



House of Commons
Environmental Audit Committee

Scrutiny of the Draft Environment (Principles and Governance) Bill

Eighteenth Report of Session 2017–19

*Report, together with formal minutes relating
to the report*

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Environmental Audit Committee

The Environmental Audit Committee is appointed by the House of Commons to consider to what extent the policies and programmes of government departments and non-departmental public bodies contribute to environmental protection and sustainable development; to audit their performance against such targets as may be set for them by Her Majesty's Ministers; and to report thereon to the House.

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Summary

The draft Environment (Governance and Principles) Bill aims to create a new framework for environmental governance, as part of a wider Environment Bill in 2019. It is a crucial piece of legislation to maintain protection for the environment after leaving the European Union, yet the pre-legislative scrutiny process has identified some serious concerns with the proposals as they currently stand, which must be resolved before the Bill is introduced.

While we welcome that we have had the opportunity to scrutinise the draft Bill before its introduction, we have only had sight of the sections on governance and principles. Therefore, our conclusions and recommendations are qualified as we are unable to assess the full implications of the Bill for the environment.

The legal definition of the environment in the Bill should encompass at the very least the definitions such as those in the Natural Environment and Rural Communities Act 2006, the Environmental Protection Act 1990 and the Aarhus Convention. The scope of the Bill is largely limited to England, which is disappointing given that UK-wide cooperation would enable more efficient and coordinated action. It is welcome that the oversight body will have jurisdiction in Northern Ireland. The Government must now set out how it will practically achieve this and how oversight will be coordinated with equivalent arrangements in Scotland and Wales.

The Bill is a missed opportunity for taking a holistic approach to environment and climate change, placing them at the heart of Government policy. From what we have seen, the Bill lacks coherence with many Government Departments' responsibilities exempted. Taxation and spending have been explicitly excluded from the application of the principles - as has defence, one of the largest landowners in Britain. There is no enforcement mechanism to replace the role of the European Commission to enforce action on climate change mitigation, which weakens the Climate Change Act and should be remedied when the final Bill is published. It is clear where the competing interests of different Departments have influenced the drafting of the Bill, which weakens its effectiveness. Defra must take ownership and ensure that the rest of Government is on board with its ambitions prior to the Bill's introduction.

We consider the following areas of the Bill are deficient and require attention:

Environmental principles

The environmental principles which guide and inform European Union legislation and policy have been severely downgraded by the proposals in the Bill. Their application is limited to Minister's action rather than all public bodies; they are subject to a number of exclusions; and to the veto of the Secretary of State. They do not link to the rest of the Bill or other legislation. Due to the weak drafting of the duty it could create a great deal of litigation. We recommend that an overarching objective to achieve a high level of environmental protection is included in the Bill to guide environmental policy.

We have still not had sight of the policy statement which will guide interpretation of the principles, so it is impossible to assess the true impact of the Bill. We recommend

that the Government looks again at the principles and puts them on an unqualified legal basis in relation to environmental policy. The policy statement must be subject to Parliamentary and Select Committee scrutiny.

Oversight

We welcome the Government's ambition to establish a world-leading, green governance body—the Office for Environmental Protection (OEP)—to provide advice, scrutiny, reporting and enforce environmental law. The Secretary of State has suggested that this body could go further than the European Commission, yet the proposals in the Bill fall woefully short.

We previously set out how this body should be constituted to ensure that it was independent; to be free to criticise the Government and hold it to account. The Government rejected our previous recommendations from July 2018, which suggested a greater role for Parliament in its governance, funding and appointments processes. The evidence to this inquiry was near-unanimous in supporting a greater role for Parliament and we were informed that, contrary to Government suggestion, there would be no constitutional impropriety in this.

We stand by our previous recommendations and conclude that the OEP, constituted as a Non-Departmental Public Body, will not have the independence required of a watchdog of this nature. Greater scrutiny is needed in the appointments process for the OEP's board and chief executive and its budget setting process. Greater independence is required for its communications and its ability to conduct investigations and report any interference from Ministers or Government officials. The Government must commit to a longer term financial settlement to avoid the OEP following a similar fate to other Non-Departmental Public Bodies in having funding reduced over time.

Enforcement

Enforcement by the OEP is limited to administrative compliance and not the failure to attain environmental standards and targets. This is at odds with the Government's claim that the Bill places environmental accountability at the heart of Government and is not equivalent to the procedure of the European Commission.

Under the accountability framework set out in the Bill, local authorities or arm's-length bodies, who may have limited control over their budgets, could be held to account for failings outside their control. The whole of Government should be accountable for the achievement of environmental standards and targets, rather than individual public authorities, unless the OEP deems that a specific body is at fault. This would ensure collective accountability and cross-Government working to resolve environmental failures.

The enforcement of climate change mitigation has been deliberately excluded from the scope of the OEP, yet this will become increasingly important as carbon budgets become harder to achieve in the coming years. With only 12 years to halt the most devastating impacts of climate change, it is vital that mitigation is put on the same footing as the rest of environmental law.

The procedure to address failure by public bodies set out in the Bill is too slow and inflexible. It relies on judicial review which is not appropriate for environmental problems, where a quicker and more proportionate approach is needed. A bespoke enforcement procedure would help to address these shortcomings. We recommend an expanded role for the first tier tribunal, which could resolve more cases before the need for judicial review and undertake a more considered review of decision-making by expert members.

Environmental Improvement Plans

The Government has promised the wider Bill will introduce “legislative measures to take direct action to address the biggest environmental priorities of our age”. Yet the targets, metrics and milestones that will be important to drive meaningful action to improve the environment have not yet been published. The wider Bill must establish the framework for target setting and require that the OEP has a duty to advise on the establishment of targets as is the case with the European Commission. Targets will need to be established as soon as possible through stakeholder consultation and parliamentary scrutiny and linked coherently to the OEP’s enforcement procedure.

We welcome the reporting cycle for Environmental Improvement Plans, as recommended in our previous report. However, the reporting timetable is lax and could allow a number of years to pass between a poor decision taking place and a Minister being accountable for it. The timetable for reporting should be tightened with specific dates for the reporting duties put into the Bill.

The Government has not established clear accountability for other Departments’ progress and there is little in the Bill to bind other Government Departments into action. The Cabinet Office must issue guidance to ensure Departments commit to achieving delivery of the targets and milestones in their single departmental plans and can then be held to account by the OEP. Only then will environmental accountability be put at the heart of Government.

We welcome the Department and Ministers’ open approach during our inquiry and hope our recommendations are viewed constructively. We look forward to seeing them addressed in the final Bill.

1 Introduction

The Environment Bill 2019

1. Following the decision to leave the European Union (EU) in 2016, our Committee and many other stakeholders raised concerns that there would be a lack of oversight for environmental policy in the UK, resulting from the loss of jurisdiction of the European Commission, the European Court of Justice and the European Environment Agency.¹ The Government acknowledged these concerns and committed to consulting on the “setting up a new independent body to hold Government to account and a new set of environmental principles to underpin policy making”.² The Government published this consultation on 10 May 2018,³ whilst at the same time provisions were included in the *European Union (Withdrawal) Act 2018* for the Government to publish a draft Bill on environmental principles and governance by December 2018.⁴

2. On 18 July 2018, Prime Minister Theresa May, announced that the Government would introduce a wide-ranging Environment Bill.⁵ The Bill is expected to be introduced during the second session in 2019 and will cover sectoral environmental regulation and standard setting in areas such as air quality, wildlife and habitats, better management of resources, water and waste.⁶

3. The *draft Environment (Principles and Governance) Bill*,⁷ was published on 19 December 2018 to meet the requirements of the *EU Withdrawal Act 2018*.⁸ These clauses, which are the subject of this report, will be included as part of the wide-ranging Environment Bill when it is introduced later this year. In this report we refer to the draft clauses and the forthcoming Environment Bill interchangeably as “the Bill” or “the draft Bill”.

