



Chartered
Institute for
Archaeologists



Graeme Dey
Convenor of the Environment, Climate Change and Land Reform Committee
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27 March 2018

Dear Mr Dey,

Re: Call for evidence – EU Environmental and Animal Welfare Principles

Thank you for the opportunity to comment on these proposals. This response is submitted on behalf of the Chartered Institute for Archaeologists (CIfA), the Association of Local Government Archaeological Officers (ALGAO), Archaeology Scotland (AS) and the Built Environment Forum Scotland (BEFS). Details of these bodies are provided in an appendix, below.

Our evidence is primarily concerned with highlighting the vital importance of the polluter pays and precautionary principles to the historic environment sector. These principles underpin the system of investigation and protection of heritage assets of archaeological interest in the planning system. Any impact on the legal basis of these principles could expose these safeguards to weakening in any future policy change.

Scotland's cultural heritage is a key part of our environment. Whether the physical heritage of traditional farm buildings, villages, field boundaries, ancient monuments, woods, and parkland, or the cultural traditions associated with human interaction with the land. In Scotland's landscapes, it is virtually impossible to separate the cultural from the natural. This historic environment is important in its own right, and as part of wider landscape management, delivering substantial benefits for communities - attracting inward investment, as a key driver of rural tourism and, through conservation, by creating skilled employment, often in areas where jobs are scarce.

Specific Questions

- 1. How important are the EU principles of: the precautionary principle, preventive action, environmental damage should as a priority be rectified at source, the polluter should pay, and animal sentience.**

For the historic environment, and in particular, the archaeology sector, the polluter pays and precautionary principle underpin the majority of archaeological work undertaken in Scotland. This is because the polluter pays principle has provided the model for developer-funded archaeological investigation and mitigation in the planning system since 1994.

A precautionary principle is also adopted through this system, whereby prior investigation of land which has a high potential to yield archaeological discoveries is required, providing safeguards against undiscovered sites being destroyed without opportunity to investigate.

These EU-derived environmental principles help to protect the provisions for safeguarding the historic environment by guiding future governmental decision-making and policy reform. They also provide a mechanism by which it would be possible to challenge in court actions which are inimical to these principles.

2. How and where have these principles had an impact on environmental and animal welfare policy in Scotland?

These principles were introduced in the 1990 Department of Environment white paper *This Common Inheritance*, and has been part of a comprehensive system of protections in the planning system in Scotland since 1994, with the publication of *National Planning Policy Guideline 5 – Archaeology and Planning* (NPPG5) in Scotland. This policy

- made it a responsibility for developers to pay heed to known archaeological assets and to fund proportional archaeological investigations on sites containing archaeological assets which would be affected by development proposals,
- enshrined a precautionary principle to allow investigation of sites of high archaeological interest
- recognised that archaeology is a non-renewable resource and that archaeological remains should 'be regarded as part of the environment to be protected and managed'

This policy prevented sites from being destroyed without any consideration, and revolutionised the process of obtaining information about our pasts. This had hitherto only been possible by voluntary agreement to provide a few paid museum workers, university archaeologists, and volunteers, with small amounts of time to 'rescue' and record as much as possible. The policy led to the rapid development of a market for archaeological services and the professionalisation of the discipline, including the development of a network of local

authority archaeologists with the role of advising planners of how developers should address the archaeological impacts of their development.

These principles are retained in current *Scottish Planning Policy* and *Planning Advice Note 2/2011*.

3. Views on the appropriateness of retaining/adopting/enshrining these EU principles in law or alternative principles/approaches that could be adopted.

We believe that it is entirely appropriate that these principles should be enshrined in law domestically. We believe that this could be achieved through UK-wide or devolved legislation.

4. Views on if and how environmental principles could and should be enshrined in law in Scotland and enforced.

We have recommended to both Westminster Government and the Devolved Administrations that amendments are introduced to the EU Withdrawal Bill that would transpose Environmental Principles from the Treaty on the Functioning of the European Union into domestic law in order to secure a continuing statutory underpinning for these environmental principles after exit-day. So far this has not happened.

