespread consensus yet on how this could easily cover a wide range of environmental issues. We would therefore recommend the following:

- Government should publish **measurable targets that reflect the 25 Year Environment Plan**, against which progress could be monitored by the new strategic body;
- In parallel, Government should consider options for how the draft Bill required by Section 16 of the Withdrawal Act could require **progressive improvement** of environmental regulations and/or outcomes. It is possible that this could be covered by a “net gain” principle, however we cannot comment on this until proposals for the definition of “net gain” are published for consultation, which is expected later this year. As a minimum and in the immediate term we would recommend a requirement for regular reviews of how the requirement for improvements could be enshrined in statute (e.g. every 5 years).

Please describe below any additional environmental principles which you consider should underpin future policy-making. For each state whether you consider them to be of high, medium or low importance. Please also give any reasons for your answers.

In addition to the other principles required by Section 16 (2) of the Withdrawal Act, noted above, we would also recommend the inclusion of principles already included in EU and international law, as recommended by the EAC, such as: **making use of the best available scientific knowledge**, from the Paris Agreement; **conserving ecosystem structure and functioning, in order to maintain ecosystem services**, from the Convention of Biological Diversity; and **anticipating, preventing or minimising the causes of climate change and mitigating its adverse effects**, from the UN Framework on Climate Change – as also recommended by the Committee on Climate Change (CCC) and Adaptation Sub-Committee (ASC). They are of high importance.

We would also recommend the inclusion of other principles which would help interpretation in the accompanying policy statement, such as a principle of **prudent and rational use of resources, UK-wide collaboration** between the devolved administrations and a principle of “**public money for public good**”.

Altogether, the principles listed in our response to Question 1 would clearly demonstrate the UK’s stated commitments to environmental leadership, offering **export opportunities** for UK actors; this can already be seen for example in the field of climate action, where the Climate Change Act has afforded a degree of commitment and policy stability, opening increasing opportunities for UK professionals and industry to inform other nations’ carbon reduction policies and action plans, as noted by government themselves in the Clean Growth Strategy¹⁴. We would also point to recent research for the Aldersgate Group¹⁵ in 3 sectors (waste, construction, and car industries) which concluded that, when regulations are well-designed and enforced, “**the impact of environmental regulation on the competitiveness of (...) business was positive overall**”, and that this is supported by a growing amount of academic and market research; furthermore, “**the costs of compliance (...) are more than offset by gains in improved quality, performance and competitiveness** or are absorbed in some other way within their business models”.

¹⁴ The UK’s International Leadership and Actions to Reduce Emissions Overseas”, in *Clean Growth Strategy*, page 27, October 2017 with April 2018 amendments

¹⁵ Aldersgate Group, report commissioned from Buro Happold, “*Beyond red tape: smart regulations are key to delivering UK industrial and environmental ambitions*”, 7th December 2017

We would also stress the associated **public health benefits** of environmental protection and enhancements. There are numerous and well-documented synergies in this domain, including for example (but by no means limited to) **air pollution, water quality**, and the **proximity to green space and the natural environment**; this would also help meet government objectives for reducing **health inequalities**, to which environmental factors are a known contributor¹⁶. These could in turn offer much-needed savings on **health and social care costs**. As a result, we also think the concept of **environmental rights** needs consideration as it could support the government’s objectives to reduce health inequalities; we understand this may need to be covered elsewhere in the environmental Bill than as a principle as such.

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

- Yes
- No
- Other response
- Don't know/ No opinion

If "Other response" was selected please state what this is below (Please limit to 250 words)

Please give any reasons for your answer (Please limit to 250 words)

Yes, we agree policy statements are useful in providing guidance to policy-makers on the implementation of the law, and in offering a flexible way to reflect evolving knowledge and priorities in how to apply the fundamental environmental principles.

We have suggested in our response to Question 1 some principles and commentary which may have a better place in such a statement supporting the environment Bill, than in the Bill itself.

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)?