4. The Bill sets out how the Government will maintain environmental standards in the event of the UK leaving the EU. It also details how the Government will build on the vision of the 25 Year Environment Plan.⁹ This includes creating an independent oversight body, the Office for Environmental Protection (OEP), to:

- a) scrutinise environmental law and the Government’s environmental improvement plan (EIP);
- b) investigate complaints on environmental law; and
- c) take enforcement action on environmental law.¹⁰

1 Environmental Audit Committee. [The Future of the Natural Environment after the EU Referendum](#), Sixth Report of Session 2016–17, HC599

2 HM Government, [A Green Future: Our 25 Year Plan to Improve the Environment](#), January 2018, p14 (henceforth 25 Year Plan)

3 Defra, *Environmental Governance and Principles after the United Kingdom Leaves the European Union*, May 2018

4 *European Union (Withdrawal) Act 2018*, [section 16](#), 26 June 2018

5 [Q101–103](#)

6 House of Commons Library. *Environmental Principles and Governance: the draft Bill*. Briefing paper no 8484, 30 Jan 2019, p3 and [Environment Bill: Policy Paper](#), 19 December 2018

7 [Draft Environment \(Principles and Governance\) Bill](#)

8 *European Union (Withdrawal) Act 2018*, [section 16](#)

9 [25 Year Plan](#)

10 *Draft Environment (Principles and Governance) Bill 2018*, [press notice](#), 19 December 2018

Previous inquiries

5. Our Committee has previously reported on the *Future of the Natural Environment after the EU referendum*,¹¹ which raised concerns that environmental legislation might be transposed into UK law without the accompanying enforcement, reporting, governance and policy development functions currently carried out at an EU level. As part of our inquiry into *The Government's 25 Year Plan for the Environment*, we took evidence on the Government's environmental governance and principles consultation.¹² In July 2018, we published our recommendations for a new oversight body to replace the European governance architecture and on the application of the environmental principles.¹³ The Government's response to our report was published on 6 November 2018.¹⁴

The pre-legislative scrutiny process

6. On 20 December 2018, we launched a joint call for evidence on the draft Bill with the Environment, Food and Rural Affairs (EFRA) Select Committee. We received 100 submissions of written evidence. Both Committees held separate hearings over the course of February and March 2019. The House of Lords EU Energy and Environment Sub-Committee also held a roundtable on the enforcement powers in the Bill on 6 February. We took oral evidence from environmental organisations, leading academics in governance and law and practicing barristers. Finally, we heard from the Secretary of State for Environment, Food and Rural Affairs, Rt Hon Michael Gove MP and Parliamentary Under Secretary of State for the Environment, Dr Thérèse Coffey MP. We are grateful to all those who responded to our inquiry. The evidence we received—even where it is not directly referenced in this report—will continue to inform our future inquiries.

11 Environmental Audit Committee, [The Future of the Natural Environment after the EU Referendum](#), Sixth Report of Session 2016–17, HC599

12 Defra, *Environmental Governance and Principles after the United Kingdom Leaves the European Union*, May 2018

13 House of Commons Environmental Audit Committee, [The Government's 25 Year Plan for the Environment](#), 24 July 2018, HC803

14 House of Commons Environmental Audit Committee, [The Government's 25 Year Plan for the Environment: Government Response to the Committee's Eighth Report](#) Twelfth Special Report of Session 2017–19, 6 November 2018, HC1672

2 Environmental Principles

7. European Union (EU) environmental law and policy is informed by environmental principles which are reflected in various international instruments and are set out in the EU treaties.¹⁵ Environmental principles act as guidelines for policymakers to consider how the environment can be improved and environmental harm avoided or minimised. The principles “inspire and inform” the European equivalent of primary legislation and aid the interpretation of the law by the European Court of Justice (CJEU).¹⁶

List of principles

8. Nine environmental principles are listed in clause 2 of the Bill and the explanatory notes detail their meaning in this context (see Annex for list).¹⁷

A high level of protection

9. We previously recommended that the Government should include “a principle in UK law that policy and all public bodies will seek to ensure a high level of environmental protection and a presumption that environmental protection will not be reduced”.¹⁸ This principle, which currently applies to the UK under the Lisbon Treaty,¹⁹ has not been included in the list of principles in clause 2.²⁰ Nigel Haigh, previously of the Institute for European Environmental Policy (IEEP), said that absence of a high level of protection from clause 2 is “striking and surprising” given a ‘high level’ principle is consistent with the Government’s 25 Year Plan and the Foreword to the draft Bill.²¹ The Environment Agency also supported its inclusion to drive positive change and set the tone of the Act.²²

10. Liz Fisher, Professor of Environmental Law at the University of Oxford, said that a commitment to a high level of protection should be in primary legislation because it would bind the Executive and bind the courts.²³ She cautioned that it should not be included in the list in clause 2 as it would then be subject to interpretation by the policy statement.²⁴ Eloise Scotford, Professor of Environmental Law at University College London, agreed it should be in primary legislation. She added that it was important to guide the other principles in a similar way to the Treaty of the Functioning of the European Union.²⁵

15 A number, but not all, of the principles are set out in [Article 191](#) of the Treaty of the Functioning of the European Union (TFEU). One group of environmental principles has been used in EU policy-making since the 1970s, and a wider set of principles were agreed globally at the 1992 Rio Declaration on Environment and Development (the Earth Summit). [POSTnote: 590](#), November 2018; [Q85](#)

16 [Q85](#); Dr Mary Dobbs & Dr Ludivine Petetin ([DEB0068](#))

17 The European Union (Withdrawal) Act 2018, [section 16](#) required nine environmental principles to be included in the Bill

18 House of Commons Environmental Audit Committee, [The Government’s 25 Year Plan for the Environment](#), 24 July 2018, HC803

19 The Treaty of Lisbon is an international agreement that amended the two treaties which form the constitutional basis of the European Union (the Treaty on European Union and the Treaty on the Functioning of the European Union).

20 Mr Nigel Haigh ([DEB0019](#)); Brexit and Environment ([DEB0008](#)); Professor Maria Lee ([DEB0076](#))

21 Mr Nigel Haigh ([DEB0019](#)); Brexit and Environment ([DEB0008](#)); Professor Maria Lee ([DEB0076](#))

22 [Q257](#)

23 [Q97](#) [Professor Fisher]

24 And hence the proportionality test outlined in clause 4(2) to show that there is a significant environmental benefit before taking action.

25 [Q97](#) [Professor Scotford]; see also [Qq256–257](#) [Emma Howard Boyd]

11. **We remain convinced that the Bill should include an objective to achieve a high level of environmental protection to guide the application of the principles. We recommend that a high level of environmental protection is put on the face of the Bill. This should be inserted at the start of clause 2, as an overarching guiding objective rather than a principle, in the same way as Article 191(2) of the Treaty of the Functioning of the European Union, for example: “Environmental policy shall pursue a high level of protection and it should be based on the principles”.**

Aarhus rights

12. The final three principles listed in the Bill (the principles of public access to environmental information, public participation in environmental decision-making and access to justice in relation to environmental matters) are rights derived from the Aarhus Convention.²⁶ The UK Environmental Law Association (UKELA) said that including the three Aarhus Convention rights as environmental principles “is legally inaccurate and problematic” because Ministers (and public authorities generally) are bound to apply and recognise such rights, not simply have regard to them (as is the case in the draft Bill).²⁷ Dr Viviane Gravey from the Brexit and Environment academic network explained that they are rights that every citizen in the UK has, not principles that bind the Secretary of State.²⁸

13. Professor Scotford recommended that they should not be included in the Bill explicitly as ‘principles’.²⁹ Greener UK said a way to do this could be to include a requirement in the Bill for the Government better to secure and give further effect to the Aarhus Convention.³⁰ The Environment Agency said it would be sensible to separate true environmental principles from environmental rights.³¹

14. **The Bill has confused the three Aarhus Convention rights as environmental principles under clause 2. These rights should be kept separate from the principles.**

15. **We recommend that the Bill does not include the three Aarhus convention rights explicitly in the list under clause 2 as this would reduce their current effect by putting them on a qualified basis. The Bill should better secure and give further effect to the Aarhus Convention, for example, by ensuring access to justice in relation to environmental matters by providing an adequate standard of review through its enforcement and complaints mechanisms, in cases within the scope of the Aarhus Convention.**

Policy statement on environmental principles

16. The Bill requires the publication of a statutory policy statement on the interpretation and application of the principles (clause 1), which Ministers will have a duty to “have regard to [...] when making, developing or revising their policies” (clause 4).³² The Government

26 The United Nations Economic Commission for Europe (UNECE) [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters](#) was adopted on 25 June 1998 in the Danish city of Aarhus. It entered into force on 30 October 2001.

