

REA Response to “Environmental Principles and Governance after the United Kingdom leaves the European Union” Consultation

The Renewable Energy Association (REA) is pleased to submit this response to the above consultation. The REA represents a wide variety of organisations, including generators, project developers, fuel and power suppliers, investors, equipment producers and service providers. The REA also includes the Organic Recycling Group, representing the interests of the biowaste industry. Members range in size from major multinationals to sole traders. There are over 550 corporate members of the REA, making it the largest renewable energy trade association in the UK.

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

The Government's commitment to ensuring that leaving the EU does not result in a watering down of environmental protections is very welcome. There should be no reduction in Government responsibility or liability in considering how the environment is protected within policymaking. Strong environmental principles, underpinning policy development, provide certainty and a clear direction of travel in the long term for developers and investors. As such, we believe that at a minimum, if Government is to reach its stated objective within this consultation, then there can be no watering down of the current environmental principles that already apply in EU and International Law.

The six principles highlighted in Annex A of the consultation should be maintained along with a number of others that are laid out in European or International Law. Below we have highlighted a number of specific principles which currently underpin important renewable, cleantech and organic recycling policies and, as such, should be maintained.

- **Sustainable Development:** Decarbonisation of our power, heat and transport systems must remain fundamental to future policymaking in order to ensure that energy needs today are met while also guaranteeing fair access to clean energy systems for future generations. Furthermore, the sustainable use of our natural resources, ensuring resource productivity, reducing emissions and protecting soils are all fundamental to ensuring we do not jeopardise the environment for future generations.
- **Precautionary Principle:** In most cases, we are far too slow to act on issues which impact on the environment hence the rise in GHG emissions and the impact this has had on climate change.
- **Polluter Pays Principle:** This principle forms the basis of policies such as Carbon Pricing, which has been proven an effective economic driver for decarbonising the power grid. Similarly, it underpins waste management policies, with focuses on extended producer responsibility and landfill tax being central to the successful delivery of the circular economy, as well as underpinning waste crime regulations and the new agricultural policy recently consulted on by DEFRA
- **Integration Principle:** Renewable energy and cleantech are at the centre of the transition to decentralised energy. Such systems integrate into consumers lives on multiple levels influencing how they utilise power, heat their homes, travel, manage their waste, preserve their soil health and interact with the broader circular economy. As such it is appropriate that environmental policies are integrated across all policy-making and Government departments.

- **Make Use of Best Available Scientific Knowledge (Paris Agreement):** The renewable energy and cleantech industries are constantly evolving with continuous innovation and scientific monitoring of activities. It is appropriate that Government policy is evidenced based, reflecting the best available scientific knowledge to ensure future energy system developments are fit for the future.
- **Conserve ecosystem structure and functioning, in order to maintain ecosystem services (Convention on Biological Diversity):** Bioenergy sustainably utilises natural resources for the delivery of renewable energy. Policies supporting these sectors rightly ensure high standards aimed at the continuous maintenance of these ecosystems so that their services can be used by future generations. Similarly, this principle underlines policies aimed at reversing the degradation of soils in the UK, delivering policies that administer organics to soils to maintain ecosystem services that are fundamental to our agricultural and forestry sectors.
- **Anticipate, prevent or minimize the causes of Climate Change and mitigate its Adverse Effects (UN Framework on Climate Change):** This principle lies at the heart of policies to decarbonise our power, heat and transport sectors, underpinning the Climate Change Act and the UK's legally binding carbon budgets.

When translating these environmental principles into regulation, **the principles of pragmatism and proportionality** are also important. Policies should be straightforward, administratively-efficient and should not constrain innovation. Applying these principles should ensure streamlined policy-making across departments and avoid the delivery of contradictory policies that fail to achieve their environmental objectives and restrict the growth of effective renewable and cleantech industries. For example, in the waste and resources sector, it is important that the Environment Agency uses proportionate principles to maximise limited resources available to them to prevent 'real' environmental damage and not just seek easy wins rather than targeting the harder to reach offenders.