- Option 1 - Environmental principles listed on the bill
- Option 2 - Environmental principles only set out in the policy statement
- Other response
- Don't know/no opinion

If "Other response" was selected please state what this is below (Please limit to 250 words)

Please give any reasons for your answer (Please limit to 250 words)

Inclusion of the principles in a Bill is now already required by the Withdrawal Act. This is in any case our strong preference. We would however note that the Withdrawal Act requires “Ministers of the Crown” to “have regard to” these principles. We **strongly recommend** that the proposed Environment Bill should expand this to **all public authorities**, and that they should be required to **“act in accordance with” the policy statement and to “have special regard to” the principles**. This would make legislation more effective and less open to interpretation, as well as delivering on the clear political statements of leadership and the direction of public opinion on this matter.

In addition we have listed in our answer to Question 1 a small number of additional principles which may assist in the interpretation of the main ones contained in the Act, and which we believe should be placed in a policy statement.

PART 2: ACCOUNTABILITY FOR THE ENVIRONMENT

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

- Yes, I agree with the assessment in the consultation document

¹⁶ See for example the work of the Institute of Health Equity, including the 2010 report “Fair Society Healthy Lives (The Marmot Review)”

- I think the governance gap will be greater in some areas than that described in the consultation document
- ~~I think the governance gap will be less in some areas than that described in the consultation document~~
- ~~I do not think there will be any environmental governance mechanisms missing as a result of leaving the EU~~
- ~~Don't know / No opinion~~
- ~~Other response~~

If "Other response" was selected please state what this is below (Please limit to 250 words)

Please give any reasons for your answer (Please limit to 250 words)

Crucially, we would highlight the significant gap resulting from potential **lack of UK-wide alignment and collaboration between the devolved administrations** post-Brexit; we would stress the **urgent and important need** for this to be addressed – see response to Question 14.

Apart from the above point and without detailed expertise on legal details, we broadly agree with the assessment of the governance gap but **not** with the proposals on how to fill it, in particular with regards to enforcement; the proposals do not respond to DEFRA's assessment of the gap, and therefore do not meet its commitment to fill the gap – see our response to Question 9.

The governance gap was highlighted by the House of Lords and **partially** addressed through the Withdrawal Act and we broadly share the concerns on this point raised in the Upper House.

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

	Yes	No	Partially, but with amendments	Don't know / No opinion
a) Act as a strong, objective, impartial and well-evidenced voice for environmental protection and enhancement.	✓			

Please give any reasons for your answer (Please limit to 250 words)

We agree. this would match current arrangements within the EU, and the statements in the 25 YEP. In addition, providing a voice to the environment is important since it may be unowned and cannot always "represent itself", as stated in the consultation document itself (§76).

As noted above, the body must also have meaningful enforcement powers, which is not included anywhere in this Question, but is clearly required by Section 16 of the Withdrawal Act.

	Yes	No	Partially, but with amendments	Don't know / No opinion
b) Be independent of government and capable of holding it to account	✓			

Please give any reasons for your answer (Please limit to 250 words)

Enforcement is the most significant and important role to fill in order to match, and improve on, current arrangements after the UK leaves the EU. Enforcement mechanisms, including the potential for sanctions if necessary, are crucial to ensure proper and effective application of the law. In the past 15 years approximately half of cases between the UK and the European Court of Justice were related to environmental matters, with the large majority of cases ruling the UK was in breach of its obligations¹⁷.

We do not think the current proposals meet this stated objective – see our response to Question 9.

¹⁷ Institute for Government, Jill Rutter, *Gove's post-Brexit environment watchdog*, 15 November 2017 <https://www.instituteforgovernment.org.uk/blog/gove-post-brexit-environment-watchdog>

If the new body is to hold government to account and replace existing functions carried out by the Commission and the ECJ, it is logical and necessary that it should be independent of government and able to hold this function without fear of constraints, weakening, or dissolution. The National Audit Office (NAO) is an example of independent body which reports to Parliament and whose funding depends on Parliament, not on government departments whose work it is tasked to monitor. This has been stressed as a point of particular importance by the NAO and by the chair of the Committee on Climate Change (CCC)¹⁸.

