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RESCUE: The British Archaeological Trust is an independent non-political charitable trust dedicated to supporting archaeology and the historic environment in Britain and abroad. As a charitable trust, RESCUE does not receive any state support, being entirely reliant on the contributions of subscribing members to support the organisation's work.

RESCUE welcomes the consultation on the development of the Environmental Principles and Governance Bill, and has concerns that the documents, *Environmental Principles and Governance after the United Kingdom leaves the European Union* and *A Green Future: Our 25 Year Plan to Improve the Environment* cause.

Relationship between the cultural and natural environment

1. As indicated by our title, we are concerned with the environment, that is, *both* the cultural (historic) and natural environment. The fundamental issue that arises from this consultation is that it – at best – overlooks the relationship between the cultural and natural environment, or at worst actively ignores it. While we approve of Government's aim to 'ensure we leave our environment in a better state than we inherited it' through what aims to be a new and 'world-leading, independent environmental watchdog', it would – by its very nature – *not* be world-leading at all. International and European organisations named in the document are acutely aware of the strong relationship between natural and cultural environments, and of course the *cultural* elements that are overlooked in what the Prime Minister labels as 'our most precious inheritance' in the 25 Year Environment Plan.
 - 1.1 Agenda 21 (1992) is mentioned in Section 4 as one of the many international instruments which underpins clear principles with regard to sustainable development. It also has now developed 'Agenda 21 for culture (2002)' in which it recognises culture as a fourth pillar of sustainable development alongside the environment, economics and social inclusion. As a fourth pillar of sustainability, it includes the preservation of cultural heritage and promotes development of and access to culture.
 - 1.2 The Rio Declaration on Environment and Development (1992) proclaims 27 principles in which the precautionary principle and polluter pays principle are included -both essential for the protection of the historic and natural environment. The Rio+20 meeting also recognised culture as an essential part of fostering sustainable development, acknowledging its contribution to the economic, social and environmental dimensions of development.
 - 1.3 The relationship between cultural and natural environments is increasingly recognised, with – for example – international organisations such as the IPCC and ICOMOS addressing this in their work.

The failure to include cultural landscape, ancient woodlands and all other representations of the combined works of nature and peoples ultimately reduces the influence and reputation of this new Bill internationally.

We would also draw attention to the fact that sectors such as building and infrastructure development have profound impact on climate change and the environment (for instance, the relationship between heating and electricity, carbon emissions and housing).

Lack of definition of environment

2. We suggest an explicit definition of the environment be introduced. Adapted from the OECD's definition as well as the International Epidemiological Association of the environment, the definition appropriate for the emerging Bill's aim to 'champion sustainable development' and 'ensure we leave our environment in a better state than we inherited it' should be:

The environment is the totality of all the external conditions affecting the life, development and survival of an organism, including the naturally, socially and culturally produced physical surroundings on which humanity is entirely dependent in all its activities. The environment can be divided into physical, biological, social and cultural factors, any or all of which can influence health status in populations.¹

A clear and explicit definition of the environment and what it includes is **essential** should any law be required to hold offenders to account.

Lack of inclusion of cultural/heritage authorities such as Historic England in helping to deliver the remit of the new body

3. In Section 11, wider environmental governance includes the Environment Agency and Natural England but excludes Historic England. Natural and Historic England must both work in unison to ensure England's environment is protected.
 - 3.1 There is no mention of any national body overseeing the protection of the cultural/historic environment
 - 3.2 There is no mention of any advisory committee that explicitly aims to preserve and protect the cultural/historic environment

We suggest the new body alongside the Bill works with existing bodies nationally as well as coordinates with international bodies to ensure best practice in areas of considerable impact on the natural and cultural environment as key to sustainable development goals and the root of much research and study.

The new Environmental Bill must align itself with existing documents but does not do so

4. There is a missed opportunity here in that the ambitions of the 25 Year Environment Plan have been set so high – to leave the environment in a better state than that in which we inherited it. Its plans will require the planning system to play a key part in its delivery, yet it was not embedded firmly into the revision of the National Planning Policy Framework.
 - 4.1 The Bill's interaction with the planning system section is minimal and fails to recognise that development is a core obstacle to achieving: sustainability, significant decline in pollutants/emissions, clean water and land use, climate change ambitions, rises in biodiversity and

¹ Last, J.M. (Ed). 1995. *A Dictionary of Epidemiology*. New York: Oxford University Press

so on. Development is also responsible for the huge losses of cultural and natural landscapes, which must be addressed and assessed with more world-leading approaches and strategies.

While the UK has other national priorities such as delivering economic growth and housing, we do not feel that there is a body that will ensure a balance in conflicting and contradicting agendas. The function of the new body is to ensure Government is held accountable however the document insists that Government can treat the new body as advisory rather than legally binding. This function is contradictory to the aim to ensure the 'pledge to hand over our planet to the next generation in a better condition than when we inherited it'.

Principles in International and/or European Union law and policy

5. We welcome the inclusion of the two core principles: i.e., the precautionary principle and the polluter pays principle; however, while Annex A includes the Prevention Principle, there is a lack of any clear understanding as to what measures (or what services) will be undertaken to ensure this in practice.
- 5.1 We urge the UK to embed the international treaties which it has signed into UK law and enable them to have impact in planning and other consent decisions. This includes the World Heritage Convention, and the European Landscape Convention which recognises 'landscapes' in law as 'an expression of the diversity of their shared cultural and natural heritage, and a foundation of their identity'. Recognised landscapes are to be subject to policies for their management, among other obligations.