We would also support other statutory measures to legislate domestically for environment principles. To achieve legal continuity, any future Environmental Principles Policy should be:

- **established in law:** either in statute directly, or underpinned by a strong legal base
- **subject to parliamentary and public consultation:** set out in Standing Orders and statute.
- **binding:** with a duty to comply
- **applied to all public and private bodies:** Government Departments, agencies, and courts, as well as private developers, infrastructure providers, and contractors
- **overseen by an arbiter with prosecutorial functions:** with strong remedies for non-compliance
- **devolution-sensitive:** Whether enacted at a UK level or by each of the four UK administrations, the approach should be agreed by all devolved parliaments

We also believe that there is an opportunity to go further and establish a principles policy which is proportionate to the challenge of passing on our environment in better condition. In this regard, any future Environmental Principles Policy should be:

- **comprehensive:** including international legal principles that have developed more recently than the Treaties, including non-regression, no net loss and individual environmental responsibility.
- **accompanied by an implementation plan:** laying out plans for integrating the principles in UK decision-making.

5. Examples of where key environmental principles have been enshrined in domestic legislation elsewhere.

Environmental Impact Assessment regulations are legislated at devolved level in The Town and Country Planning (Environmental Impact Assessment) Scotland Regulations 2017. These regulations embody both the precautionary and the polluter pays principles.

We would be happy further to discuss the issues raised in this consultation insofar as they affect the historic environment. In the meantime, if there is anything further that we can do to assist please do not hesitate to contact us.

Yours sincerely,



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About us

Built Environment Forum Scotland (BEFS)

Built Environment Forum Scotland (BEFS) is an umbrella body for organisations working in the built environment in Scotland. Drawing on extensive expertise in a membership-led forum, BEFS informs, debates and advocates on the strategic issues, opportunities and challenges facing Scotland's historic and contemporary built environment.

Association of Local Government Archaeological Officers Scotland (ALGAO)

The Association of Local Government Archaeological Officers: Scotland (ALGAO) is the national body representing local government archaeology services in England at County, District, Metropolitan, Unitary and National Park authority level. These provide advice to nearly all the District, Unitary and other local government bodies in the country.

ALGAO: Scotland co-ordinates the views of its member authorities (currently 28 in total) and presents them to government and to other national organisations. It also supports the work of the Local Government Association (LGA) on archaeological matters. The range of interests of its members embraces all aspects of the historic environment, including archaeology, buildings and the historic landscape. ALGAO: Scotland is also a member of the Built Environment Forum Scotland (BEFS).

The Chartered Institute for Archaeologists (CIfA)

The Chartered Institute for Archaeologists is the leading professional body representing archaeologists working in the UK and overseas. CIfA promotes high professional standards and strong ethics in archaeological practice, to maximise the benefits that archaeologists bring to society, and provides a self-regulatory quality assurance framework for the sector and those it serves.

CIfA has over 3,500 members and more than 80 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.

CIfA's Scottish Group has over 250 members practising in the public, private and voluntary sectors in Scotland. Furthermore, CIfA is a member of the Built Environment Forum Scotland

(BEFS), a network organisation that brings together non-governmental organisations and professional bodies that work with Scotland's built environment.

Archaeology Scotland (AS)

Archaeology Scotland is a leading independent charity working to inspire people to discover, explore, care for and enjoy Scotland's archaeological heritage. We were established over 70 years ago and have gained a wealth of experience in community engagement, volunteer and project management and professional best practice. Membership is open to all and we have an extensive list of partners that we work with and a large pool of trained volunteers. We are the lead body for delivery of Aim 4 of Scotland's Archaeology Strategy which is about encouraging greater engagement.

Although we are primarily focussed on archaeology, we apply this in the widest sense to include projects covering natural, built and cultural heritage. Our main areas of activity include:

- Adopt-a-Monument - a community-led scheme to record, conserve, interpret and promote local sites and monuments;
- Learning - providing resources and advice for educators on how to use archaeology to deliver the curriculum;
- Youth engagement, encouraging young people to get involved in heritage and providing careers advice;
- Scottish Archaeology Month - a celebration of archaeology events across Scotland in conjunction with Doors Open Days and European Heritage Days in September each year;
- Conferences and events - archaeological and heritage conferences and archaeo-tourism events;
- Training - skills training for volunteer archaeologists and historians including archival research, surveying, recording and other archaeological techniques and CPD sessions for teachers;
- Advocacy - we bring together members, supporters and partners to give Scottish archaeology a voice.