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

We support the use of a statutory statement on the application of environmental principles. Making use of the best available scientific knowledge should be a principle in itself, legislated within the Bill. As such, providing clarifications through a statutory policy statement, following public consultation, is an appropriate method for updating how the principles are applied.

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)?

The principles themselves must be protected from diverging political sentiments which may result from a change of Government and/or Ministers. As such, we support option 1 with the environmental principles being written into the Bill as part of the Primary Legislation. This will ensure that they cannot be easily watered down or removed. This is essential for providing long-term policy stability against which investors and developers can be confident of the overall UK policy direction. The authority of the Environmental Principles would be reduced if only stipulated in the statutory statement and easily subject to change.

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

As the proposals currently stand they do not fully reflect the existing governance mechanisms available to the UK under current EU arrangements. Fundamental to this is a lack of legal recourse to hold the Government to account on the Environmental Principles. The new

governance body should have the ability to take the Government to court where other governance mechanisms have been exhausted and the Environmental principles remain unobserved. Currently, this role is maintained by the European Court of Justice which can issue substantial fines to member states.

The authority of the proposed advisory notices and binding notices will be undermined if there is no further mechanism to apply penalties where notices are not adhered to. Without such a mechanism the Government cannot claim to maintain equivalence with current EU enforcement powers.

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

Overall we agree with the proposed objectives for the new environmental body. It is imperative that there is an independent and impartial voice to ensure that the Government is held to account in matters pertaining to the environment as this impacts on the lives of all both in the realms of health, business and wider society.

We would, however, encourage further development of the fourth objective: *"have a clear remit, avoiding overlap with other bodies."*

It is correct that the body should have a separate remit; however, there is a risk that this objective could silo the work streams of the new body. The operational remit will have many cross-cutting themes with other environmental governance institutions, which cannot be seen in isolation but across the wider environmental landscape. In particular, we see there is a clear interrelation between the work of the Committee on Climate Change and complementary activities with the Environment Agency. It is not in the interest of the industry, or Government, to have another body with which to engage that does not pay due regard to complimentary work streams being carried out elsewhere.

As such, while we believe the stated objective should remain as stated, it may also be appropriate to stipulate a further objective for the new body to complement and support the work of other regulatory and governance bodies in order to ensure joined up thinking and consistent regulation.

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

Yes, we believe it is both appropriate and essential that the new body has the functions to scrutinise and advise the government in relation to extant environmental law. The current function of the Committee on Climate Change, in regards to the Climate Change Act and resulting policy, provides a strong template for similar functions to be applied to the new body.

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

We support the NCC in its call for the new body to also be established as the independent statutory body to scrutinise and advise on the delivery of the 25-Year Environment Plan. This should be supported and underpinned by this role being written into primary legislation as part of the new Bill. This will then ensure a legal framework against which the Plan is delivered by future Governments.

As stated in the consultation this would be similar to how the CCC operates against the Climate Change Act, with the new body conducting and publishing an independent annual assessment of national progress against the 25-Year Environment Plan, which the Government must then respond to in a reasonable timeframe. We would also further recommend that the new body is encouraged to operate to similar timescales as the CCC, with both annual reports supporting each other and reinforcing messages associated with the progress of complementary themes around climate and the environment.

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. It is important that there are opportunities for the public to raise complaints, especially as it could help justify and support the costly process of launching a Judicial Review. This will provide the public with the further ability to hold Government to account, especially on the delivery of agreed targets.

It is, however, recognised that it will not be the role of the body to directly resolve or rule on these complaints. As stated within the consultation, the body will be limited to making a prominent declaration where it found that an authority had failed to implement environmental law properly. As such, in setting up the new body, Government should also use this opportunity to set out the appropriate procedure for how contested issues are referred to an appropriate tribunal or court in a position to rule on environmental cases - this could involve setting up a dedicated Environmental Court.

