

# Environmental Principles and Governance in Scotland

## Consultation response from the Landscape Institute

Date: 11 May 2019

### 1 Summary

The Landscape Institute welcomes the opportunity to comment on the consultation on environmental principles and governance in Scotland which sets out how the country will ensure that we maintain sufficient environmental protection following an exit from the European Union (EU).

We welcome Scottish Government's commitment to maintaining or exceeding environmental standards and note the need for an approach which is fitting of Scotland's circumstances and established processes of accountability. However, we believe that this is an opportunity to not only replicate existing protection, but to enhance and strengthen Scotland's existing framework of environmental legislation and governance to ensure that it is fit for purpose in the long term.

In this respect, we agree that the Scottish Government should establish a legal duty which enshrines the four EU environmental principles in Scottish law and policy. We suggest that this could be best achieved through a tailored piece of Scottish legislation which not only embeds environmental principles, but seizes the opportunity to set clear, long term objectives and targets for environmental protection in Scotland alongside a framework for providing environmental improvements at a national and local level. We would urge the Scottish Government to commit to the delivery of such a Bill and to set out clearly the timescales for its delivery.

It will be important that primary legislation is supported by a policy statement which sets out clearly how the principles should be interpreted and applied in policy and decision making as well as how individuals and groups can raise complaints or concerns. Such a policy statement could include details of how environmental targets and outcomes will be achieved and put in place the framework for environmental governance to support the delivery of these.

Regarding scrutiny, complaints and enforcement, we agree that a new body should be formed to provide oversight of the legislation which would effectively perform the role of an environmental 'watchdog'. It is imperative that such a body would remain independent from Scottish Government and Ministers to ensure that they can carry out their duties separately and can provide guidance and advice on policy and legislation while also hearing and overseeing environmental complaints.

## 2 Response to specific issues and questions

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

Yes.

We agree that there is a need for a legal duty on Scottish Ministers to ensure that the four EU environmental principles are embedded into Scottish law and policy. At present, we note that the consultation is not clear about the specific vehicle for establishing such a duty, but assume that it cannot be achieved without primary legislation. We believe that the Scottish Government should consider bringing forward a tailored piece of Scottish legislation which can enshrine the principles into law whilst also setting clear objectives and targets for environmental protection in Scotland alongside a framework for planning and delivering environmental improvements.

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

No.

We are concerned that the application of the duty as proposed in the consultation is too narrow and suggest that it should apply to a wider range of functions and public bodies that that currently described. We acknowledge the Scottish Government's concern about the difficulties of applying the duties generally across all powers and functions, but think that it is important that the environmental principles are applied in all individual decisions that could have significant environmental consequences. Legislation and accompanying policy could set out clearly where the need for enhanced protection in operation and regulation is most required and make appropriate provision for this.

Of course, we note that applying the duty could have resource consequences for public bodies and would urge the Scottish Government to consider this, particularly the implications for local authorities, and attribute adequate resources to ensure that it can be applied.

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

Partly.

We support the focus on the four environmental principles identified in the consultation document as that which stem from existing EU requirements, but suggest that the obligation should be widened to include additional principles which are mandated by the UK's EU (Withdrawal) Act 2018. These include, as a minimum:

- The principle of making use of the best available scientific and technical expertise

- The principle of environmental net gain, in its broadest sense of ‘progressive improvement’, to ensure that the net stocks and quality of natural capital do not decrease from this point onwards. In practice, this includes a non-regression principle applied to the targets and obligations contained in the EU environmental directives which should be written into policy.
- The principle of integration or interconnectedness to ensure that landscapes and ecosystems are understood holistically and that green and blue spaces are appropriately connected.

In addition to these, as highlighted in the consultation document, there are a number of specific environmental principles contained in UN treaties and other international documents to which the UK is a signatory. These principles must continue to carry weight, regardless of the UK’s future status within the EU. We note that the development of a Human Rights Framework is likely to include principles for ecosystem services and participation.

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

Yes.

We agree that as well as enshrining these principles in policy and law it is important that they are embedded within practice. A policy statement that guides the interpretation and application of the duty is critical for transparency and to ensure that decisions can be monitored and, where necessary, decision-makers can be held to account.

