



CONSULTATION RESPONSE ON ENVIRONMENTAL PRINCIPLES AND GOVERNANCE IN SCOTLAND

by the
Sustainable Inshore Fisheries Trust
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Question 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?

SIFT supports the inclusion of the four EU environmental principles in legislation. Indeed we believe that new legislation is a prerequisite for meaningfully establishing the “new legal duty”. Without this, Scotland will cease to have the environmental protection provided by Article 191 of the Treaty on the Functioning of the European Union (TFEU), which states that environmental policy “shall be based on” the four principles.

However, SIFT is concerned that simply having a duty to “have regard to” the principles, could enable Ministers to circumvent the principles and falls short of the aim of the treaty. So SIFT is clear that the proposed duty should retain the Treaty’s words of “shall be based on”. If “shall be based on” is deemed unacceptable, other wordings should be adopted to ensure that the Treaty’s aims are not weakened, potentially using the phrase ‘ensure the application of’ [the four principles].

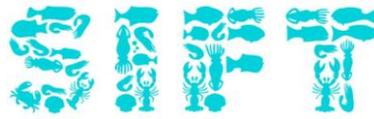
It is also vital that there are mechanisms to ensure that the application of the duty is reported on, monitored and scrutinised and that the legislation introducing the duty is presented to Parliament and scrutinised by a Committee.

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

No. This would be too narrow. TFEU includes all institutions of the Union, and all their functions. A similar approach should be adopted in Scotland. So the duty to base policy on the EU environmental principles should apply to all public bodies and their functions (where they impact on the environment), just as the Nature Conservation (Scotland) Act 2004; Part 1, Section 1 imposes a duty on: “*every public body and office-holder, in exercising any functions, to further the conservation of biodiversity*”.

Question 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?

The duty should not be restricted to the four EU environmental principles. Other principles should also be included, as follows:



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- the “right to a clean and healthy environment” – as recommended by the First Minister’s Advisory Group on Human Rights Leadership¹.
- ‘sustainable development and integration’ - these principles are proposed for inclusion in the UK Government’s Environment Bill², so their inclusion would bring consistency with the rest of the UK.
- ‘non-regression’ – as included in the UNFCCC’s Paris agreement. This is fundamentally important if the Scottish Government genuinely intends to fulfil its commitment “*to maintain or exceed EU environmental standards*”.

Question 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, a policy statement is necessary, and there should be a duty on Ministers and Public Bodies to have regard to it. The wording of such a policy statement is critical so it should be the subject of a public consultation prior to adoption.

Question 5: What do you think will be the impact of the loss of engagement with the EU on monitoring, measuring and reporting?

Loss of engagement with the EU will inevitably be damaging to Scotland’s environment and its ability to contribute to multinational efforts to address international environmental problems. The EU has provided structures for Scotland to contribute to monitoring, measuring and reporting. After an EU exit there will be lack of clarity on reporting requirements, on responsibilities of different institutions, on how reporting will be scrutinised and on how data will be benchmarked.

Until a clear and effective new monitoring, measuring and reporting regime is established, SIFT believes existing EU reporting requirements should continue and Scotland should seek to retain affiliate membership of EU agencies, particularly the European Environment Agency.

Question 6: What key issues would you wish a review of reporting and monitoring requirements to cover?

All existing issues that are covered.

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

Yes. SIFT is concerned that loss of scrutiny will adversely affect the quality of performance of government agencies relating to the environment.

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

The Scottish Government should:

- establish a new and independent environmental watchdog body with scrutiny powers which reports to Parliament; and
- Increase the scrutiny powers of Parliament potentially through the establishment of a Committee broadly equivalent to Westminster’s Environmental Audit Committee.

¹ <https://humanrightsleadership.scot/>

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766849/draft-environment-bill-governance-principles.pdf (clause 2(e) and (f)).



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

Given that the Scottish Government intends to emulate European environmental standards, Scotland should establish scrutiny arrangements which cover the maximum range of policy areas, as set out in

in Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information. Thus, the areas to be included would cover any law, policy or decision that impacts on the environment as set out in Environmental Information (Scotland) Regulations 2004.

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

It will be harmful to the Scottish environment. Although EU complaint mechanisms are rarely used, their existence is sufficient to promote improved environmental performance by public authorities. Domestic alternatives to EU complaint mechanisms (essentially Parliamentary Inquiry or Judicial Review) are so awkward and, or, expensive that they fail to act as an effective deterrent to poor performance.

Question 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 a new function will be required, and to that end SIFT recommends that consultation be undertaken in regard to the establishment of an independent, statutory Scottish equivalent to the UK Government's proposed Office for Environmental Protection.

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

It is reasonable to assume that, in the absence of satisfactory replacements, the loss of EU enforcement powers will result in a lowering of Scotland's environmental standards. The failure to enforce existing environmental standards is already one of the principle barriers to improvements to Scotland's environment. This problem can only worsen if a further layer of enforcement powers are removed.

Question 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?

In addition to the improvements in monitoring, reporting, and scrutiny (as set out above), an Environmental Court should be established. The Court must have the powers to:

- quash decisions;
- order legal or administrative actions to be taken;
- require management measures/restoration.