27 UKELA ([DEB0048](#))

28 [Q87](#); see also Professor Maria Lee ([DEB0006](#))

29 Professor Eloise Scotford ([DEB0065](#))

30 Greener UK ([DEB0027](#))

31 Environment Agency ([DEB0080](#))

32 [Draft Environment \(Principles and Governance\) Bill](#), clauses 1 -4

expects that this policy statement will be read alongside other Government documents such as National Policy Statements and considered alongside other aspects of policy-making, such as cost benefit analyses, to ensure a balanced and comprehensive approach.³³

17. Professors Lee and Scotford said that the principles have become “creatures of policy” and not law which undermines their legal influence “to the greatest extent possible, despite their statutory foothold”.³⁴ Tim Buley QC, Barrister at Landmark Chambers, explained that the principles had been “downgraded” in many ways through the Bill:

They are to be defined and expanded upon by the Secretary of State. They are only relevant to policy formation and not decision making. They do not apply in any direct way to anything other than central Government and so on and so on.³⁵

18. Professor Scotford noted that as the draft Bill stands it does not inform the courts of specific legislative measures,³⁶ or inform legal review of public action and decision making.³⁷ She added that the Bill is “utterly isolated” from all other parts of environmental law and it is unlikely to connect to any other pieces of environmental legislation.³⁸ Others suggested that the OEP should have some of the responsibility for the implementation of the principles.³⁹

Application of the principles

19. Following the Government’s consultation on the principles we concluded that the wording to “have regard to” the principles was too weak, and their application was too limited (to central Government, rather than including all public bodies). We recommended that the Bill must include provisions for “all public bodies to act in accordance with the principles”.⁴⁰ The Government rejected our recommendation, which is of great concern when it stated that a key theme in the responses to its consultation were “concerns that the requirement for Government to have regard to the policy statement is not strong enough”.⁴¹ We heard these concerns reiterated many times during our inquiry, even from the Environment Agency who suggested stronger language was needed.⁴²

20. The Government’s justification for the application of the principles being limited to central Government is that it “has primary responsibility for developing the majority of

33 Draft Environment (Principles and Governance) Bill [Information paper on policy statement on environmental principles](#), p3

34 Lee, M and Scotford, E. Environmental Principles after Brexit: the draft Environment (Principles and Governance) Bill ([Working Paper](#)), Jan 2019

35 [Q96](#); see also [Q77](#) [Georgina Holmes Skelton] and [Q79](#) [Ruth Chambers]

36 E.g. specific provisions of the Environmental Liability Directive are interpreted in light of the precautionary principle

37 E.g. informing what constitutes lawful decision making taken on the basis of the precautionary principle. Professor Eloise Scotford ([DEB0065](#))

38 [Q89](#)

39 Mr Victor Anderson & Dr Rupert Read ([DEB0036](#))

40 House of Commons Environmental Audit Committee, [The Government’s 25 Year Plan for the Environment](#), 24 July 2018, HC803, p39

41 Environmental Principles and Governance after the United Kingdom leaves the European Union, [Summary responses and Government’s response](#), p8

42 [Q252](#); see also [Q104–105](#); [Q107](#); Aldersgate Group ([DEB0060](#)); Chartered Institution of Water and Environmental Management ([DEB0010](#)); ClientEarth ([DEB0039](#)); National Trust ([DEB0018](#)); Environment Agency ([DEB0080](#)); Natural England ([DEB0023](#)); Professor Eloise Scotford ([DEB0065](#)); Professor Maria Lee ([DEB0006](#)); WWF ([DEB0063](#)); Wyeside Consulting Ltd ([DEB0001](#))

high-level and strategic environmental policies and legislation”.⁴³ It considered that central Government sets the strategy and approach for policies developed by other public bodies. Professor Scotford said that it was “slightly weird” making the Government accountable and is the reverse of what happens in EU law.⁴⁴ Dr Vivianne Gravey highlighted that it will be important to have a duty that goes further than Ministers, particularly in the case of Northern Ireland where there currently is no Executive. She said it would help public bodies in Northern Ireland when they are implementing environmental policies, to try to meet the principles directly.⁴⁵

21. Georgina Holmes-Skelton, Head of Government Affairs at the National Trust, said she was concerned with Ministers only having to comply with the policy statement, and not the principles themselves:

quite a lot of weight is placed on this policy statement in terms of the way the principles are being upheld and moved into domestic law, because there is no duty to adhere to or apply the principles, but rather the policy statement specifically.⁴⁶

Wildlife and Countryside Link highlighted the precedent in the *Equality Act 2010*, that “a public authority must, in the exercise of its functions, have due regard to the need to ...”.⁴⁷ Professor Maria Lee from University College London, explained that the Bill could easily give the principles statutory status with a provision in the Bill that “all public authorities shall apply the environmental principles in the exercise of their functions”.⁴⁸

22. The Secretary of State for Environment, Food and Rural Affairs, Rt Hon Michael Gove MP, said that he considered the language around ‘have regard to’ was a “well-understood legal term” and highlighted that he had been judicially reviewed before for not having regard to a set of criteria when he was Education Secretary. He considered it was “a perfectly well-understood form of wording”.⁴⁹ When challenged further on whether he would consider a change to “act in accordance with”, he agreed:

Caroline Lucas: Just to be really clear, in Section 4.1, where at the moment it says, “A Minister of the Crown must have regard to the policy statement on environmental principles” are you saying that that will change to, “A Minister of the Crown will act in accordance with the environmental principles”?

Michael Gove: Will act in accordance with the policy statement and the policy statement will lay out what the principles are.⁵⁰

23. We have heard a great deal of concern over the way the environmental principles and their application have been set out in the Bill. We remain convinced that the requirement to ‘have regard to’ the policy statement on principles is so vague that

43 Environmental Principles and Governance after the United Kingdom leaves the European Union, [Summary responses and Government’s response](#), p14

44 [Q116](#)

45 [Q90](#)

46 [Q77](#)

47 Equality Act 2010, [Section 149](#); Wildlife and Countryside Link ([DEB0035](#))

48 [Q8](#)

49 [Q335](#)

50 [Q176](#); see also The Department for Environment, Food and Rural Affairs ([DEB0096](#))

every decision could result in litigation. The Bill downgrades the principles' legal effect and does not connect to the rest of the Bill or other pieces of environmental legislation. This aspect of the Bill is not fit for purpose.

