

Response to the Consultation on the Environmental Principles and Governance after the United Kingdom leaves the European Union

From Local Nature Partnerships across England

As this is a collective response we will confine it to key issues on which we have a collective view and relevant experience rather than follow all the consultation questions, although where appropriate these have been addressed.

Local Nature Partnerships (LNPs) are partnerships of a broad range of influential organisations, businesses and people, from a range of sectors, charged by government with the task of bringing about improvements in their local natural environment in England. To achieve this, they are expected to ensure that consideration for the environment is put right at the heart of local decision-making.

Local Nature Partnerships originated in a vision set out in the UK government's 2011 'Natural Environment White Paper', which identified the need to take greater account of the value of the environment when strategic decisions are made that affect people and the local economy.

LNPs have been cited as part of the implementation of the Government's 25 Year Environment Plan (25 YEP) through the development of Local Natural Capital Plans. In this light it was disappointing to see no mention of their role in this consultation document. We believe as individual LNPs and a national network we can play a very important part in delivery of the plan provided we are properly resourced and empowered.

We welcome and commend the comprehensive coverage in the document of past, present and proposed future governance arrangements as well as some international comparisons. We also applaud the Government's determination, frequently emphasised, to leave our environment in a better state than that which was inherited. This ambition should be strengthened with specific targets as "better than" is open to very wide interpretation.

We consider it worthwhile to look back at the history of environmental regulation and protection and consider why, as a totality, it has not been successful. In some aspects of environmental regulation, such as water and habitats, decarbonisation of the grid and uptake of renewables, there are strong foundations to build on and it will be essential that the new body does not allow this progress to be reversed. In other aspects, the direction of travel has been largely in a negative direction as evidenced in the State of Nature Report. As well described in the document part, the answer may be in the very complex nature of environmental governance split between national and European bodies and actioned through a plethora of laws and organisations, some of whom have overlapping responsibilities. It is essential to use this opportunity to simplify and clarify existing

arrangements while retaining and enhancing protection of the environment if the outcomes we all desire are to be achieved. This also applies to the system of designations which can be totally baffling to anyone not fully immersed in them.

The principle of proportionality as outlined in paragraph 41 should be a key underlying prerequisite. We would assert in line with our understanding of Natural Capital Principles that a healthy environment underpins a healthy economy and a healthy population. In other words it is a prerequisite of prosperity rather than a competing agenda as implied in some of the wording. It therefore should have the very highest priority and where conflicts exist the environment should be accorded precedence. If a regenerative approach with a circular economy is adopted as well as the net gain principle implemented, we believe much potential conflict can be avoided. We would suggest this principle is reworded to reflect a Natural Capital approach in the objectives for the establishment of the new body:

Current: *Operate in a clear, proportionate and transparent way in the public interest, recognising that it is necessary to balance environmental protection against other priorities*

Proposed: *Operate in a clear, proportionate and transparent way in the public interest, recognising that a healthy environment underpins successful economic development as well as health and wellbeing.*

Consultation Questions

Q3: 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)?

We support **Option 1**. If the principles are sound, we don't believe they will change as a result of new evidence and if that is the case then legislation may be necessary in view of the many international treaties we have signed in which some or all of the principles underpin the thinking as well as all the existing case law based on these principles.

In addition, we understand there was an amendment to the European Union (Withdrawal) Act 2018, which received Royal Assent on 26th June. This requires the Secretary of State to publish this statement of policy on the application and interpretation of the environmental principles, effectively meaning that it is now a statutory policy statement.

Part 1 – Environmental Principles

We welcome the setting down of the principles in one place and incorporating them into UK law. We also would welcome the adoption of these across the United Kingdom so there is consistency of approach in the devolved nations; and the opportunity might usefully be taken to extend that to the UK Crown Dependencies and Overseas Territories, or at least to those in geographical Europe – namely the Channel Islands, the Isle of Man, Gibraltar and the UK sovereign bases in Cyprus

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

All principles listed are important and should be included, but we will highlight Sustainable Development as the key underpinning principle which needs to be properly and fully set out in the statutory policy statement. These should address the sustainable use of natural capital assets, particularly those that are non-renewable.

We propose the integration of two further principles for future policy decision making. Firstly, the **principle of 'non-regression'** promoting a constant improvement in ambition in any subsequent law reform and policy, environmental protection and management practices and de-risk any lowering of ambition or protection. Secondly the consideration of including a **principle that environmental issues should be managed at the most appropriate scale**. The way in which an environmental issue is managed and how action is taken will vary quite significantly depending on the nature of it. For example, the most appropriate way to manage river systems is at the catchment level to ensure all components are considered, however in managing climate change in the UK, there must be management at an international level.

In relation to the **polluter pays principle** this can be more challenging when large numbers of people or organisations are responsible as with air pollution or ocean plastic. It may not always be possible to ensure everyone pays but rather to enable and facilitate alternatives and make them attractive and easy to adopt.

In addition, we would like to see recognition of the importance of a flourishing natural environment to our future as a species, recognising there is much we do not fully understand or have had the opportunity to study. Environmental enhancement is a public good, regardless of whether we can assess its direct financial benefit.

Q4: Do you think there will be any environmental governance mechanisms missing as a result of leaving the EU?

We welcome the retention of the Habitats Directive, the Birds Directive and the Marine Strategy Framework in UK law, but we would be missing the scrutiny from Europe for designated sites. We also question whether we can fully rely on a national body, albeit independent from government, to hold us fully to account in this area, given the experience with air pollution where the EU has sanctioned several member states.

