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2 August 2018

Dear Madam/Sir,

Re: Environmental Principles and Governance after EU Exit

Thank you for the opportunity to comment on these proposals. Our evidence is primarily concerned with highlighting the importance of environmental principles to the preservation, conservation, and management, of archaeology and the historic environment. We would like to stress the need for clear and consistent recognition that the historic environment is included within the ambit of environmental principles and will be within the scope for the proposed environmental regulator¹.

A critical concern for us in this consultation and other aspects of environmental reform currently being undertaken (eg Agriculture Bill), or recently completed (eg 25 Year Environment Plan) is the lack of clarity or consistency over what the scope and definition of 'environment' is, and how well understood this is by law makers and practitioners.

For example, in this document there is no explicit mention of cultural heritage or the historic environment² and few mentions of wider non-natural aspects of our environment or discussion of how human or cultural landscapes (including settlements, agricultural land, or other managed landscapes – which make up almost the entirety of our islands) are to be understood within the scope of the term environment.

¹ This conception first arose in the 1970s when, at that time, the historic environment was part of the Department of the Environment, but has commonly been eroded since the re-ordering of Westminster portfolios. See for example: *This Common Inheritance* (DoE 1990)

² The term historic environment is used extensively in planning policy and in protection regimes for cultural heritage assets, but the phrase cultural heritage is more common in environmental policy. Cultural heritage encompasses the historic environment – eg heritage sites, physical assets, landscape features – as well as broader elements of material and intangible culture and identity – eg agricultural practices, relationships to nature.

We understand that archaeology and the wider historic environment are part of the environment in several core ways and share many characteristics, including a finite nature and a sensitivity to unmanaged change. Public perceptions of landscape and environment are also inseparable, as natural landscapes are almost always shaped by past and present cultural activity. Furthermore, seeking to protect and manage either natural or cultural heritage has the potential to see benefits to the other.

As we explain in our answers to this consultation, we rely upon the existence of various environmental principles to ensure that systems enable sustainable management of the historic environment and that harm is minimised, and public benefit generated to mitigate unavoidable harm to heritage assets as a result of development processes or agricultural activities.

Clear, consistent, and overarching recognition that these principles are considered to apply to cultural heritage/historic environment, including to archaeology, will be necessary to the continued protection and positive management of these elements of the wider environment.

We recommend that government uses the opportunity of this national policy statement to set out a clear and inclusive definition of the environment which will overarch understandings across government. Previous statements by the Secretary of State, the 25 Year Environment Plan, and recent Health and Harmony white paper have all included cultural heritage within their ambit in places, and we are pleased to note that. However, there are also areas in which there appears to be a lack of recognition, and therefore there is a fear that without a clear definition, in some places cultural heritage may fall between the cracks. This makes little sense, as the cultural aspects of landscape cannot be separated from the natural. As such, imposed separation from management and protection regimes for the natural environment could cause lasting damage to historic preservation and limit the benefits that it has the potential to contribute to.

We recommend that government considers whether a formal definition, derived from the current 2004 Environmental Information Regulations which includes “cultural sites and built structures” (Part 1, 2 (f)). However, we recommend that in widening this definition to apply not simply to environmental information, but to the environment itself, attention is paid to the fact that aspects of the environment can be physical, biological, social, and cultural, and that these naturally and culturally produced physical surroundings are important interconnected elements of the environment.

Our answers to the online survey are transcribed below.

About us:

The Chartered Institute for Archaeologists (CIfA) 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.

The Council for British Archaeology (CBA) is an educational charity and national amenity society with a leading role in championing the public interest in archaeology. CBA works throughout the UK to involve people in archaeology and to promote the appreciation and care of the historic environment for the benefit of present and future generations. CBA has a membership of 500 heritage organisations who, together with our thousands of individual members, represent national and local bodies encompassing state, local government, professional, academic, museum and voluntary sectors.