24. *We recommend the environmental principles are put on an unqualified legal basis in relation to environmental policy. All public bodies should have a duty to apply the principles as is currently the case under EU law. We welcome the Secretary of State's consideration of the wording in clause 4(1) and recommend it should be amended so that, "all public authorities will act in accordance with the policy statement and have due regard to the environmental principles in the exercise of their functions".*

25. *One of the Office for Environmental Protection's principal duties should include the application and promotion of the principles. This should be included in clause 12(3) on the exercise of its functions.*

Exclusions to the application of the principles

26. Clause 1 sets out that the policy statement on principles will be subject to several exclusions, e.g. policies that in the opinion of the Secretary of State are "not relevant",⁵¹ or where they have "no significant environmental benefit".⁵² It also may not deal with policies relating to "the armed forces, defence or national security", "taxation, spending or the allocation of resources within Government", or "any other matter specified in regulations made by the Secretary of State".⁵³ The explanatory notes explained that this final clause is needed to provide flexibility to ensure that "inappropriate policy areas" are not covered by environmental principles.⁵⁴

27. The Environment Agency said there was a risk that the exclusions may mean that the principles do not continue to have "a meaningful influence on the development and application of environmental policy and law after EU Exit".⁵⁵ Its Chair, Emma Howard Boyd, said taxation was important to embedding the polluter pays principle across Government and preventing environmental harm,⁵⁶ while Alan Law, Deputy Chief Executive at Natural England was particularly concerned about the exclusion of defence as the Ministry of Defence owns and manages a lot of land.⁵⁷ William Wilson, barrister and environmental lawyer, considered these exclusions to be "absurd" and Tim Buley cautioned that the lack of clarity on what is and is not included will result in litigation cases and the Court of Appeal having to decide.⁵⁸

28. Clause 4(2) sets out further exclusions for the policy statement. Ministers have the option to take (or not take) action that "would have no significant environmental benefit".⁵⁹ The National Trust described this as a "proportionality test", stating that it is unclear "how such a judgement would be made, or how environmental benefit would be calculated, or

51 Clause 1 (5)(a)

52 Clause 1 (5)(b)

53 Clause 1 (6)

54 Draft explanatory note 1

55 Environment Agency ([DEB0080](#))

56 [Qq259-260](#); see also Environmental Audit Committee, [Greening Finance: embedding sustainability in financial decision making](#), Seventh Report of Session 2017-19, HC1063

57 [Qq259-260](#)

58 [Q96](#); Wyeside Consulting Ltd ([DEB0001](#)); see also Greener UK ([DEB0027](#)) and Chartered Institution of Water and Environmental Management ([DEB0010](#))

59 Clause 4(2)(a)

over what period”.⁶⁰ Professor Scotford said this clause was “particularly problematic” and likely to be immune from judicial review.⁶¹ Professor Fisher said it seemed “quite a serious limitation on the application of the environmental principles” and there is no equivalent in EU law.⁶² She was concerned that in both clause 1 and clause 4 the onus would be put on the need to show that there *was* a significant environmental benefit from applying the principles when making, developing or revising policies.⁶³

29. Professor Scotford said the approach assumed that environmental problems “are easily carved off from everything else in society”, whereas it is in all these excluded matters that environmental issues and their regulation really count.⁶⁴ She considered that the exclusions have come about from a misunderstanding of the role of the principles as they currently apply:

... they are [not] a rule that might stop a particular decision. [...] That is not what they are about. They are about expressing a policy vision that will inform how environmental law works.⁶⁵

30. Daniel Greenberg, Counsel for domestic legislation at the House of Commons, suggested that there must be an underlying reason for the exclusion of taxation, spending or the resources within Government from the application of the principles.⁶⁶ He said this could be refined before being put into statute.⁶⁷ We asked Michael Gove about the exclusions, suggesting that it could perversely increase the amount of litigation associated with them. He acknowledged our concerns:

We will look at it on a case by case basis. If cases are put to us as to why the exclusion of certain policy areas creates particular problems, then we will certainly do so.⁶⁸ [...] we would be grateful for your recommendations about where you think the strongest arguments have been made.⁶⁹

31. Michael Gove added that in the case of the Ministry of Defence, it would be subject to the full weight of environmental law as a landowner, but there would be certain areas of national security and defence where it would be unnecessary for the OEP to have a role.⁷⁰ On the exclusions on taxation, spending and resource allocation, he considered that the Treasury could choose to ensure that the tax system can produce environmental goals and benefits and did not think they should be bound by environmental principles:

... it is the case that almost every Finance Minister across the world would think that in its allocation of resources, particularly in extremis, it has to have the freedom to be able to allocate resources as the Finance Minister sees fit.⁷¹

60 National Trust ([DEB0018](#))

61 [Q91](#); Professor Eloise Scotford ([DEB0065](#))

62 [Q94](#)

63 [Q94](#)

64 [Q93](#); [Q95](#)

65 [Q91](#)

66 Clause 1(6)(b)

67 [Q31](#)

68 [Q180](#)

69 [Q182](#)

70 [Q186](#)

71 [Q186](#)

32. The principles should be broadly applied to have their intended effect. The exclusions set out in the Bill are so broad that the principles will not continue to have a meaningful influence on the development and application of environmental policy and law. It is likely that the exclusions set out in clause 4(2) will be immune from judicial review.

33. *Any exclusions to the application of the principles ought to be very narrowly defined. The Bill should specify that the Ministry of Defence as a landowner is not excluded, nor should general taxation or spending be omitted since many environmental measures depend on changes to the tax system. We welcome the commitment that the Secretary of State will look again at the exclusions to the principles and recommend that:*

- *Clause 1(5) should be deleted*
- *The exclusions in clause 1(6)(a) and (b) should be very narrowly defined and an adequate justification given for why they are necessary.*
- *Clause 1(6)c should be deleted; and*
- *Clause 4(2) should be deleted.*

Scrutiny of the Policy statement on environmental principles

34. We previously cautioned that successfully establishing the principles in law and policy making will largely be determined by the Government's policy statement and that scrutiny of this will be key. We recommended that the policy statement should be included as a schedule to the Bill itself - allowing it to be scrutinised fully by Parliament and that substantive amendments should only be made after a debate on the floor of the House.⁷²

35. Witnesses were concerned by the lack of scrutiny of the policy statement that clause 3 provides.⁷³ Georgina Holmes-Skelton was concerned that the Bill does not allow for "active approval" of the statement by Parliament and that the Secretary of State could amend the policy statement later.⁷⁴ The Chartered Institution of Water and Environmental Management (CIWEM) also noted that the Bill allows Ministers considerable discretion when revising the policy statement:

... the fact that the Secretary of State may at any time revise the policy statement adds in the potential for it to be amended according to the priorities of the Government at a given point in time (which may not necessarily be best for the environment).⁷⁵

36. **We are disappointed that we have not had sight of the policy statement on principles and this limits our ability to comment. Clause 3 should be amended to require Parliament to approve the policy statement and any subsequent revisions to it. The provisions of the Planning Act 2008 which require public consultation and scrutiny of policy statements by Select Committees should also apply.**

72 House of Commons Environmental Audit Committee, [The Government's 25 Year Plan for the Environment](#), 24 July 2018, HC803, p39

73 Aldersgate Group ([DEB0060](#)); National Trust ([DEB0018](#)); Professor Eloise Scotford ([DEB0065](#)); The Woodland Trust ([DEB0054](#)); Wildlife and Countryside Link ([DEB0035](#)); WWF ([DEB0063](#))

74 [Q77](#)

75 Chartered Institution of Water and Environmental Management ([DEB0010](#))

3 Environmental Improvement Plans

37. The Bill introduces a new requirement for the Secretary of State to prepare an Environmental Improvement Plan (EIP); a “plan to improve the natural environment”.⁷⁶ These are to cover a period of no less than 15 years and are applicable to England only. Clause 6(7) confirms that the Government’s 25 Year Plan for the Environment is the first EIP, while other clauses set out the process for reviewing, revising and renewing EIPs, with reviews taking place every five years.