Part 2 – Accountability for the Environment

The proposed new Independent and Statutory Environmental Body

Success we believe will be dependent on Government accepting that the three pillars of sustainable development have equal weight (a healthy environment underpins a healthy economy and a healthy population) and that the precautionary and net gain principles underpin any legal determinations.

We strongly approve of the proposal for a new independent body. It is essential that it is genuinely independent and has real authority. Further clarity is needed on its ability to hold the Government to account especially as we are losing the international scrutiny that the EU would provide over UK

governance of the environment. We would also welcome the identification of a clear role for LNPs with respect to local accountability and governance. This role would require proper resourcing if it is to be effective.

Q5: Do you agree with the proposed objectives for the establishment of the new environmental body?

We believe the objective ‘Operate in a clear, proportionate and transparent way in the public interest, recognising that it is necessary to balance environmental protection against other priorities’ neutralises the effectiveness of this body and have suggested alternative wording. We agree with the first 5 objectives.

Q6: Should the new body have functions to scrutinise and advise the government in relation to extant environmental law?

Yes. A fundamental role for the new body is to have functions to scrutinise and advise the government in relation to extant environmental law.

Clarity should be provided in terms of who is enforcing what, is it the new Body or is it the existing regulatory bodies?

Agriculture, fisheries and the marine environment are fundamental aspects of the 25 Year Environment Plan, so the new body should have a key role in overseeing their impacts on the environment.

Q7: Should the body be able to scrutinise, advise and report on the delivery of key environmental policies, such as the 25 Year Environment Plan?

We believe that to be effective and deliver lasting change the 25 YEP should be actively monitored with feedback mechanisms and strong sanctions for non-compliance. The LNPs will be happy to cooperate with implementation at local level provided they are adequately resourced.

Table 1 shows that there are already domestic arrangements in place that cover, at least in part, some of the important EU environmental protection mechanisms. However, these come with a number of constraints and limitations and do not fully meet government’s ambitions for effective environmental governance after we have left the EU.

Q8: 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?

Following the principle that environmental issues should be managed at the most appropriate scale, representation regarding issues of national importance could be dealt with by the new body as an alternative option to judicial review which is very expensive and limited in scope. In addition, to aid easier and clearer communication, it could act as a signpost to existing bodies, such as Defra and LGSCO, to deal with more localised issues.

Having clarity about who owns what legislation is vital, but challenging. Does for example pollution regulation come out of the EA and go into the new body? Including so many regulatory duties could lead to the new body being unwieldy - it will be important for it to take an integrated "landscape/ecosystem" approach and to look for long term solutions.

Q9: 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?

Binding notices and agreeing environmental undertakings are useful additional mechanisms to be included in the framework for the new body to enforce government delivery of environmental law beyond advisory notices, as these give more strength to the role of the new body. Enforcement does require adequate resourcing though.

Importantly the approach overall should not be perceived as reliant on sanctions and penalties – attention should also be given to positive incentives, educational measures and “nudge” type efforts to influence cultural norms. Behaviour change research demonstrates these are more effective in bringing about lasting change because motivation is internalised. We want assurances that the effectiveness of the new body will not be thwarted by the Government's funding cuts, lack of support and falling staff numbers as has been seen throughout the environment sector in the past 10 years.

Q10: 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?

Non-Ministerial Departments (NMD's) and Non-Departmental Public Bodies (NDPBs) are government bodies that may need to be held to account, as are public authorities that have statutory obligations with regard to SSSIs, so these should all be accountable to the new body.

Q11: 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?

Not entirely. While there may be good reasons in specific case to remove areas subject to international agreement from the remit of the new body in general environmental issues are strongly interconnected so these divisions can introduce artificial potential loopholes. It is also desirable in terms of clarity and simplicity that the new body has comprehensive oversight even if it may have to refer certain matters elsewhere. Ramsar legislation is an example.

Q13: Should the body be able to advise on planning policy?

As most planning decisions result in an environmental impact we believe that the new body should advise on planning policy, and additionally be granted the powers to intervene where clearly national and local planning policy has the ability to have a significant negative impact upon the environment. This is critical to backing up the NPPF's claim to support sustainable development.

In summary, this document and the proposed legislation is welcomed overall and very much needed. However we do not believe that what is proposed in the consultation is yet adequate to ensure

effective future oversight of environmental legislation and we make recommendations as to how it could be strengthened. We would welcome an opportunity to comment on a more detailed proposal after this consultation and offer the support and engagement of the nature partnerships in the next stages.

Signed

Northern Upland Chain LNP
West of England Nature Partnership
Devon LNP
Natural Cambridgeshire
Tees Valley Nature Partnership
Surrey Nature Partnership
Wild Anglia
Dorset LNP
South Pennines LNP
Morecambe Bay LNP
Northamptonshire LNP
Herefordshire LNP
Shropshire, Telford and Wrekin LNP (excepting NFU)
Birmingham and Black Country Local Nature Partnership
Buckinghamshire and Milton Keynes Natural Environment Partnership
North East England Nature Partnership
North Yorkshire and York LNP
Warwickshire Coventry and Solihull LNP
South Yorkshire LNP
Gloucestershire LNP
Cornwall and the Isles of Scilly LNP
Sussex LNP
Kent Nature Partnership

Date 1st August 2018

All signatories listed have approved this response via their own governance process.