Any future national Bill must recognise advances and developments made internationally and ensure that agreed principles, milestones, and best practices are embedded into UK law. The UK is signatory to a range of international treaties relevant to the natural and cultural environment, of which are neither law nor have direct force in planning or other consent decisions. There needs to be a clear understanding as to which obligations the UK is in breach of, i.e. the Valletta Convention, and ensure world-leading principles are enshrined in UK law.

Enforcement

6. We are concerned about the current cuts that national bodies have seen which has diminished their capability and responsibility to Government as advisory bodies. This includes Historic England among others.
- 6.1 In Section 98, we object to this body not having the authority to deal (or assist) other bodies in addressing violations concerning the protection of the cultural/natural environment that may be conducted by private businesses and third parties. We ask Government how can enforcement in this capacity be addressed.
- 6.2 The body should be able to hold all tiers of government accountable (Section 117)

There needs to be legally enforceable instruments and clear mechanisms of enforcement for the protection of the environment. Government should recognise its legal obligations outlined by legislation and the direct impact of changes in enforcement under austerity or cuts to services/resources as well as how this may lead to violations of responsibility.

In addressing questions from the consultation, please see below:

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

- a) Sustainable Development

- b) Precautionary Principle
- c) Prevention Principle
- d) Polluter Pays Principle
- e) Rectification at Source Principle
- f) Integration Principle
- g) Other environment principles not listed

We do not believe that ranking these important principles is a valid exercise. However, Rescue would emphasise the Integration Principle because the protection of the cultural and natural environment must be integrated into the definition and implementation of policies and activities.

Question 2. Do you agree with these proposals for a statutory policy statement on environmental principles (this applies to both Options 1 (Environmental principles listed in the Bill) and 2 (Environmental principles only set out in the policy statement))?

There needs to be a clear and explicit recognition that balancing national priorities alongside environmental priorities is key to sustainable development goals and that the environment **must** be considered a national priority.

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)?

Option 1

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

Yes. Because the EU is built up of 28 member-states, there are strong independent mechanisms in place. As this new body is set out in the document, it appears that despite its role in holding Government to account – the Government can simply ignore it. This weakens the overall objective and does not align with the core message of pledging that the planet will be in a better condition through the 25 Year Plan.

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.
- b) Be independent of government and capable of holding it to account
- c) Be established on a durable, statutory basis
- d) Have a clear remit, avoiding overlap with other bodies
- e) Have the powers, functions and resources required to deliver that remit
- 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
- g) Other objectives not listed

The new body must work with others and by definition there will undoubtedly be overlapping areas of interest. The key will be to avoid competing interests and establishing appropriate scope of remit and sphere of influence. The body must also align itself with relevant international bodies to ensure that the claim to being 'world-leading' is both credible and sustainable. We are sceptical that funding will allow it to be as successful as these objectives suggest, noting that existing bodies with similar quasi-independent status as Government advisors and/or regulators struggle in their ability to hold government accountable or provide advice independently, for fear of having their (Government provided) funding reduced.

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

Yes

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
- b) Provide advice when commissioned by government on policies set out in government strategies and other published documents and how they are being implemented
- c) Respond to government consultations on potential future policy
- d) Other response

Yes. They should also report on other national bodies whose interests are aligned with this new body.

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. Members of the public are the core of democracy and are critical citizen watchdogs.

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
- b) Intervention in legal proceedings
- c) Agree environmental undertakings
- d) Other powers not listed above

Yes. Other mechanisms need to be explored further.

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)
- b) Local authorities
- c) Other public authorities
- d) Other response

All of the above. Third parties and the private sector must also be held accountable. To be effective the body must be able to act against government and its interests, in any sector, if there is a breach of environmental law.

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
- b) Domestic environmental law not based on EU legislation
- c) International environmental law

We must ensure that international environmental law is maintained, and it is important for the new body to be made aware of any violations of either domestic or international law.

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

Climate Change

Agriculture

Fisheries and the Marine Environment

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

Absolutely. It is an oversight that the NPPF did not embed the 25 Year Plan. It is also a failure that the current document lacks any real and significant recognition of the importance of Planning Policy in the success of the ambitions laid out in the 25 Year Plan.

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

The natural and cultural environment is recognised as a global challenge – or priority – and should be equally prioritised as such on a national level. Nine of the 17 sustainable development goals are directly linked to the environment (i.e. SDG 2, 3, 6, 7, 11, 12, 13, 14, and 15), demonstrating its immeasurable relationship to sustainable growth and economic development.

The UK government's 'Priority regulatory outcomes for England' (2011) also highlighted five priorities as (1) support for economic growth; (2) protection of the environment; (3) improving quality of life and wellbeing; (4) promoting public health and healthier lives, and; (5) ensuring a safe, healthy and sustainable food chain. Equally, the UK National Infrastructure Commission report (2017) has identified 'congestion, capacity, and carbon' as key priorities for consideration and consultation.

While we develop new policy to help protect the environment – or, put another way – tackle increasing challenges and concerns towards present day practices destroying the environment, we need to ensure we have strong and impenetrable enforcement instruments in place. We also need to rethink current policy's impact on the environment, and how we can ensure the UK is world-leading through research and innovative development to enable the application of innovative practices across policy.