38. The National Farmers Union was concerned about the adoption of the 25 Year Plan as the first EIP, since the 25 Year Plan was not subject to consultation with stakeholders.⁷⁷ Andrew Jordan, Professor of Environmental Sciences at the University of East Anglia, considered that rather than an EIP being a plan to “improve the environment”, it should be a plan to achieve the ten headline objectives in the existing 25 Year Plan (for example, clean air).⁷⁸

Government reporting

39. Clause 8 requires the Secretary of State to “prepare annual reports on the implementation of the current environmental improvement plan”, which are to be laid before Parliament. The Government has claimed that the Bill puts the 25 Year Plan on a statutory footing with a cycle of environmental planning, monitoring and reporting.⁷⁹ Yet the National Trust was afraid that without legally binding objectives and targets, there was little in the Bill “to drive real-world environmental improvements”.⁸⁰

Targets

40. Many witnesses considered that there was a need for legal objectives and targets to drive improvements in the environment.⁸¹ As drafted, there are no clauses to make the targets in EIPs legally binding, however Michael Gove announced on 5 February 2019 that the ten goals set out in the 25 Year Plan will be put on a statutory footing in the second half of the Bill (see also Chapter 7).⁸²

41. We previously recommended that long-term legally-binding, measurable targets should be set and the Government should be required to legislate for interim targets across the areas of the EIP and incorporate this process into its five-yearly reviews of the plan.⁸³ The Aldersgate Group, representing major businesses, considered that statutory targets

76 Clause 6

77 National Farmers’ Union ([DEB0067](#)); see also Agricultural Law Association ([DEB0037](#))

78 [Q73](#)

79 Explanatory notes, p32

80 National Trust ([DEB0018](#))

81 E.g. National Trust ([DEB0018](#)); Aldersgate Group ([DEB0060](#)); Natural England ([DEB0023](#)); The Woodland Trust ([DEB0054](#)); Nature Friendly Farming Network ([DEB0056](#))

82 Speech at the launch of the Natural Capital Committee’s sixth annual report, 5 Feb and [Q72](#) [Ruth Chambers]; Aldersgate Group ([DEB0060](#))

83 House of Commons Environmental Audit Committee, [The Government’s 25 Year Plan for the Environment](#), 24 July 2018, HC803. Targets should be set in the areas of water (stress and quality); marine; waste; air quality; soil health; habitats (biodiversity conservation); species conservation (insects, birds, mammals); trees/plants; and environmental equality (access to environmental justice)

could provide the market signal needed to increase investment in the natural environment, but that the target setting process should be subject to stakeholder consultation and parliamentary scrutiny.⁸⁴

42. We asked Michael Gove how he intends for the 25 Year Plan to be put on a statutory footing in the second part of the Bill:

I think it is important that the 25 Year Environment Plan is placed on a statutory footing [...] I think we all recognise that, if the various obligations placed on Government within it were placed on a statutory footing, Government would be held to account for its performance against not just the metrics within it, but the broader obligations we have.⁸⁵

Environmental monitoring - Indicator framework

43. Clause 7 sets out the arrangements for monitoring of the natural environment in accordance with the EIP. The Government's draft indicator framework identified an initial set of around 65 system indicators and 15 headline indicators.⁸⁶ The Natural Capital Committee (NCC), the Government's independent advisers on natural assets, did not consider the draft indicator framework was adequate and said there were "some serious errors in the approach and the indicators being proposed" with insufficient emphasis on natural capital assets:

In assessing progress, a baseline needs to be set, and metrics and natural capital accounts developed to record progress so that the Government can be held to account.⁸⁷

44. Professor Liz Fisher, from the University of Oxford, was also critical that the baseline of the EIP is limited as it is defined by the Secretary of State.⁸⁸ The NCC called for "greater alignment" between the ten goals in the 25 Year Plan and the indicator framework so that progress against the plan can be assessed transparently.⁸⁹ We requested that the National Audit Office (NAO) review the Government's environmental data and its alignment with the Government's 25 Year Plan objectives. This was published in January 2019 (see box).

National Audit Office - Environmental metrics: Government's approach to monitoring the state of the natural environment

The NAO found that a "significant portion" of the goals and targets in the 25 Year Plan are currently "too vague to allow Government to measure and monitor performance effectively". Less than one-quarter of the 44 targets are SMART (specific, measurable,

84 Aldersgate Group ([DEB0060](#)); see also Broadway Initiative ([DEB0084](#)) and concerns from Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#))

85 [Q158](#)

86 Defra. 2018. [Measuring environmental change – draft indicators framework for the 25 Year Environment Plan: Draft for discussion](#), 19 Dec 2018. System indicators track changes in specific aspects of the environment relating to the goals and targets in the 25 Year Environment Plan (e.g. concentrations of fine particulate matter), Defra has brought some of these together to create 15 'headline indicators' (e.g. air quality) with the aim of producing a more accessible, overall summary.

87 Natural Capital Committee's [sixth annual report](#), 29 Jan 2019, p3 and p12

88 UKELA Conference. A First Response to the Environment Bill: The New Body, the Courts and the Future of UK Environmental Law. 14 Jan 2019

89 Natural Capital Committee's [sixth annual report](#), 29 Jan 2019

achievable, realistic and time-bound).⁹⁰

Defra's draft indicator framework identified an initial set of around 65 system indicators and 15 headline indicators. Each goal in the 25-Year Environment Plan has at least one headline relating to it, and these in turn have a number of system indicators feeding into them.⁹¹ The NAO said that this work was "promising" but there were significant gaps in the data.

Defra's own analysis showed that one-quarter of its proposed metrics will not be ready until at least December 2019.⁹² A further nine per cent are likely to need further development after that point. Those relevant to the 25 Year Plan targets are healthy and diverse seas, sustainable seafood and soil health. The NAO also noted that it is important for environmental performance metrics to have a spatial element, but that Defra did not intend to publish indicators at the sub-national level.

The NAO concluded that Defra "has not yet done enough to engage other parts of Government with its approach, nor to set clear accountabilities for performance".⁹³

Data requirements

45. Environmental Protection UK (EPUK) described the data requirements for environmental monitoring in clause 7 as "weak".⁹⁴ There is a duty on the Secretary of State to obtain data about the natural environment, but no duty to monitor the data. EPUK said that there was also no reference to the importance of maintaining comparability and consistency with EU and other international data.⁹⁵ The Brexit and Environment network told us the successful design and implementation of environmental policy rests upon having accurate, robust and comparable data. Yet they were concerned that there is insufficient detail in the Bill on how data will be collected, quality checked and shared and what role will be played by the OEP.⁹⁶

46. The NAO concluded that the EU has driven much of the UK's reporting of environmental data with 161 environmental reporting obligations to European bodies.⁹⁷ It said there is a risk that this data will no longer be collected if it is not required to be reported and recommended that reporting should be maintained or improved to complement Defra's new headline indicators.⁹⁸

90 National Audit Office. 2019. [Environmental metrics: government's approach to monitoring the state of the natural environment](#). HC1866, p47

91 National Audit Office. 2019. [Environmental metrics: government's approach to monitoring the state of the natural environment](#). HC1866, p42-43

92 Defra. 2018. [Measuring environmental change – draft indicators framework for the 25 Year Environment Plan: Draft for discussion](#), p12 -17

93 National Audit Office. 2019. [Environmental metrics: government's approach to monitoring the state of the natural environment](#). HC1866, p9

94 Environmental Protection UK ([DEB0062](#))

95 Environmental Protection UK ([DEB0062](#))

96 Brexit and Environment ([DEB0008](#))

97 Including the European Environment Agency, European Commission and EUROSTAT. National Audit Office. 2019. [Environmental metrics: government's approach to monitoring the state of the natural environment](#). HC1866

