

NEMT Response to SG Consultation (closes 11 May 2019) on  
**Environmental Principles and Governance after Brexit**  
As sent via online Q&A website, 10 May 2019  
Ken Thomson and Dave Windle

**Q1:** Do you agree with the introduction of a duty to have regard to the four EU principles in the formation of policy, including proposals for legislation, by Scottish Ministers? (*SG: Yes*)

**Q2:** Do you agree that the duty should not extend to other functions exercised by Scottish Ministers and public authorities in Scotland? (*SG: Yes, i.e. Ministers only*)

**Q3:** 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? (*SG: the 4 principles only*)

**NEMT Response(s):** We suggest that the principles include reference to the UN's Sustainable Development Goals (SDGs), since these represent a commitment already agreed to by the UK and Scottish Governments, and are widely understood and supported.

**Q4:** 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? (*SG: Yes*)

**NEMT Response:** We support, but are troubled by, this suggestion. Unless well drafted, a policy statement could dilute or distort in favour of, say, economic development, whereas environmental protection should be paramount. Any such statement should be drafted after wide consultation, and reviewed every (say) 5 years by the Scottish Parliament.

**Q5:** What ... will be the impact of the loss of EU engagement [re Monitoring, Measuring, Reporting]?

**Q6:** What key issues [should] a review of reporting and monitoring requirements cover?

**NEMT Response(s):** The proposed review is sensible, but should take account of (i) data comparability between Scotland and other countries, and (ii) the risk that time and other pressures will lead Scottish agencies to reduce the collection of data, and to minimise reporting to the general public, i.e. beyond favoured NGOs.

**Q7:** Do you think any significant governance issues will arise as a result of the loss of EU scrutiny and assessment of performance?

**Q8:** How should we meet the requirements for effective scrutiny of government performance in environmental policy and delivery in Scotland? (*SG: possibly a new independent body (along lines of Scottish Information Commissioner?), with adequate scope and powers.*)

**NEMT Response(s):** The loss of EU scrutiny is of concern. The Information Commissioner seems to do a reasonable job in dealing with FOI requests, but the task of dealing with environmental complaints will be a good deal more complicated, and will rely on specialist staff outside the agencies directly involved. Any new body, corresponding to the proposed UK Office of Environmental Protection but with powers to levy fines on public bodies and to report directly to the Scottish Parliament, would need real scope, powers and resources.

**Q9:** Which policy areas should be included within the scope of any scrutiny arrangements?

**NEMT Response:** We suggest all 10 areas as suggested.

**Q10:** What do you think will be the impact in Scotland of the loss of EU complaint mechanisms?

**Q11:** Will a new function be required to replace the current role of the European Commission ...?

**NEMT Response(s):** Loss of EU complaint mechanisms will be a problem, since experience suggests that such complaints receive more attention (at least informally, if not formally) than PQs to Ministers. It is essential that a body (new or existing) should be established that reports to the Scottish Parliament, and that its adjudications are taken into account by Scottish courts in respect of complaints about compliance with environmental law.

*Q12:* What [will be] the impact in Scotland of the loss of EU enforcement powers?

*Q13:* What do you think should be done to address the loss of EU enforcement powers?

*NEMT Response(s):* The CJEU does not levy large fines but the threat gets agency attention. The logical body to take over from the CJEU is the UK Supreme Court, but this may be a sledgehammer to crack a nut. This aspect could be added to the powers of an appropriate senior Scottish court, but we would prefer a specialist body (new or existing, UK or Scottish) whose findings would of course be subject to ultimate appeal to the supreme Scottish and/or UK law courts.