Consultation questions:

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

a) Sustainable Development

Answer: High importance

Sustainable development should be a core principle in the management of the historic environment and presents a model for the integration of decision making on natural and cultural heritage, environmental protection, and other needs, such as for housing, food, etc. Because this principle is based on the joint and simultaneous pursuit of economic, social, and environmental objectives, it is vital these elements are explicitly included and given equal weight in the remit of the proposed environmental regulator.

It is not appropriate to consider ranking this principle against others.

b) Precautionary Principle

Answer: High importance

We would like to acknowledge that the precautionary principle is critical to the underpinning of archaeological investigation and mitigation within the planning system. Proportionate archaeological investigation of sites which are either known to contain, or are assessed to have a high probability of containing, archaeological remains is enabled under this principle in all UK planning systems. It is therefore important that this and other principles are clearly set out as having relevance to and scope to inform the historic environment, as well as the natural environment.

It is not appropriate to consider ranking this principle against others.

c) Prevention Principle

Answer: High importance

We would like to acknowledge that the prevention principle is critical to the underpinning of archaeological investigation and mitigation within the planning system. Proportionate archaeological investigation of sites which are either known to contain, or are assessed to have a high probability of containing, archaeological remains is enabled under this principle in all UK planning systems. It is therefore important that this and other principles are clearly set out as having relevance to and scope to inform the historic environment, as well as the natural environment.

d) Polluter Pays Principle

Answer: High importance

We would like to acknowledge that the polluter pays principle is critical to the underpinning of systems of funding for archaeological investigation, mitigation, and achievement of public benefits within the planning system. It is not appropriate to consider ranking issues against others. As above, it is important that this and other principles are clearly set out as having relevance to and scope to inform the historic environment, as well as the natural environment.

e) Rectification at Source Principle

Answer: High importance

This principle is used in the management of scheduled monuments by historic environment professionals. As above, it is important that this and other principles are clearly set out as

having relevance to and scope to inform the historic environment, as well as the natural environment.

f) Integration Principle

Answer: High importance

It is vital that environmental principles are understood to cut across various policy areas and that the environment is generally understood to benefit from being widely integrated. For example, local plans and other local government policies, and national legislation and policy affecting historic environment heritage assets should include respect for environmental principles. For example, conservation of historic buildings should take into account impacts on climate change.

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

Answer: Yes

We applaud the Government's ambition to commit in a meaningful way to parliamentary scrutiny of the proposed statutory policy statement, whether taken forward under options 1 or 2. We agree with the proposals as set out in the two options and recognise the potential trade-off between flexibility and the need to secure a long-term commitment to environment principles.

However, we think that the need to ensure strong commitment and protect against future dereliction of duties towards the environment are more important (and more potentially damaging) than any lack of flexibility in amending these principles. We do not expect that these principles, which have been established for more than 30 years – even if understandings and approaches to implementing them have shifted – are likely to change in the medium-term future. Effectively worded legislation should allow for flexibility without compromising this security.

Additionally, it is crucial that a definition of the environment is sought which explicitly and unequivocally includes cultural heritage/historic environment (note: the term historic environment is used extensively in planning policy and in protection regimes for cultural heritage assets, but the phrase cultural heritage is more common in environmental policy. Cultural heritage encompasses the historic environment – e.g. heritage sites, physical assets, landscape features – as well as broader elements of material and intangible culture and identity – e.g. agricultural practices, relationships to nature).

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)?

Answer: Option 1 – Environmental principles listed on the bill

The environmental principles set out here are not short-term issues which are likely to change within the lifetime of a Parliament. And although it is sensible to have more detailed descriptors of principles and up to date policy on their application in a document which can be more easily changed in the case of updated information, it is unlikely that the high-level principles will objectively change in any meaningful way to prevent inclusion on the face of the Bill. If the Government's commitment to be the first generation to leave the environment in a better state than we found it is to be possible, it will be necessary to have to strongest foundation for these principles. Recording these high-level principles on the face of the Bill sends the strongest message about the vital and permanent commitment of government to protecting the environment and it ensures that future governments cannot undermine or weaken them without first consulting parliament. The fact that similar principles are widely developed, accepted internationally, and are embedded within international agreements is another sign of their permanence and long-term relevance. Inclusion of high level principles in the Bill should not preclude the pursuit of additional environmental objectives if, in the future, new principles were established, or new approaches developed.

