

CIEEM response to EAC Inquiry on Environmental Principles and Governance Bill

Introduction

1. The Chartered Institute of Ecology and Environmental Management (CIEEM) is the UK professional body for ecologists and environmental managers working to manage and enhance the natural environment.
2. CIEEM welcomes the Government's consultation – published by Defra on 10 May 2018, entitled the Environmental Principles and Governance Bill – on establishing a new, independent scrutiny body to provide appropriate accountability for the environment after the UK leaves the EU. However, the consultation proposals do not go far enough. The new body must, as a minimum, replace the current powers of the European Commission (EC) and Court of Justice of the European Union (CJEU), and if the UK is to be a 'world leader on the environment' it must go beyond this.
3. The above consultation sets out the Government's possible options for the new body. Whilst we are pleased with the overall commitments set out in the consultation on independence, some accountability and resourcing, we are very concerned that the proposals fall short in three particular areas:
 - i. The proposed new body has only an advisory role in respect of potential Government failings to comply with environmental legislation. It is essential that the body has meaningful enforcement powers in relation to all public bodies. Without enforcement powers the new body will have no way to hold Government to account, which is one of the objectives set out in para. 79.
 - ii. The consultation offers an option whereby the environmental principles do not need to be included in legislation. It is imperative that they are included in the new legislation in order to provide protection against future policy changes by successive governments.
 - iii. The UK Government must be far more proactive in engaging the devolved administrations in order to secure 'buy-in' from all of the UK nations.
4. At a time of huge uncertainty, a powerful expression of the conviction of the UK Government to protecting the environment would go a long way in reassuring stakeholders. The lack of conviction within these proposals is disappointing and is also contrary to the Prime Minister's stated aspiration for "*a new, world-leading, independent, statutory body to hold government to account and give the environment a voice*"¹.

Environmental Principles Options

5. The Government has set out two options for establishing environmental principles in law. In Option 2, the Government seems to suggest that the flexibility of being able to amend the principles more easily because they are in policy rather than legislation could be an advantage, however Option 1 of having the principles in primary legislation gives the security that they cannot be amended too easily by successive governments and gives them more weight in decision-making. CIEEM strongly favours Option 1.

¹ <https://www.gov.uk/government/news/new-environment-law-to-deliver-a-green-brexite>

6. CIEEM supports all six of the principles set out in the consultation document (para. 150-155) being listed in primary legislation: Sustainable Development; Precautionary Principle; Prevention Principle; Polluter Pays Principle; Rectification at Source Principle; and Integration Principle.

A UK-wide body

7. Whilst we welcome the Government's aspiration that the body should be UK-wide, it must be far more proactive in achieving this. The current consultation is for England only with a vague suggestion that the devolved administrations can be involved if they want to be. The Government needs to set out a strong and persuasive case as to how much better and stronger the body can be if it is UK-wide and how the devolved administrations can be equal partners, actively involved in its creation and delivery.
8. The establishment of a UK-wide scrutiny and enforcement body must be co-designed by consensus between the four UK governments. It must not subsequently become a UK body reporting to Westminster but must instead remain a jointly operated body with no one government having more influence than any other. The new body must hold all UK governments and relevant public bodies to account with the means to challenge those which are not delivering high standards of environmental protection, or worse, damaging the environment.
9. A co-designed body will have more influence over the overall UK environmental agenda, the UK's joint international obligations, maintain some alignment of environmental standards across UK borders (which the environment does not recognise), and contribute in a more holistic approach to the protection of the global environment and the biogeographic region of which the British Isles are a part.

An independent scrutiny body?