	Yes	No	Partially, but with amendments	Don't know / No opinion
c) Be established on a durable, statutory basis.	✓			

Please give any reasons for your answer (Please limit to 250 words)

We agree. The new body should be stable to ensure good governance and good use of the resources spent in creating it. There are numerous examples of environmental bodies whose remit and powers were eroded over the years, or which were abolished altogether (e.g. the sustainable development commission); avoiding this is crucial.

The NAO and CCC provide examples of durable statutory bodies.

We would note that the chances of ensuring the new body's durability would be greatly improved if it was linked to the UK parliament rather than only to England (this would also apply to the stability of new bodies created by the devolved administrations, should UK-wide arrangements not be arrived at) – see our comment in response to Question 14.

	Yes	No	Partially, but with amendments	Don't know / No opinion
d) Have a clear remit, avoiding overlap with other bodies			✓	

Please give any reasons for your answer (Please limit to 250 words)

We agree it should be the intent to avoid overlap with the activities of other bodies in order to avoid duplication in efforts and costs, however there are many areas of overlap in interest and outcomes where close collaboration with other bodies will be beneficial and indeed required, due to the far-reaching nature of environmental matters and the need for an integrated approach.

The CCC provides an example of a body with a clear remit, and its chair has stressed the value of its clear remit, including the clear targets it has oversight of (i.e. the carbon budgets). Taking the lessons from this, we would stress the importance of having clear objectives – see our response to Question 1i and our general introductory remarks).

	Yes	No	Partially, but with amendments	Don't know / No opinion
e) Have the powers, functions and resources required to deliver that remit	✓			

Please give any reasons for your answer (Please limit to 250 words)

We agree - it should go without saying that a body should only be created with the appropriate powers, functions and resources to deliver its remit; the contrary would be an ineffective use of time and resources.

¹⁸ Evidence given to the Environment Audit Committee by Lord Deben, Chair, Committee on Climate Change, and Sir Amyas Morse, Comptroller and Auditor General (NAO), 19th June 2018
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environmental-audit-committee/environmental-principles-and-governance-consultation/oral/85727.html>

	Yes	No	Partially, but with amendments	Don't know / No opinion
f) Operate in a clear, proportionate and transparent way in the public interest, recognising that it is necessary to balance environmental protection against other priorities			✓	

Please give any reasons for your answer (Please limit to 250 words)

While we broadly agree with this objective, we would make the following caveats:

- “public interest” should be defined with sustainable development and the full set of principles defined in Section 16 of the Withdrawal Act in mind, and taking account of the numerous benefits afforded to the public (including future generations) by the natural environment, now and in the long-term;
- we recognise the need for balancing environmental protection against other matters; however, we would note that the body’s remit should include environmental enhancement (in line with the 25 YEP): limiting its objective to protection is significantly reductive; furthermore, there are already other parties (governmental, public, and others) which represent other priorities and which can feed into policy making and implementation; we do not think the body should have that balance as primary objective; as stated in point a), the body’s primary objective should be as the voice of environmental protection and enhancement.;
- Similarly, we are aware of the concerns expressed by some environmental law experts about the notion of acting in a “proportionate” way, depending on how this is defined and interpreted.

	Yes	No
g) Other objective not listed		✓

Please list any other objectives below (Please limit to 250 words)

n/a

Please give any reasons for your answer (Please limit to 250 words)

n/a

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

- Yes
- ~~No~~
- ~~Don't know / no opinion~~
- ~~Other response~~

If "Other response" was selected please state what this is below (Please limit to 250 words)

Please give any reasons for your answer (Please limit to 250 words)

It would seem artificial and inefficient to differentiate between extant and future environmental law, especially given the inter-connected nature of many environmental issues.

However, and as pointed elsewhere in our response, enforcement is the most important function to fill for the new body. We would therefore recommend that some thought is given to how both functions (advice on policy, and enforcement) could best be filled while ensuring independence and avoiding conflicts of interest.

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

	Yes	No	Don't know / No opinion
a) Annual assessment of national progress against the delivery of the ambition, goals and actions of the 25 Year Environment Plan	✓		

Please give any reasons for your answer (Please limit to 250 words)

We agree with this function; in order to avoid duplication with the work of others, limit the resources required for this new body, and focus the functions of the new body on scrutiny and enforcement, we would expect other bodies (e.g. DEFRA, the Environment Agency) to be the main producers of the assessments, with the new body having the ability to scrutinise the assessments and carry out their own additional investigations, of the scope they would consider appropriate.