The policy statement is also an opportunity to put in place a clear framework for environmental governance in Scotland which sets out how the targets and objectives enshrined in legislation will be met. This could include requirements at a national and local level to put in place clear plans for environmental improvement as well as processes for monitoring and assessing progress.

The policy statement should also set out how organisations and members of the public can raise concerns or complaints in relation to the legislation and provide information for the courts in the interpretation of the legislation. We would be keen to be involved in the preparation of such a document to ensure that it is clear and accessible and would urge the Scottish Government to establish a process for its development which includes adequate consultation and engagement with relevant stakeholders.

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

We agree with the findings of the roundtable that a loss of connection with the EU will put us at a disadvantage in terms of access to expertise and advances in methodologies for monitoring environmental outcomes, and our ability to directly compare progress with others using the same frameworks.

## 2.6 What key issues would you wish a review of reporting and monitoring requirement to cover?

We welcome the intention to review monitoring and reporting. We would be keen for the review to consider whether UK and/or Scotland could become a cooperating country in order to remain within the existing monitoring and evaluation processes and, failing this, what other mechanisms are available for ensuring that we retain a strategic view of Scotland's progress and outcomes as compared to other nations.

An enhanced monitoring and reporting framework which seeks to integrate existing requirements could also usefully support an enhanced framework for environmental governance and improvement which sets clear objectives and targets for Scotland in the long term.

We propose that such a review should include consideration of how environmental information reported under monitoring arrangements is communicated and made available to the wider public to ensure that there is transparency and openness.

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

Yes.

Scrutiny and performance appraisal are critical if we are to ensure that environmental decision-making is compliant and just, that public bodies are accountable for their decisions, and that our environmental performance is progressing in line with other countries. Withdrawal from the EU would leave a significant gap in this regard and could have wide-ranging implications for environmental performance.

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

Scrutiny and performance appraisal must remain independent of those carrying out functions under the duty and as such would need to be carried out by an organisation or body separate to the Scottish Government. It would be possible to attribute this role to Parliament as the legislative body and to make provisions within the committee structure for environmental audit. It may also be possible to enhance the role of scrutiny bodies such as Audit Scotland or existing environmental public bodies.

It is our view, however, that there is a need for the creation of a well-resourced, robust and appropriate body which can oversee Scotland's progress on environmental targets set within new legislation and intervene where environmental law is contravened as currently exists through the European system. Such a body is essential for addressing complaints and concerns relating to environmental protection (see below) and its remit could also extend to scrutiny and performance appraisal.

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

We note the difficulty of defining the limits of environmental policy. We agree that the new body should have remit for all the areas listed in the consultation document, but should also include policy relating to people's enjoyment of and access to the natural environment including parks and greenspaces, landscapes and the historic environment.

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

It is critical that individuals and organisations are able to raise concerns and have them considered in an open and consistent manner. The loss of the EU complaint mechanisms will be detrimental to environmental outcomes and would impact on the sense of control and empowerment of Scotland's people and communities.

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

Yes.

The Scottish Government should consider establishing a new, independent, resourced body with the remit and expertise to hear and decide environmental complaints from third parties, including members of the public and issue binding orders or monetary fines. This body should have a role in scrutinising and advising the government in relation to policy delivery and environmental and other domestic law which may impact on the environment. It is important that the new body does not divert resources away from existing environmental public bodies, either in its creation or in the delivery of its responsibilities.

We believe that were such a body seen to be accessible to individuals and groups concerned about the implementation of environmental policy and decision-making in Scotland, then it may also increase public participation and access to environmental justice in line with national and international objectives.

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

As above. Enforcement powers are essential to complement any complaints process. Without enforcement there is no recourse for decisions which, even inadvertently, result in environmental decline or degradation.

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

A new, resourced and independent environmental body could be given the provision to issue binding orders or monetary fines in specific situations where, in performing their functions,

Scottish Ministers and public bodies have made decisions which have been contrary to the environmental principles enshrined in the legislation and supporting policy framework or have inadvertently caused environmental declines.

### **3 Who are we?**

The Landscape Institute (LI) is the royal chartered body for the landscape profession. We represent over 5000 landscape architects, planners, designers, managers and scientists.

As a professional organisation and educational charity, we provide training, accreditation, technical advice, and standards to maintain the high quality of the landscape profession in the UK. We protect and enhance the built and natural environment for the public benefit.