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?

Advisory notices form an appropriate initial framework for starting governance proceedings and we would encourage these to be followed by 'Binding Notices'. However, the authority of these notices will be greatly reduced if there is no threat of further judicial action being called upon to enforce the notices if they are not followed.

While it is recognised that such notices could support cases brought by the public, such as Judicial Review, this does not preclude the new body itself from having the powers to take Government to court where previous notices have been issued. This would also be entirely in keeping with the consultations primary ambition to ensure that there is no weakening of existing Governance mechanisms available to the UK under current EU arrangements.

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?

The consultation effectively summarises the relevant bodies and existing arrangements for environmental governance. As stated in the answer to question 5, the new body should have its own clear remit, which should not overlap with, or impede, on the operations of other bodies. If it were to have oversight of other bodies it could lead to industry confusion as it becomes unclear which body has the final say in respect of regulatory decisions and processes.

However, just as we are keen to avoid multiple bodies setting regulations for the same process, we also want to avoid the various bodies working completely in silos, especially in areas where there are evident shared interests.. As such, greater detail is required to set out the basis for how the new body will complement, but not overlap with, existing

environmental authorities. This should include making clear how the body will relate to devolved Governments and Local Authorities, which is not made clear in the current consultation.

We would encourage DEFRA, as part of the development of the new body, to publish a detailed organigram that clearly shows where the remits and authorities of the different regulatory and governance bodies lie, along with clearly stipulating which Government bodies come under each bodies scope.

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?

A broader audit of all environmental requirements under both EU derived rules and international law should be carried out to understand what areas the new body should have oversight in regards to environmental law. This should be done transparently and made public for further consultation as the full remit of the new body is decided.

It needs to be recognised that domestic, EU derived environmental law and international agreements are heavily interdependent. For example, meeting our climate commitments under the Paris Agreement is currently predicated on us meeting our EU obligations, including within the EU Emission Trading Scheme, or meeting the Renewable Energy Directive targets. Similarly, our obligations around the Convention on Biological Diversity could well depend on the successful implementation of the 25-year environment plan.

As such, it may not be appropriate, or as simple as, divorcing domestic environmental law and international environmental agreements. To do so could be seen as undermining our strong international commitments, while also removing from the new body a key consideration in regards to how domestic policies interplay with our international obligations. As such, careful deliberation needs to be had to ensure both domestic environmental laws and international agreements are appropriately covered.

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

We echo the concerns raised by the Committee on Climate Change within their initial letter to Michael Gove following the release of the consultation, dated 30th May 2018. This is that paragraph 127 of the consultation states that 'it is proposed that the new body's remit does not cover matters related to climate change'.

While it is correct that the new body has a clear and separate remit to the CCC, it is also evident that many of the key environmental considerations the new body shall be examining will inevitably involve consideration of either mitigating or adaptive policies required because of climate change. Factors such as resource management, land use or maintenance of soils are all impacted by issues of emissions and climate-related problems. As stressed in previous answers, the new body cannot work in a silo. Instead, both the CCC and the new body will need to complement and strengthen each other's work, with a clearly defined relationship in operation between the two.

Furthermore, if the new body is provided appropriate judicial powers beyond that of the CCC, this could provide more robust governance on Climate Change.

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

We agree with the proposal as outlined in the consultation. It is right that the new body should not constitute another tier in the planning process, however, it would be appropriate for the new body to be a key consultee when new planning policy is being considered and provide advice on the implementation of environmental aspects of existing planning policy.

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

Greater clarity now needs to be provided in regard to how the new Governance body is to be structured, who is to be involved, how it will operate and, crucially, how it is to be funded. It is reassuring that the consultation recognises the need to ensure that the body remains independent and not in any way influenced by the funding organisation, however, greater detail will need to be provided, with further industry consultation, required before the body is set up.

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