

Consultation Title	Environmental Principles and Governance in Scotland
Date	10/05/19
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Scottish Land & Estates (SLE) is a member organisation that uniquely represents the interests of both land managers and land-based businesses in rural Scotland. SLE has members with interests in a great variety of land uses and welcomes the opportunity to respond to this consultation on Environmental Principles and Governance in Scotland.

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 proposal for legislation, by Scottish Ministers?

Yes. While the European Union (Withdrawal) Bill will translate current EU law into 'domestic law', it does not have the capacity to legislate for the environmental principles co-developed by member states in the EU. The absence of provisions to bring the four principles over into domestic law following the UK's exit from the EU is a critical gap and SLE agree with the introduction of a duty (or duties) which has regard for these.

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

Yes. SLE supports the Scottish Government's preferred option for the duty to only apply to Scottish Ministers. We agree that a general application of the duty across all powers and functions would lead to complex interactions and could possibly contradict each other.

3. Do you agree that a new duty should be focused on the four EU environmental principles? If not, which other principles should be included and why?

SLE believes the principles relevant to the EU and international agreements should be maintained. We agree that a new duty (or duties) should be focused on the four principles outlined on page 8 of the consultation document.

While the need to develop domestic environmental principles arises from our exit from the EU, Scotland should not take an insular approach to their application and it should ensure that they can be modified to reflect changing European and international standards. In addition, to ensure Scotland keeps pace with world best practice consideration should also be given to including the following principles as outlined on page 9.

- **Non regression**
- **Sustainable development**
- **Integration**
- **Appropriate spatial and temporal scales**

SLE would encourage cross-governmental co-operation to ensure that there is a pragmatic and common-sense approach to the understanding and implementation of these with some flexibility in their application.

4. Do you agree 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. SLE agrees a statutory policy statement should be produced. It is important that all principles are well defined, commonly understood and that there is guidance on their interpretation and application.

The principles and their associated guidance should be developed in consultation with stakeholders and should require statutory sign-off. Examples of where this approach has previously worked well include the development of the Scottish Outdoor Access Code and a Management Framework for Beavers in Scotland.

It is also important that guidance on the interpretation of the principles is regularly reviewed and updated and is in line with emerging scientific evidence.

5. What do you think will be the impact of the loss of engagement with the EU on monitoring and reporting?

SLE recognises the key role the EU currently plays in monitoring and reporting requirements. On leaving the EU, Scotland (and the rest of the UK) will lose the oversight and enforcement roles of the Commission, European Court of Justice and other EU bodies. These bodies play a key function in monitoring, reviewing and reporting and provide a mechanism to raise and address potential breaches of environmental law and in holding governments to account. There is uncertainty around how this mechanism could be replicated in Scotland.

Uncertainty also remains around (i) what information will need to be reported on (ii) timescales for reporting and (iii) at what level reporting will need take place i.e. will this be at an EU, UK or Scottish level. Further uncertainties remain around the level of funding that will be available to support and deliver this.

Consideration therefore needs to be given to establishing a domestic governance mechanism which takes on the existing function of existing EU bodies and which considers long-term monitoring, trend analysis, data sharing and encourages a collaborative governance culture.

6. What key issues would you wish a review or reporting and monitoring requirements to cover?

EU membership has provided the framework, drivers and opportunities, allowing for the sharing of information between jurisdictions and the membership of groups and processes. Monitoring and data quality and the capacity to quality check and analyse data will need to be maintained on leaving the EU as unless an agreement is made this will be lost.

There is concern that there will be a loss of expertise and access to comparative information should an agreement not be met, impacting on reporting standards. Further consideration needs to be given to what access the Scottish government might have to EU data from our time in the EU – this would be important in understanding future environmental change and impact.

Gathering and comparing robust environmental data is essential to supporting evidence-based policy making and any review should seek to rationalise current programs ensuring we have a robust and transparent reporting system that can inform decision-making processes and benefit the environment.

The Scottish Biodiversity Information Forum (SBIF) recently completed a review towards transforming Scotland's biological infrastructure. The review makes 24 recommendations which seek to resolve the long-standing issues around the flow of biological records from those who collect them to all who may use them. It would seem imprudent not to consider the recommendations from this review which offer the opportunity to set up a robust and transparent monitoring and reporting system for Scotland.

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

The consultation rightly identifies several gaps which will be created when we leave the EU, namely the oversight and enforcement roles of the Commission, European Court of Justice and other EU bodies. As outlined above, these institutions perform several key functions. To maintain the same level of environmental standards, it will be important to address the governance gaps created by the loss of the functions performed by these bodies.

In addition to the potential losses identified in the consultation, the lack of oversight from the EU could have an effect on compliance issues and we could see the loss of EU enforcement mechanisms which to date have ensured environmental legislation is effectively monitored, reported on and enforced. Other issues might include what enforcement powers a new body might have to issue penalties to incentivise action.

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

To ensure that retained EU law has the same practical impact, domestic governance mechanisms will be required to take on the functions of existing EU bodies. This is likely to require the creation of a new independent and well-resourced body which operates in a proportional way and balances environmental protection against other priorities.

It is important that the body is independent of government and is not subject to political pressure. The new body should include oversight of all domestic environmental law and international environmental agreements. The latter point is particularly important in terms of influencing and coordinating international environmental action and delivery.

The new body should have the ability to scrutinise and advise government in relation to existing environmental law and be able to hold government departments and agencies to account. It should have the remit and powers to respond to and investigate complaints from members of the public about the alleged failure of government to implement environmental law.

As well as being adequately resourced and independent of government, it is important the body has relevant expertise and sufficient legal powers to enforce the law and hold government to account. The new body should have the ability to impose financial penalties and sanctions if the government fails to adequately implement objectives.

9. Which policy areas should be included within the scope of any scrutiny arrangements?

Leaving the EU enables Scotland to adopt policies more suitable for its own objectives and circumstances. We support the policy areas outlined on page 24 of the consultation document which are based on the roundtables framework.

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

The most significant loss is likely to be enforcement and upholding compliance. Robust enforcement mechanisms are needed for when environmental requirements and standards are not being met.

A new independent body should be established as set out in the response to question 8, which can investigate potential breaches of environmental law and ensure enforcement and apply sanctions in cases of non-compliance.

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 European Commission and European Court of Justice have been key in ensuring justice in terms of investigating and addressing cases where environmental law has not been enforced. It is therefore key that on leaving the EU these functions are maintained and replicated in domestic governance mechanisms.

To be clear, domestic governance mechanisms should not have the ability to hold individuals and businesses to account as this would be replicating existing functions carried out by government departments and agencies etc. Scottish Environment Protection Agency.

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

Monitoring and enforcement powers of the EU Commission and EU Court of Justice will end with Brexit, potentially leaving a gap until a replicated domestic governance mechanism is put in place. It is important to ensure that environmental principles are part of domestic law soon after the UK exits from the EU and that appropriate powers, including an obligation for delivering effective enforcements and including but not limited to issuing appropriate penalties to achieve this are in place.

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?

As per our response in question 12, it is important to ensure that environmental principles are part of domestic law soon after the UKs exit from the EU and that appropriate powers, including an obligation for delivering effective enforcements and including but not limited to issuing appropriate penalties to achieve this are in place.

As set in the response to question 8, the establishment of a new body to hold government departments and agencies to account seems to be the most appropriate way to achieve this. It is important that this new body has a range of enforcement powers so that appropriate actions can be taken on a case-by-case basis. Enforcement powers need to be wide-ranging to be efficient in both time, funding and other resources to best achieve the environmental outcome(s).