Additionally, we would like the Bill to include a definition of the environment, as described in our answer to question 2 and 14.

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

Answer: I think the governance gap will be greater in some areas than that described in the consultation document

We broadly agree with the analysis. We would emphasise that domestic governance mechanisms should be directly and clearly applied to all government departments and agencies, and their responsibilities promoted. This should be in addition to securing similar levels of accountability, regulatory oversight, and opportunity to bring legal challenge to those offered by the EU Commission and ECJ powers, post-Brexit. It will be important for NGOs and private individuals (such as landowners) to also have the ability to bring cases to an independent authority for non-compliance with environmental law and that current options for this are enhanced.

We do, however, think that there is a greater potential gap than that described, as mechanisms such as select committee scrutiny are not as robust as current EU Commission powers, which enable action to be taken, as opposed simply to recommendations made, which the government, ultimately, have the right to ignore. The powers of other public administration bodies are limited and cannot challenge policy-making agendas and directions.

We are also conscious that public advisory committees like the NCC, JNCC, and CCC do not have a specific locus to report on the historic environment. In many areas of EU environmental reporting (such as that by Natural England) has previously failed to take adequate account of the historic environment. This is partly because the historic environment has been legislated for at a domestic level, with EU bodies having limited purview over management of heritage. A new body with a clearer oversight across a broadly defined environment remit (which includes the historic environment) and a concern with all relevant legislation, not just transferred EU legislation, as described above, could improve this situation.

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

a) Act as a strong, objective, impartial and well-evidenced voice for environmental protection and enhancement.

Answer: Yes

This objective is vital to the success of the proposed body, but success will be dependent upon detail not included within the consultation. For example, that the historic environment is included within the remit for the organisation alongside the natural environment.

b) Be independent of government and capable of holding it to account

Answer: Yes

This objective is vital to the success of the proposed body, but success will be dependent upon detail not included within the consultation.

c) Be established on a durable, statutory basis

Answer: Yes

This objective is vital to the success of the proposed body, but success will be dependent upon detail not included within the consultation.

d) Have a clear remit, avoiding overlap with other bodies

Answer: Partially, but with amendments

It is likely that the new body will need to liaise with other bodies in support of its envisioned roles. Therefore, the objective should not be one of simply avoiding overlap, but of achieving effective partnership with other organisations. For example, the body may need to work with Historic England in order to supply specialist assessment of protections relating to the historic environment.

e) Have the powers, functions and resources required to deliver that remit

Answer: Yes

This objective is vital to the success of the proposed body, but success will be dependent upon detail.

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

Answer: Partially, but with amendments

We would like to emphasise the importance of the defined remit for the proposed body being subject to a clear and broad definition of the environment and environmental protection (including the historic environment). Additionally, there must be recognition that environmental protection is not simply to be balanced against other priorities, but that the achievement of environmental protection is fundamentally linked with the pursuit of other priorities. For example, economic growth should be pursued in concert with environmental protection and social benefit, to the extent to which the pursuit of one objective does not compromise the others. This sustainability objective should be at the core of the body's need to balance environmental protections against other priorities, rather than a wording which could compromise sustainability. It is very important that the environment is unequivocally defined to include the historic environment alongside the natural environment.

g) Other objective not listed

Answer: Yes

‘Set a broad agenda and remit, as befitting the many areas of societal and political activities which have a role in shaping and maintaining the environment.’

As the consultation stands, all examples used are of natural environment elements. This sets a narrow scope for what the environment is, how it is affected by human activity, and how it influences us in return. In addition to natural capital, the environment also creates cultural capital for people, and through interactions with the environment, people may achieve heritage and wellbeing benefits. These connections with culture and heritage, among other things, should be within scope of the organisation. Previous experience, however, shows us that these relevances need to be clearly in place and enforced in order to become embedded in practice. See, for example, the Memorandum of Understanding between Historic England and DEFRA.