98 National Audit Office. 2019. [Environmental metrics: government's approach to monitoring the state of the natural environment](#). HC1866

Cross-Government accountability

47. We previously recommended that the Departments and public bodies who hold the policy levers to deliver the 25 Year Plan targets must also be accountable for meeting them.⁹⁹ The NAO found that Defra has not yet engaged the Department for Transport, the Department for Business, Energy and Industrial Strategy and the Ministry of Housing, Communities and Local Government, in its oversight arrangements for progress against the 25-Year Environment Plan.¹⁰⁰ It also said the Government has not established clear accountability for other Departments' progress. Ruth Chambers, from Greener UK, suggested that Government Departments and other public bodies could be linked into the delivery of EIPs, by producing an action plan saying how they have had regard to environmental principles and helped to achieve the objectives of the EIP.¹⁰¹

48. We asked Michael Gove how Defra will compel other Departments to play their role to contribute to meeting EIP targets. He responded:

If the Environment Bill passes as we envisage, then it will be the case that there will be a statement of environmental principles, which will govern all Government policy. All Government policy has to be judged against that statement of principles and if any Government Department or any Government agency is in breach of those principles and existing statute, then the OEP would have a role in ensuring that arm of Government was brought to book.¹⁰²

49. Michael Gove acknowledged the criticisms from the Natural Capital Committee and said he has since met with its Chair. He told us he is “reflecting on exactly how we can make sure that we have metrics that properly take account of the importance of natural capital”.¹⁰³ When asked about engagement from other Departments on the implementation board that oversees progress on the 25-Year Plan, he considered that cross-Department “action focussed” groups on specific policy areas, such as marine protected areas or wildlife crime, were more effective.¹⁰⁴

50. We welcome the Government putting the requirement to prepare annual reports on the implementation of Environmental Improvement Plans in the Bill. Yet we are concerned that the approach to monitoring and data collection could hinder this process. While Defra’s draft indicator framework is promising, we are concerned that a proportion of the indicators will not be ready until 2020 at the earliest and that the Natural Capital Committee considers that there are errors in the Government’s approach. We recommend Defra urgently completes its indicator framework and takes on board the advice from the Natural Capital Committee to establish a robust baseline from which to measure progress.

99 House of Commons Environmental Audit Committee, [The Government’s 25 Year Plan for the Environment](#), 24 July 2018, HC803

100 National Audit Office. 2019. [Environmental metrics: government’s approach to monitoring the state of the natural environment](#). HC1866

101 [Q72](#)

102 [Q159](#)

103 [Q163](#)

104 [Qq161–162](#)

51. We heard that environmental policy rests upon having accurate, robust and comparable data. Yet much of the UK's environmental data has been driven by European requirements and this must not be lost upon leaving the EU. *We recommend that clause 7 is amended to commit the Government to ensure that UK environmental data and information is collected to at least the same standards as the European Environment Agency for the European Union. The Bill should also require that the data collected under clause 7 is published and that under clause 14, there be a requirement for the Office for Environmental Protection to monitor and publish a commentary on this data.*

52. The National Audit Office has concluded that Defra has not yet done enough to engage other parts of Government with its approach on environmental targets, nor set clear accountabilities for performance. Given the weaknesses we have heard about the application of the principles and the broad exclusions to them that exist in the Bill, we do not think this will be enough to drive improved environmental performance across Government. We consider that legally binding targets and objectives are needed.

53. *We recommend that in addition to the objective of a high level of protection being included on the face of the Bill, the Bill should also include a framework for targets and interim milestones to be achieved by Government Departments. These should be set following stakeholder consultation and parliamentary scrutiny. Once these targets have been established, the Cabinet Office must issue guidance directing Departments to explain how their work programmes will achieve the delivery of these targets in their Single Departmental Plans. This will then assist the Office for Environmental Protection in holding Government Departments to account.*

54. *Since the European Commission has a role in advising on target setting, one of the Office for Environmental Protection or the Joint Nature Conservation Committee's principal duties should also be to advise on the establishment of targets. This should be included in clause 12(3) on the exercise of its functions.*

Scrutiny of Environmental Improvement Plans by the Office for Environmental Protection

55. The new oversight body (the Office for Environmental Protection (OEP) outlined in Chapter 4) will have a role in scrutiny of the annual reports on the implementation of the EIPs (clause 14). This introduces a statutory cycle of environmental planning, monitoring and reporting - akin to the Climate Change Act and the interaction between the Government and Committee on Climate Change. This is in line with our previous recommendation that there should be regular progress reports to Parliament on the plan and the Government should not mark its own homework.¹⁰⁵

56. However, the Institute for Government (IfG) described the reporting timetable, set out in clause 8, as “absurdly elastic”.¹⁰⁶ Raphael Hogarth from the IfG explained:

The Secretary of State has a year-long period on which to report. The OEP then has six months to get back to him. The Secretary of State then has a

105 House of Commons Environmental Audit Committee, [The Government's 25 Year Plan for the Environment](#), 24 July 2018, HC803

106 Institute for Government ([DEB0030](#))

year to get back after that. You could be looking at two and a half years from a piece of bad implementation to the Secretary of State having to account for it, and most Secretaries of State do not even last for that long.¹⁰⁷

57. The IfG suggested that the reporting functions of the Committee on Climate Change set out in the *Climate Change Act (2008)* are the closest analogue to the reporting functions of the OEP.¹⁰⁸ Sections 36 and 37 of the Climate Change Act set out specific dates rather than time periods for reporting.¹⁰⁹ Ruth Chambers told us that the OEP could be empowered to review not just that a plan exists, but the effectiveness of that plan.¹¹⁰ Professor Jordan said that the Secretary of State should also be required to explain why they have or have not taken on board the comments of the OEP on the previous improvement plan.¹¹¹

58. We welcome that the Government intends to put Environmental Improvement Plans on a statutory cycle of monitoring, reviewing and reporting in line with our previous recommendations. Yet we heard how the reporting timetable between the Government and the Office for Environmental Protection on Environmental Improvement Plans was “absurdly elastic” and could allow for a number of years between a poor decision taking place and a Minister being accountable for it.

59. We recommend that the timeframe for reporting is tightened with specific dates for the reporting duties put into the legislation. Clause 8 should be redrafted to reflect the reporting timetable in the Climate Change Act 2008, which is a helpful analogue.

60. Reporting on progress on an Environmental Improvement Plan by the Office for Environmental Protection does not make an assessment on the effectiveness of the plan. Clause 14(3) should include an assessment of how well the Government has met its statutory targets and the effectiveness of its Environmental Improvement Plan. It should also include a requirement for the Government’s response to the progress report to explain how it intends to take any action recommended by the Office for Environmental Protection, or why it does not intend to take such action.

107 [Q24](#)

108 Institute for Government ([DEB0030](#))

109 Climate Change Act 2008, [Section 36–37](#)

110 [Q72](#)

111 [Q73](#) [Professor Jordan]; see also Professor Maria Lee ([DEB0006](#))

4 The Office for Environmental Protection

61. The Government’s ambition is to create “a new, world-leading, independent environmental watchdog” to hold Government to account on its environmental ambitions and obligations in the event of leaving the EU.¹¹² Michael Gove suggested that the remit of this new body could go further and improve upon that of the European Commission.¹¹³ The Bill establishes the Government’s proposed oversight body - the Office for Environmental Protection (OEP), the governance of which is set out in the Schedule to the Bill.

