

Environmental Principles and Governance In Scotland

Overview

General Comments

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Detailed Response

Specific Comments

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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?
<p>We agree that the environmental principles set out in the EU Aarhus Convention should continue to apply in Scotland, and that the most appropriate means to implement this would be to place a duty on ministers to have regard to this in forming policy and legislative proposals.</p>	
2	Do you agree that the duty should not extend to other functions exercised by Scottish Ministers and public authorities in Scotland?
<p>The consultation paper rightly highlights the difficulties with extending the application of these principles across all powers and functions of government. We therefore agree with the Government's proposal to retain the principles at the environmental policy and legislative proposals level, consistent with current EU practice.</p> <p>Scottish domestic legislation already sets broader strategic environmental requirements and principles on public bodies in areas such as carbon, climate change and biodiversity. It may be appropriate to review the range of environmental duties placed on public bodies across Scotland for consistency with any duties placed on Scottish Ministers.</p>	
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?
<p>We agree that the primary focus should be the four EU principles to ensure continuity and alignment with the EU. There is at least scope to consider further principles within this duty, but we suggest this must be done carefully.</p> <p>With respect to principles such as biodiversity and sustainable development</p>	

set out in the UN's 1992 Rio Declaration, Scottish domestic legislation already sets duties on public bodies. The Scottish Government is increasingly setting strategic outcomes in the context of the UN Sustainable Development Goals and further principles such as access to environmental information are already contained within domestic legislation.

It would be prudent to focus on the four EU principles in terms of the new duty, but a review of various international environmental principles may be beneficial to understand how they already apply in Scotland, or if there are gaps that should be closed.

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?

We believe a policy statement guiding the interpretation and application of the principles within a duty would be a helpful step.

In addition to setting out how Scotland will remain aligned with EU environmental principles, the policy document may also clarify Scotland's approach to some of the wider principles considered in Q3, or confirm how they are covered in current domestic policy and legislation. Whilst these would not be captured within the new duty, setting out Scotland's approach may help government, regulators and operators understand the broad suite of principles and how they are expected to apply.

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

Given that a key objective of the Scottish Government is to ensure EU-equivalent standards are maintained, losing engagement with the EU may present challenges in terms of:

- assessing performance against directives;
- understanding/explaining or learning from steps taken to achieve compliance across member states; and
- understanding what constitutes acceptable performance within the EU

This requires that a method to assess Scotland's performance and calibrate it with European performance in order to determine Scotland's compliance levels.

There is a risk that we lose access to sources of information on standards and effective implementation. As discussed with Scottish Water at the recent Scottish Government engagement workshops on this consultation, this can be demonstrated by considering two different of environmental directives relevant to the water industry, the Urban Waste Water Treatment Directive (UWWTD), and the Water Framework Directive (WFD). These directives take different approaches in setting legislative standards, and both demonstrate how engagement across Europe can be important to inform implementation.

The UWWTD takes a generally prescriptive approach, setting environmental standards centred on the size of population connected to waste water systems, the type of receiving water (coastal or freshwater) and sets expectations on specific types of treatments to be used. The directive, as transposed to domestic legislation, requires extensive implementation guidance to help member states take proportionate approaches to potentially significant capital investment. This is centred on the principle of Best Technical Knowledge not Entailing Excessive Cost (BTKNEEC).

Performance is reported across Europe every 2 years and this has helped the water industry in Europe to understand the different approaches that can be taken, and establish a view of BTKNEEC for investment.

The UK has been influential at a European level in informing approaches to compliance, particularly environmental outcome based modelling to design wastewater systems, recognising BTKNEEC principles. The EU is currently using reporting information gathered from across Europe, coupled with evidence from Pan-European groups such as EUREAU (European trade association for the water sector) to inform reviews of the directive. Continued engagement would help influence development and implementation of the directive, but also inform practice in Scotland.

The WFD is different – it takes an outcome based approach, setting a goal of “good ecological status” for water bodies across Europe. Setting an ecologically based quality outcome is correct in terms of delivering for the environment, but also complex in that there are different ecological types across Europe. Extensive pan-European technical work underpins the way in which standards are set in member states to ensure a consistent quality focus across Europe, and this is under continual review.

Outside of the EU, if there is the intent to continue to meet or exceed European standards, there would be a need for continued assessment and ‘intercalibration’ of ecological performance in Scotland with the rest of Europe.

6	What key issues would you wish a review of reporting and monitoring requirements to cover?
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As identified in the consultation paper there is a significant amount of environmental and regulatory performance information under the current EU reporting requirements.

The scope of the review is therefore broad in terms of legislative instruments and data, and we suggest it considers and clarifies the types of data on environmental performance, regulatory policy, implementation and compliance with EU law.

The review might consider if there are overlaps with the same (or similar) data reported for other purposes (e.g. domestic performance statistics), and

whether there are opportunities for rationalisation.

From an EU legislative equivalence perspective there will be compliance statistics that continue to be important in their own right. However, there may be an opportunity to consider the purpose and use of information to support environmental outcomes. Scottish Public Bodies already capture and report significant amounts of information, and make this available via portals such as the SEWEB website (<https://www.environment.gov.scot/>).

There are further extensive data sets held on the Scottish Public Bodies performance in terms of Scotland's Climate Change Act and the Biodiversity Reporting Duty within the Nature Conservation Act. We would welcome review of the way in which this information and the platforms on which it is held could be used to enable us to clearly track Scotland's compliance position, but also to inform future strategic environmental planning.

7

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

There is a risk that in the absence of scrutiny, environmental performance may fall, making it difficult for the Scottish Government in the long term to achieve its aim of maintaining equivalence with EU standards. In Scotland, the structures exist to continue to generate and report information, and there also exist bodies that can undertake the role of scrutinising performance (e.g. Scottish Parliament, Audit Scotland, and Scottish Public Services Ombudsman). A key consideration is the role, remit and potential for additional powers to fulfil this function.

8

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

As noted in our answer to Q7, there are several bodies within Scotland that may have a role in scrutinising Scotland's performance against EU derived legislation. One approach may be to consider extending the role and remit of Scottish Bodies that already undertake a scrutiny role, such as Scottish Parliament Committees, Audit Scotland and the Scottish Public Services Ombudsman.

9

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

Scrutiny centred on the current level of EU legislative compliance reporting should form the basis for future arrangements. Broader scrutiny of Scotland's performance against domestic environmental legislation and strategies, currently provided by Parliamentary Committees etc, may be further considered in terms of ensuring a proportionate and efficient oversight of Scotland's environmental and compliance performance.

10	What do you think will be the impact in Scotland of the loss of EU complaint mechanisms?
See response to question 11 below	
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?
<p>Answer to Q10 and 11: Since its inception, the Scottish Parliament has had a very active engagement with the public through the Public Petitions process. Environmental issues have featured prominently within this and Scottish Water has been involved in addressing a number of issues raised by through this route.</p> <p>The Scottish environmental regulatory process also provides mechanisms to make representations on regulatory decisions to regulators, and to write to Scottish Ministers seeking ministerial review of decisions made.</p> <p>By comparison with these mechanisms there have been relatively few EU level complaints relevant to Scotland.</p> <p>It may be appropriate to consider the extent to which mechanisms such as the Petitions Committee and direct complaints to statutory bodies such as SEPA, SPSO etc may provide adequate complaint mechanisms.</p>	
12	What do you think the impact will be in Scotland of the loss of EU enforcement powers?
Scottish Water has no view on Q12	
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?
Scottish Water has no view on Q13	



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