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

Answer: Yes

Yes, in the context of the application of environmental principles to extant law. The body should avoid duplication with other bodies, such as EAC and EFRA, but will have a uniquely broad role, as the application of environmental principles will be relevant across wider areas of policy-making, for example, historic environment legislation.

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

a) Annual assessment of national progress against the delivery of the ambition, goals and actions of the 25 Year Environment Plan

Answer: Yes

The body should have a remit akin to the EEA to provide oversight and report on progress of 25 YEP aims and objectives. Again it is very important that the environment is unequivocally defined to include the historic environment alongside the natural environment.

b) Provide advice when commissioned by government on policies set out in government strategies and other published documents and how they are being implemented

Answer: Yes

The body should have a remit akin to the EEA to provide reports and advice, although this remit should be limited to the application and interpretation of environmental principles. Again it is very important that the environment is unequivocally defined to include the historic environment alongside the natural environment.

c) Respond to government consultations on potential future policy

Yes

Yes, although this remit should be limited to the application and interpretation of environmental principles. Again it is very important that the environment is unequivocally defined to include the historic environment alongside the natural 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?

Answer: Yes

Yes, although this remit should be limited to the application and interpretation of environmental principles. We reiterate the need for, in setting the terms for the body's 'specific and confined focus', a broad and inclusive definition of the environment, comprising natural, historic, and public/community relationships to the landscape, and therefore that the new body will be open to complaints originating from these areas of application of environmental principles.

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?

a) Binding notices

Answer: Don't know

It will be important for the new body to have all the tools that it needs to reasonably meet its targets with regard to environmental improvement. We would be willing to see the new body receive any such powers.

b) Intervention in legal proceedings

Answer: Don't know

See previous answer.

c) Agree environmental undertakings

Answer: Don't know

See previous answer.

d) Other powers not listed above

No

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?

a) Non-Ministerial Departments (NMD's) and Non-Departmental Public Bodies (NDPBs)

Answer: Yes

We do not think that it is appropriate to provide an exclusive list, but rather think that it should be possible to directly or indirectly oversee any public body, in as far as that body has a locus to implement environmental principles. Bodies may include, for example, Historic England, National Heritage Memorial Fund/Heritage Lottery Fund, Forestry Commission, Environment Agency, Natural England).

We understand that not all bodies will be actively monitored to the same degree, but that the body should have powers to investigate in the event of breaches of the law coming to light is important.

NPDBs, in particular, are responsible for the delivery of many environmental protection activities and therefore should certainly be within scope for of the new body. Direct oversight is likely to be more effective than requiring sponsoring Departments to take responsibility on behalf of arms-length bodies.

b) Local authorities

Answer: Yes. All local authorities should be in scope.

Local authorities are responsible for the delivery of various environmental protection activities and therefore should be included within the scope for oversight for the new body. Any

intervention should be overarching on issues relating to environmental principles and their implementation through policy, rather than case specific. We understand that it would be resource intensive to actively monitor all local authorities, and respect the need to manage this workload. It is also important that the new body concerns itself with all relevant legislation, not just transferred EU legislation.

c) Other public authorities

No opinion

d) Other response

No

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) EU environmental law retained under the EU (Withdrawal) Bill

Answer: Include all

Again, it is very important that the environment is unequivocally defined to include the historic environment alongside the natural environment, i.e. not just areas covered by EU Directives.

b) Domestic environmental law not based on EU legislation

Answer: Include all

c) International environmental law

Answer: Exclude

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

a) Climate Change

Answer: Agree

b) Agriculture

Answer: Agree

This is a critical area to ensure that the remit of the new body unequivocally recognises the contribution of the historic environment and heritage to the environment, and is included with the body's remit. There is significant potential to increase the degree to which cultural heritage/historic environment is recognised and integrated with agricultural and land use legislation and policy.