Constitution of the Office for Environmental Protection

62. The OEP’s constitution is not set out in the Bill, but the *statement of impacts* explained that it will be an arm’s length body, with the explanatory notes setting out that the OEP is to be a non-Departmental public body (NDPB).¹¹⁴ Many witnesses suggested that an arm’s length body would not provide enough independence for it to truly hold Government to account.¹¹⁵ The Brexit and Environment network said that the OEP “will be at arms-length from the Government but ultimately subject to its control”.¹¹⁶

63. The National Audit Office (NAO) has previously raised concerns about inspectorates and their perceived independence because they were funded and appointed by the bodies they inspect.¹¹⁷ The NAO warned that the Government’s proposals could have risks for the independence of the OEP, highlighting that the perception of independence is important:

It will be funded through Defra, with a Chair appointed by the Secretary of State for Defra. While in principle this is not incompatible with it being functionally independent it could bring risks for its independence in practice, or for its perceived independence.¹¹⁸

64. In our report into the 25 Year Plan we recommended that the new body should report to Parliament, like the NAO, and a statutory body of parliamentarians, modelled on the Public Accounts Commission, should set its budget, scrutinise its performance and oversee the governance of the oversight body.¹¹⁹ The House of Lords European Union

112 Governance and Principles Consultation

113 Rt Hon Michael Gove, [speech](#), 13 Nov 2017

114 [Draft Environment \(Principles and Governance\) Bill](#), clause 11 draft explanatory note and [Statement of Impacts p8](#); Institute for Government ([DEB0030](#))

An arm’s-length body is an organisation that delivers a public service, is not a ministerial Government Department, and which operates to a greater or lesser extent at a distance from Ministers. The term can include non-Departmental public bodies (NDPBs). The Environment Agency is an example of an executive NDPB. Institute for Government. 2019. [Whitehall Monitor](#)

115 Chartered Institution of Water and Environmental Management ([DEB0010](#)); National Trust ([DEB0018](#)); Greener UK ([DEB0027](#)); ClientEarth ([DEB0039](#))

116 Brexit and Environment ([DEB0008](#)); see also [Q242](#) [Chris Stark]

117 National Audit Office. 2015. [Inspection: A comparative study](#), paras 15–17

118 National Audit Office. 2019. [Environmental metrics: government’s approach to monitoring the state of the natural environment](#). HC1866, p11

119 House of Commons Environmental Audit Committee, [The Government’s 25 Year Plan for the Environment](#), 24 July 2018, HC803

Committee has since recommended that the OEP must be, and be seen to be, independent from Government and said that “the National Audit Office may offer a useful model of how this could be achieved”.¹²⁰

65. The Government’s position was that an arm’s length body “would provide sufficient scope and capacity to deliver the strategic objectives required”, and that it was “inappropriate in constitutional terms and without precedent” for the new body both to be an emanation of Parliament and be able to take enforcement action against the Government.¹²¹ ClientEarth told us that “constitutional innovation” is needed to create an enforcement body as independent as possible from Government with key ties to Parliament.¹²²

66. We asked Daniel Greenberg, Counsel for Domestic Legislation at the House of Commons, whether our previous recommendations were constitutionally inappropriate. He considered that the Government may have confused our recommendation with the OEP itself being created as a Parliamentary entity, rather than being accountable to it. He said, “anything is possible” and explained:¹²³

There is no reason why you should not have a body that reports in lots of different ways to Parliament, where Parliament takes a direct interest in its funding and its spending in exactly the same way as the NAO, which has a function of bringing reviews against public authorities, including the Government. There is no constitutional impossibility or impropriety in that.¹²⁴

67. Daniel Greenberg told the EFRA Committee that the OEP’s constitution should relate to each of its functions and that *if* the OEP “is going to have a role of enforcement against the Government, [then its] independence needs to be massive”.¹²⁵ We asked Michael Gove why the OEP was not accountable to Parliament in the same way as the NAO. He responded:

The advice that we have received is that this body can exercise full independence as a non-Departmental public body. [...] I think there are strong reasons and strong precedents why it should be a non-Departmental public body. I think that this is one of those bodies which, once established, it would impossible to terminate in the way that you refer to, but of course there is a very legitimate and respectable argument about other means of providing that independence.¹²⁶

68. We wrote to the Secretary of State asking him to provide the legal advice on the impediment to the OEP being set up as a fully independent body along the lines of the NAO. He told us that:

If a Parliamentary Body were to be given the power to initiate legal enforcement proceedings against the Government this would represent a

120 [Letter from Lord Teverson to Rt Hon Michael Gove MP](#), 28 February 2019

121 [Draft Environment \(Principles and Governance\) Bill Statement of Impacts](#), page 8

122 ClientEarth ([DEB0039](#))

123 [Q3](#)

124 [Q3](#)

125 [Q39](#); [Q40](#)

126 [Qq150–151](#)

fundamental change in the role of Parliament since Parliament has never taken legal enforcement action against the executive [...] The Government's position is based on constitutional principles, rather than on legal issues or advice.¹²⁷

This fails to address the evidence we heard from Daniel Greenberg on the accountability of the OEP to Parliament.

69. Raphael Hogarth from the IfG, said that in two key respects, through its proposed appointment and funding structures, the OEP's relationship with Parliament is "weak".¹²⁸

Appointments

70. The Secretary of State is responsible for appointing the non-executive members of the OEP.¹²⁹ This includes the Chair. Under the proposed arrangements, the Secretary of State and the OEP must also ensure that the number of non-executive members is always greater than the number of executive members. The Chair is to appoint the chief executive following consultation with the Secretary of State.¹³⁰

71. Several witnesses criticised the appointments process for not providing independent membership of the OEP.¹³¹ Many suggested a greater role for Parliament,¹³² particularly as this enables cross-party approval.¹³³ The Aldersgate Group argued that the OEP's enforcement functions warrant that its appointments are made in a more independent manner than that of the Committee on Climate Change.¹³⁴ Raphael Hogarth described other precedents for appointments, all of which could provide a greater level of independence:

The appointment of the chair of the OBR is subject to confirmation by the Treasury Select Committee, so that is one way of increasing involvement. You could go a step further than that, which is to mimic the appointments process for the Comptroller and Auditor General and say that there has to be a Humble Address and a vote on the appointments. Or you could go a step further still and mimic the appointment structures for say the Electoral Commission and say not only does the appointment have to be approved by a vote, but the name has to be proposed by a parliamentarian.¹³⁵

127 [Letter from Rt Hon Michael Gove to Chair](#), 17 April 2019

128 [Q2](#)

129 [Schedule 1](#)

130 [Schedule 1](#)

131 [Aldersgate Group \(DEB0060\)](#); [British Heart Foundation \(DEB0057\)](#); [APPG on Air Pollution \(DEB0004\)](#); [Chartered Institution of Water and Environmental Management \(DEB0010\)](#)

132 [Professor Maria Lee \(DEB0006\)](#); [UK Sustainable Investment and Finance Association \(DEB0073\)](#); [Natural England \(DEB0023\)](#); [National Trust \(DEB0018\)](#); [Emeritus Professor of Environmental Law Richard Macrory \(DEB0003\)](#)

133 [Q52](#)

134 [Aldersgate Group \(DEB0060\)](#). The Committee on Climate Change Chairs and Members are appointed through the standard Cabinet Office public appointments process. Ministers have the final choice of appointees, in consultation with the devolved administrations. The Committee Chairs are responsible for selecting the Chief Executive, but the appointment is subject to Ministerial approval. Committee appointments, including the Chair, are made by the UK Government and the devolved administrations jointly.