Please note that the delivery of environmental objectives, such as those of the 25 YEP, relies on a wide range of policies, which may not be considered strictly “environmental policies”; the new body should be able to scrutinise these policies if the objectives are to be delivered – see our response to point d).

Please also note our response to question 1i) on the importance of clear and specific measurable targets translating the ambitions of the 25 YEP.

	Yes	No	Don't know / No opinion
b) Provide advice when commissioned by government on policies set out in government strategies and other published documents and how they are being implemented	✓ with caveats noted below		

Please give any reasons for your answer (Please limit to 250 words)

We agree it will be useful for government to be provided with advice on policies and how they are implemented, in order to match and improve on current EU arrangements. However, and as pointed elsewhere in our response, enforcement is the most important function to fill for the new body. We would therefore recommend that some thought is given to how both functions (advice on policy, and enforcement) could best be filled while ensuring independence and avoiding conflicts of interest.

	Yes	No	Don't know / No opinion
c) Respond to government consultations on potential future policy			✓

Please give any reasons for your answer (Please limit to 250 words)

As per point 7a): We agree it will be useful for an expert body to inform policy-making, for example by responding to consultations. However, and as pointed elsewhere in our response, enforcement is the most important function to fill for the new body. We would therefore recommend that some thought is given to how both functions (advice on policy, and enforcement) could best be filled while ensuring independence and avoiding conflicts of interest.

	Yes	No
d) Other objective not listed	✓	

If you selected yes to "Other objective" please state what this is below (Please limit to 250 words)

- Enforcement
- Cross-departmental scrutiny of policy
- Long-term strategic framework for environmental law and policy

Please give any reasons for your answer (Please limit to 250 words)

Enforcement: this a crucial function, as detailed in our response to Question 5b), if the new body is to meet the stated objectives. See also our response to Question 9 for associated means to achieve this.

Cross-departmental reach: It is not clear from the current consultation proposals whether the body’s remit would be limited to the implementation of the 25 Year Environment Plan, DEFRA policies, or overall government policy. We strongly recommend that **its remit should not be limited to the 25 YEP nor indeed to DEFRA policies alone**. In particular, it must be able to advise on and if necessary take action related to policies

from BEIS, MHCLG and the Department for Transport, all highly influential departments in the delivery of environmental objectives in practice, for example:

- Flooding risk is influenced by a number of factors including site location of development and the planning of green infrastructure from local to regional levels, which in turn can deliver other environmental objectives such as air quality, water quality, and biodiversity;
- Transport patterns, with associated air pollution, noise, and carbon emissions, are dependent upon infrastructure and planning decisions from the regional to local planning level, such as site allocation, density, and mixity of uses.

Strategic framework: We think there is a **need to ensure strategic long-term direction of environmental policy**, a role currently provided by the EU Commission. We are aware this may conflict with enforcement powers, and would recommend government to consult with experts in this field to ensure these functions are maintained once the UK leaves the EU, whether through a new body or through extending the remit of an existing one.

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
- No
- Other response
- Don't know / no opinion

If you selected yes to "Other response" please state what this is below (Please limit to 250 words)
Yes, but with caveats and small amendments

Please give any reasons for your answer (Please limit to 250 words)

We agree this is a crucial function which will need to be filled post-EU exit. As noted by the EAC¹³, there needs to be the same ability as currently for citizens to raise complaints on the application of environmental law by public authorities, without the significant costs of judicial review (e.g. free logging of complaints, as is currently the case with the EU Commission). This is not only a matter of protecting current levels of access to justice, but can also serve as a powerful tool to raise compliance issues to the attention of the enforcement body.

We are however mindful of the resources potentially required for this function. We would therefore recommend that careful consideration is given to options for how this function could be met and the resources needed for it, for example by modifying existing mechanisms and/or extending the functions of existing bodies; it would also seem useful to differentiate between the new body's ability to receive and investigate complaints, which we strongly recommend, and the need to respond to them: while in theory desirable, it may not be practical to expect the new body to respond to individual complaints (the public could still be informed by update statements on relevant investigations and actions).