Answer: Agree

This is an important area to ensure that the remit of the new body explicitly recognises the contribution of the historic environment and heritage to the environment, and is included with the body's remit. There is significant potential to increase the degree to which underwater cultural heritage is recognised and protected with marine management and conservation legislation and policy.

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

Answer: Yes

Sustainable development is a key driver in the planning process, and it would be extremely valuable for the new body to have an influence over planning policies sufficient to ensure that environmental protection and sustainable development are effective and meet expectations under commitments to environmental principles. The new body should therefore have a clear role in advising on policy change – to the extent that implementation of environmental principles is an overarching theme – and while it should respect current systems and processes, including those for decision-making and appeal, the new body could contribute to them in an advisory capacity.

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

A critical concern for us in this consultation and other aspects of the environment reform currently being undertaken (Environment Bill, Agriculture Bill), or recently completed (25 Year Environment Plan) is the lack of clarity or consistency over what the scope and definition of 'environment' is expected to cover, and how well understood this is.

For example, in this document there is no explicit mention of cultural heritage or the historic environment (note: the term historic environment is used extensively in planning policy and in protection regimes for cultural heritage assets, but the phrase cultural heritage is more

common in environmental policy. Cultural heritage encompasses the historic environment – e.g. heritage sites, physical assets, landscape features – as well as broader elements of material and intangible culture and identity – e.g. agricultural practices, relationships to nature), and few mentions of wider non-natural aspects of our environment or discussion of how human or cultural landscapes (including settlements, agricultural land, or other managed landscapes – which make up almost the entirety of our islands) are to be understood within the scope of the term environment.

We understand that archaeology and the wider historic environment are part of the environment in several core ways and share many characteristics, including a finite nature and a sensitivity to unmanaged change. Public perceptions of landscape and environment are also inseparable, as natural landscapes are almost always shaped by past and present cultural activity. Furthermore, seeking to protect and manage either natural or cultural heritage has the potential to see benefits to the other.

And as we have explained in our answers within this consultation, we rely upon the existence of various environmental principles to ensure that systems enable sustainable management of the historic environment and that harm is minimised, and public benefit generated to mitigate unavoidable harm to heritage assets as a result of development processes or agricultural activities.

Clear, consistent, and overarching recognition that these principles are considered to apply to cultural heritage/historic environment, including to archaeology, will be necessary to the continued protection and positive management of these elements of the wider environment.

We recommend that government uses the opportunity of this national policy statement to set out a clear and inclusive definition of the environment which will overarch understandings across government. Previous statements by the Secretary of State, the 25 Year Environment Plan, and recent Health and Harmony white paper have all included cultural heritage within their ambit in places, and we are pleased to note that. However, there are also areas in which there appears to be a lack of recognition, and therefore there is a fear that without a clear definition, in some places cultural heritage may fall between the cracks. This makes little sense, as the cultural aspects of landscape cannot be separated from the natural. As such, imposed separation from management and protection regimes for the natural environment could cause lasting damage to historic preservation and limit the benefits that it has the potential to contribute to.

We recommend that government considers whether a formal definition, derived from the current 2004 Environmental Information Regulations which includes “cultural sites and built structures” (Part 1, 2 (f)). However, we recommend that in widening this definition to apply

not simply to environmental information, but to the environment itself, attention is paid to the fact that aspects of the environment can be physical, biological, social, and cultural, and that these naturally and culturally produced physical surroundings are important interconnected elements of the environment.

We also join colleagues from across the historic environment sector (including Rescue: The British Archaeological Trust and the Association of Local Government Archaeological Managers and Employers) in proposing the following description of the environment, adapted from the OECD's definition of the environment:

“The environment is the totality of all the external conditions affecting the development and survival of life on our planet. Humanity is dependent upon these naturally and culturally produced physical surroundings in all its activities. Aspects of the environment can be physical, biological, social, and cultural.”

If you have any further questions or comments, please do not hesitate to contact me.

Yours sincerely,



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