10. The EU (Withdrawal) Bill currently suggests that Parliament or Ministers can hold public bodies, including the UK Government, to account. The Government consultation effectively recognises that this is unrealistic and notes the critically important role that has been performed by the CJEU in relation to the enforcement of environmental legislation. In the run up to the UK's likely exit from the EU in March 2019 and beyond, there will be a need to build trust between government, NGOs and the public. Effective arrangements for genuine accountability and independent scrutiny are essential components to achieving this and we welcome the Government's recognition of this.
11. We are uncertain of the suggested collaborative working with NGOs set out in para. 86. The new body should not be 'supporting' the work of NGOs, it should be independently scrutinising governments and relevant public bodies. NGOs may be able to provide evidence but will also likely be bringing cases forward for the new body to investigate. The relationship as it seems to be suggested here between the two would be inappropriate.
12. The proposed new body must as a minimum replicate the role and powers of the bodies that it will be replacing. Ideally however, and in line with the aspirations of the Prime Minister and Secretary of State for the Environment, the UK must go further in order to establish itself as a world leader in environmental standards and protections. Legislation that has no enforcement mechanism is weak and unaccountable and will have little impact on environmental standards and protections. The new body must have the ability to truly hold governments to account and have robust enforcement powers.
13. The new body must be independent of government to prevent undue influence from governments and ministers in directing or steering the work of the body. The body must however have a statutory footing and be enshrined in primary legislation.
14. It must be adequately resourced so that it can perform its required functions, as set out below. Critical to this resourcing is not just financial but also adequate internal expertise and competence. We are pleased to see the Government's acknowledgement of this in the consultation.

15. CIEEM is concerned at how senior staff will be appointed to the new body in a way that is apolitical and would like this set out in the Bill. One option might be to have a Select Committee, with appropriate representation across the UK nations and political spectrum, appoint the head of the organization.
16. The body must work closely with UK-wide agencies including the Joint Nature Conservation Committee (JNCC).
17. Given that the vast majority of the UK's biodiversity is located in the UK's Overseas Territories (UKOTs), the new body must also have a close association with the governments of the UKOTs.
18. The environment is not the sole responsibility of one department or agency in each government of the UK. A healthy and resilient environment is critical to all human activity and prosperity. As such it is vital that the new body is adequately recognised and respected across all of government in all of the UK nations.
19. The role of the new body must be four-fold: reporting, advising, investigating, and enforcing.
20. The new body must have a duty set out in legislation to report on the state of the UK environment at regular set intervals. In addition, there must also be a requirement to produce a regular report on the UK's global environmental footprint in order to measure whether or not the UK is exporting its environmental impacts. This reporting needs to be consistent, and set against agreed targets, so as to allow comparison and the identification of trends over time. As an example, this will mean that for England, the 25-Year Environment Plan will need to have milestones and targets set.
21. The new body must also have an advisory role. This should include advising governments and relevant public bodies on creating, amending and repealing plans, policies and legislation, and also on the ability of governments and relevant public bodies to deliver environmental plans, policies and legislation.
22. The European Environment Agency (EEA) is mentioned in the consultation document, but without setting out the option of the UK remaining a member – which is possible. CIEEM strongly recommends that the UK remains a member of the EEA in order to share information and expertise. Most environmental issues are of a transboundary nature and many have a global scope – they can only be addressed effectively through regional and international cooperation.
23. The new body must have the power to initiate investigations independently. This will include investigating governments, their agencies and other relevant public bodies possibly breaching the law, failing to implement appropriate plans, policies and legislation, and scrutinising their decision- and policy-making.
24. The new body must also be able to follow up citizen (including NGO) complaints against the UK governments and relevant public bodies, in accordance with the Aarhus Convention.
25. It is essential that the new body has the same scope and depth of enforcement powers as those currently held by the EC, including the ability to require remedial action and to impose fines and sanctions. The new body will need to work in collaboration with the UK courts system for the judicial aspect of the process.
26. It is not acceptable that others are relied upon to bring legal proceedings against the governments and relevant public bodies as proposed in para. 106. This is simply unrealistic, and prohibitively expensive, for many citizens, NGOs and others. The new body must have the power to fulfill this role.
27. Climate change must be within the scope of the new body. The Climate Change Committee (CCC) can continue to report to and advise governments, but it crucially has no enforcement powers. This enforcement power on climate change must be included within the remit of the new body.
28. Models for the new body already exist but the UK-specific situation will require a body fit for purpose. Examples that could be used include the New Zealand Environment Commissioner, and similar bodies in India and Ontario, Canada. There are functions of some existing UK bodies that could also be usefully reproduced for the new body. For example, the National Audit Office is independent of government and able to scrutinise its performance, and the CCC reports directly to all of the UK governments as it

has a UK-wide remit. However it should be noted that these examples do not cover all of the functions required of the new body being consulted on.

More information

29. CIEEM would be pleased to provide further information and evidence to the Committee.