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	No	Partially include but with amendments	Don't know / No opinion
a) Binding notices	✓			

Please give any reasons for your answer (Please limit to 250 words)

Yes. The stated preferred option in the consultation is for the body to have advisory powers; we consider that this has been overtaken by Section 16 of the Withdrawal Act.

We strongly recommend that advisory powers alone are not sufficient, and would **fall very much short of the government's commitment to ensure at least the same level of environmental protection** as currently afforded by the European Commission and Court of Justice. We agree that a conciliatory approach should

always be preferred first, including co-operation and advisory notices. **However, the body must have enforcement powers**, including the power to issue binding notices that are enforceable in court. This should apply to **central government and to all public bodies**.

	Yes	No	Partially include but with amendments	Don't know / No opinion
b) Intervention in legal proceedings	✓			

Please give any reasons for your answer (Please limit to 250 words)

Yes, it would seem reasonable for the body to intervene when appropriate, given its technical and legal expertise. However, this is not our area of expertise and we would refer to the advice of others, in particular of the EAC¹³.

	Yes	No	Partially include but with amendments	Don't know / No opinion
c) Agree environmental undertakings	✓			

Please give any reasons for your answer (Please limit to 250 words)

It would seem reasonable that the body, given its technical and legal expertise, should be able to agree environmental undertakings, for example remediation measures to be carried out by public bodies; indeed we would expect that developing such plans of action would be part of the body's work at the conciliatory and advisory stages, before formal court proceedings; However, this is not our area of expertise and we would refer to the advice of others, in particular of the EAC¹³.

	Yes	No
d) Other powers not listed above	✓	

If "Other powers not listed above" was selected, please list them here (Please limit to 250 words)

Power to levy fines

Please give any reasons for your answer (Please limit to 250 words)

The body should have the power to impose fines, as it can be a powerful deterrent and is required in order to match current arrangements.

The funds generated should be ring-fenced for environmental protection and improvement projects.

We would however recommend that alternatives to fines should be preferred when under-resourcing of public bodies is the likely reason for non-compliance in the first place.

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?

	Yes	No	Don't know / No opinion
a) Non-Ministerial Departments (NMD's) and Non-Departmental Public Bodies (NDPBs)	✓		

Please state which NMDs and NDPBs should be directly in scope below

All public bodies should be within scope.

Please give any reasons for your answer (Please limit to 250 words)

Yes – this would match current arrangements; furthermore, the implementation of law into policy and then into action ultimately relies on public bodies.

While some public bodies will be more obviously within the its direct remit (e.g. Environment Agency), the new body should be able to investigate the actions of any public body it considers appropriate. To match current arrangements, it is possible that the new body would ultimately hold only central government departments to

account, but it should be able to investigate the actions of all public bodies and issue advisory and binding notices when required.

	Yes	No	Don't know / No opinion
b) Local authorities	✓		

Please state which local authorities should be directly in scope below

All local authorities

Please give any reasons for your answer (Please limit to 250 words)

Yes – the implementation of law into policy and then into action ultimately relies on public bodies, including local authorities, for example in plan making, planning decisions, air pollution control, and local building control.

To match current arrangements, it is possible that the new body would ultimately hold only central government departments to account, but it should be able to investigate the actions of all public bodies and issue advisory and binding notices when required.

See also our response to Question 13 on the new body’s interaction with planning.

	Yes	No	Don't know / No opinion
c) Other public authorities	✓		

Please state which other public authorities should be directly in scope below

All public bodies and statutory undertakers

Please give any reasons for your answer (Please limit to 250 words)

Yes – the implementation of law into policy and then into action ultimately relies on public bodies and statutory undertakers.

The new body must be able to scrutinise the implementation of law by public bodies and statutory undertakers, such as utilities; in addition to ensuring better compliance by individual organisations, the strategic review and scrutiny of breaches in compliance at the local level (e.g. planning, building regulations, or local air pollution control) could help identify failures and possible remedies at the systemic level.

While some public bodies will be more obviously within its direct remit, the new body should be able to investigate the actions of any public body it considers appropriate. It is possible that the new body would ultimately hold only central government departments to account, but it should be able to investigate the actions of all public bodies and issue advisory and binding notices when required.

	Yes	No	Don't know / No opinion
d) Other response	✓		

Please give any reasons for your answer (Please limit to 250 words)

We are aware that some parties have advocated for extending the scope beyond public bodies, and in particular to their **supply chains and outsourcing organisations**. We recommend this is further reviewed when establishing the scope and resources of the new body. It may be that this could be addressed without overly extending the scope of the new body, by providing clear guidance to public bodies on how to ensure compliance with environmental law by their supply chains.

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?

	Include all	Include some	Exclude	Don't know / No opinion	Other response
a) EU environmental law retained under the EU (Withdrawal) Bill	✓				

If "Other response" was selected please state what this is below (Please limit to 250 words)

Please give any reasons for your answer (Please limit to 250 words)

Yes, we agree. Oversight of domestic environmental law derived by EU law is absolutely required if government is to fill its stated intent to provide the same (or a better) level of environmental protection as under current arrangements.

	Include all	Include some	Exclude	Don't know / No opinion	Other response
b) Domestic environmental law not based on EU legislation	✓				

If "Other response" was selected please state what this is below (Please limit to 250 words)

Please give any reasons for your answer (Please limit to 250 words)

It would seem artificial, inefficient and overly complex to differentiate between law that is and isn't derived from EU legislation, particularly as in the coming years when domestic law evolves and becomes increasingly UK-led.

	Include all	Include some	Exclude	Don't know / No opinion	Other response
c) International environmental law				✓	

If "Other response" was selected please state what this is below (Please limit to 250 words)

Please give any reasons for your answer (Please limit to 250 words)

This is not our area of expertise; we are not in a position to advise whether existing mechanisms are sufficient to check the UK government's compliance with international environmental law. However, there needs to be consistency of approach to all environmental legislation, wherever it originates, and as the proposed body is responsible for overseeing UK government, which negotiates for the UK in international bodies, there is a need for a common approach.

Question 12. Do you agree with our assessment of the nature of the body's role in the areas outlined below?

	Agree	Disagree	Partially Agree/ Disagree	Other	Don't know / No opinion
Climate Change		✓			

If "Other" was selected please state what this is below (Please limit to 250 words)

Please give any reasons for your answer (Please limit to 250 words)

We strongly disagree, and this is a key area of concern for us. There is no scientific or engineering rationale for this proposal, indeed it appears to be quite irrational, given that climate change is a fundamental environmental issue.

Climate change is proposed to be excluded from the new body's remit on the basis that it is already looked after by the Climate Change Act and CCC. As pointed out by the CCC and its Adaptation Sub-Committee (ASC) themselves¹⁹, the separation of climate change from other environmental issues is artificial; there would also be serious limitations with leaving climate change action to the CCC alone post-Brexit:

¹⁹ Letter from the CCC and ASC to Secretary of State, 30th May 2018

- The CCC only has an advisory and scrutiny role. While government has so far met its carbon budget obligations, and we very much welcome this, there may in the future be the need for enforcement measures to ensure the UK meets its 2050 target²⁰.
- The CCC's scrutiny role ultimately only applies to UK carbon budgets; as pointed out by the CCC and ASC themselves, a number of climate-related policies are currently enforced at the EU level e.g. those related to the EU Energy Performance of Buildings Directive or Energy Efficiency Directive²¹. Filling this enforcement gap once the UK leaves the EU is particularly important since progress in reducing emissions from the building sector is urgently needed if the UK is to meet its carbon reduction targets, as spelt out very clearly by the CCC in its 2018 Annual Progress Report²².
- Excluding climate change from the body's remit would miss opportunities for synergies and neglect the two-ways interactions between the natural environment and climate change: in particular, the environment's capacity to adapt to climate change is intrinsically related to its current state. The proposed separation would also risk presenting government with conflicting advice due to lack of joined-up thinking; for example, it would be theoretically possible that one body would advise on the use of biomass on carbon reduction grounds, without taking account of environmental impacts such as air quality and biodiversity. We think that, without encroaching on the work of others, the new body could collaborate with and use the advice of other bodies, in particular that of the CCC's ASC^{19,21}.

	Agree	Disagree	Partially Agree/ Disagree	Other	Don't know / No opinion
Agriculture					✓

If "Other" was selected please state what this is below (Please limit to 250 words)

Please give any reasons for your answer (Please limit to 250 words)

This is not within CIBSE's area of expertise.

	Agree	Disagree	Partially Agree/ Disagree	Other	Don't know / No opinion
Fisheries and the Marine Environment					✓

If "Other" was selected please state what this is below (Please limit to 250 words)

Please give any reasons for your answer (Please limit to 250 words)

This is not within CIBSE's area of expertise.

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

- Yes
- ~~No~~
- ~~Other response~~
- ~~Don't know / no opinion~~

If you selected yes to "Other response" please state what this is below (Please limit to 250 words)

Please give any reasons for your answer (Please limit to 250 words)

Yes, we would expect the new body to be able to influence planning policy, including checking it correctly implements environmental law. It is essential that the proposed new body engages properly with the planning system: planning has a significant and strategic influence on environmental matters, and planning policy and decisions and their implementation are fundamental in delivering environmental objectives, including issues such as flooding risk, biodiversity, and air pollution, through measures such as site allocation, sustainable urban drainage, green infrastructure, and the design of buildings, neighbourhoods and cities.

²⁰ as recommended for example by the recent report "10 Years of the UK Climate Change Act", by the Centre for Climate Change Economics and Policy (CCCEP) and the LSE's Grantham Institute, April 2018

²¹ Letter from the CCC and ASC to Secretary of State, 23rd July 2018

²² CCC Annual report, 2018

We would not expect the body to intervene in individual planning decisions, as this could duplicate existing functions and would require significant resources; however, we would expect it to:

- Be able to advise on strategic matters and relevant policy, including the National Planning Policy Framework;
- Carry out investigations as it saw fit, including on local authorities and other public bodies; for example, it may identify systemic issues through the review of planning policies or decisions in the whole (without reviewing individual cases);
- Take appropriate enforcement action if required. In the large majority of cases we would expect enforcement in the form of advisory or binding notices to local authorities and other public bodies, with central government ultimately held to account if stronger enforcement was needed.

On the notion of “advice” and as noted elsewhere in our response, enforcement is the most important function to fill for the new body. We would therefore recommend that some thought is given to how both functions (advice on policy, and enforcement) could best be filled while ensuring independence and avoiding conflicts of interest.

PART 3: OVERALL ENVIRONMENTAL GOVERNANCE

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

Please explain below

BODY’S OVERALL SCOPE

Please note our important point on the body’s overall scope, which should extend beyond DEFRA policies, in our response to Question 7d.

UK-WIDE COLLABORATION

We have strong concerns about the proposals that the Environment Act and governance body would only apply in England. We note the intention to seek collaboration with the other nations of the UK, however this is a statement of intent only.

We think this is a fundamental area of weakness in the proposals, since environmental concerns and natural resources such as rivers and pollution incidents extend across national borders, effective environmental guardianship requires collaboration across those borders, and this in turn offers opportunities for economies of scale, data sharing, better use of resources etc.

CIBSE believes strongly that **environmental governance must be developed at a UK level**. The Climate Change Act and associated CCC are an example of this being achieved and delivering effective UK-wide advice and oversight. This could be the minimum common ground, with each nation free to implement higher standards or more extensive governance should they wish to.

We of course fully respect the devolution agreements and would stress this must be a collaborative effort rather than being seen as led by Westminster for the other UK nations to adopt, as also pointed out by the EAC¹. In order to set the tone for future collaboration and increase chances of success, **the devolved administrations should be approached as soon as possible to jointly develop a draft of the upcoming Environment Bill and discuss possible governance arrangements.**

END

Response collated and submitted by:

Dr Julie Godefroy, CEng

CIBSE, Head of Sustainability Development

JGodefroy@cibse.org

Please do not hesitate to contact us for more information on these responses.