135 [Q2](#)

72. Daniel Greenberg considered the appointment of the chief executive by the Chair, rather than a ministerial appointment, was “quite significant” as the chief executive is a key figure for robust independence within an organisation.¹³⁶ Georgina Holmes-Skelton, from the National Trust, said she had concerns over the balance of power on the Board as it gives “quite a large amount of power to the Secretary of State” and what that might mean for the direction of the board.¹³⁷

73. Ruth Chambers, from Greener UK, said pre-appointment hearings were not a panacea to guarantee independence.¹³⁸ The IfG suggested that the most applicable model would be to follow the process established for appointing both the Chair and the members of the Budget Responsibility Council at the Office for Budget Responsibility.¹³⁹ This also has powers to protect members against dismissal by the Secretary of State. It said this would be “a clear way of underlining the Government’s commitment to the independence of the OEP”.¹⁴⁰

Funding

74. The IfG said that Non Departmental Public Bodies (NDPBs) are a misnomer as they are accountable to Departments, who control their budgets.¹⁴¹ Greener UK was concerned that the Bill gives “supreme power” to the Secretary of State to decide the OEP’s funding, with the only requirement being that its funding be “reasonably sufficient”, in the opinion of the Secretary of State, to enable the OEP to carry out its functions.¹⁴²

75. Many witnesses considered that the OEP’s funding should be determined by Parliament.¹⁴³ Prospect and the Brexit and Environment network highlighted that the capacity of the Environment Agency and Natural England to fulfil their role as active watchdogs has been significantly restricted by resource constraints, a theme that arose during our 25 Year Plan inquiry (see box for a further example).¹⁴⁴ The Environment Agency and Energy UK were concerned that the OEP may utilise technical staff from other agencies, placing an additional pressure on already stretched resources.¹⁴⁵

Budget cuts to enforcement bodies

The Equality and Human Rights Commission (EHRC), a non Departmental public body which can issue proceedings for judicial review of Government bodies if they are failing to comply with their equality or human rights obligations, reports to the Government Equalities Office, which currently sits in the Department for International Development and will soon move to Cabinet Office. The EHRC’s budget

136 [Q12](#)

137 [Q54](#)

138 [Q56](#)

139 Institute for Government ([DEB0030](#)), para 11, 12; see Budget Responsibility and National Audit Act 2011, [Schedule 1](#)

140 Institute for Government ([DEB0030](#)), see also Dr David Wolfe ([DEB0081](#))

141 Institute for Government ([DEB0030](#))

142 Clause 9, Schedule to the draft bill. Greener UK ([DEB0027](#))

143 UKELA ([ENP0029](#)); UK Sustainable Investment and Finance Association ([DEB0073](#)); ClientEarth ([DEB0039](#)); Greener UK ([DEB0086](#)); National Trust ([DEB0018](#)); RSPB ([DEB0045](#)); see also [Q246](#)

144 Brexit and Environment ([DEB0008](#)); Prospect ([DEB0046](#)); House of Commons Environmental Audit Committee, [The Government’s 25 Year Plan for the Environment](#), 24 July 2018, HC803; see also [Q61](#) [Amyas Morse]; [Q14](#) [Andrew Sells]

145 Environment Agency ([DEB0080](#)); Energy UK ([DEB0047](#)); see also Mr Mark July ([DEB0031](#))

has been reduced from £70.3 million in 2007 to £18.3 million in 2018. The EHRC has repeatedly said that, in its view, it could better discharge its duties if it reported directly to Parliament.¹⁴⁶

76. Greener UK explained that the bulk of the OEP's costs will be associated with its initial establishment and that the ongoing work of the OEP is unlikely to require the funding needed by other environmental public bodies, such as the Environment Agency, which incur grant and capital expenditure.¹⁴⁷ Representing Greener UK, Ruth Chambers said there are three "critical" measures that could ensure that the OEP is properly and independently funded:

- a strong and visible commitment to multi-annual budgets;
- the OEP to determine what funding is sufficient by preparing and publishing its own supply estimate;¹⁴⁸ and
- the OEP having the right and the independence to say how much money it thinks it needs at the start of the process.¹⁴⁹

77. Natural England said further security could be provided by longer-term financial settlement, and that a five year settlement in-line with spending reviews would be "ideal" and would ensure that work programmes are not changed in-year.¹⁵⁰ Several existing public bodies receive multi-annual budgets, including Highways England, the Environment Agency and the Office for Budget Responsibility. Greener UK agreed that multiannual budgets would help prevent the "slow but significant funding decline that many of Defra's arms-length bodies have suffered over recent years".¹⁵¹

78. Chris Stark, chief executive of the Committee on Climate Change (CCC), highlighted that it was helpful that the CCC has the ability to go to Parliament and comment on its ability to meet its statutory duties with the funding it has been allocated.¹⁵² Professor Maria Lee, from University College London, considered that the OEP's annual accounts must include an assessment by the OEP of their sufficiency.¹⁵³ The IfG suggested that the OEP could have its own estimate that is negotiated directly with HM Treasury and voted on by Parliament in the yearly *Supply and Appropriation (Main Estimates) Bill*, rather than from the Department's own budget.¹⁵⁴ It said that Paragraph 15 of Schedule 1 to the *Railways and Transport Safety Act 2003* which established the Office of Rail and Road (previously the Office of Rail Regulation), is an example of this.¹⁵⁵

79. We asked the Secretary of State whether he would allow the OEP to have more autonomy in preparing its own budget estimate and whether it would have a multiannual budget, he responded:

146 Institute for Government ([DEB0030](#))

147 Greener UK ([DEB0086](#))

148 A supply estimate is the means through which Government Departments and certain parliamentary bodies gain parliamentary approval to access public money to fund their operations.

149 [Q59](#); [Q149](#)

150 [Q248](#); [Q250](#); RSPB ([DEB0045](#)); Natural England ([DEB0023](#))

151 Greener UK ([DEB0086](#))

152 [Q246](#)

153 Professor Maria Lee ([DEB0006](#))

154 Institute for Government ([DEB0030](#))

155 Institute for Government ([DEB0030](#))

It is certainly the case that we wanted to make sure that it is properly and adequately funded, and it is the case that the OEP will have a responsibility to state whether or not it is receiving the funding necessary [...] Of course you will appreciate that with non-Departmental public bodies we do not have to, but we have to take into account precedent, but I absolutely recognise the honest intent behind the suggestion. [...] The most important thing is that the chair and the board feel that they have all the resources required ...¹⁵⁶

80. Michael Gove added that he did not think the OEP would need the numbers of staff that an organisation like Natural England or the Environment Agency has and expected the numbers to be between 60 and 120.¹⁵⁷

Other clauses on independence

81. Clause 12 sets out the exercise of the OEP's functions. It requires the OEP to "have regard to the need to act objectively, impartially, proportionately and transparently".¹⁵⁸ Dr David Wolfe QC, Chair of the Press Recognition Panel, said it should also have to act "independently" and it should actually require the OEP to act, rather than to "have regard to" act.¹⁵⁹ Daniel Greenberg suggested that the transparency of communications can provide for greater independence, as well as whether enforcement casework could be influenced by directions from the Minister.¹⁶⁰ Dr Wolfe recommended that a duty to report interference could be included to guard against any attempt to undermine the OEP's independence. This could be included in the Annual report process in paragraph 10 of the Schedule, to provide a disincentive for Ministers or Government officials to provide direction.¹⁶¹ Ruth Chambers also highlighted that the OEP needs to be free from direction and able to exercise its operations and functions independently.¹⁶²

82. The Government has promised the Office for Environmental Protection will be independent but has not provided enough evidence that its proposals do so. Nor has it provided enough reasoning for why it has not accepted our previous recommendations on governance which the majority of evidence supports and for which there are precedents. The Secretary of State suggested that the OEP could go further than the European Commission, yet the proposals in the Bill fall woefully short of this.

83. We stand by our previous recommendation that the Office for Environmental Protection should report to Parliament and that a statutory body of parliamentarians, modelled on the Public Accounts Commission, should set its budget, scrutinise its performance and oversee its governance. The Bill should be amended to require that this body of parliamentarians be established. Constitutional experts told us there was no impropriety in the OEP being established in this way.

156 [Qq154–155](#)

157 [Qq155–157](#)

158 Clause 12(1)

159 Dr David Wolfe ([DEB0081](#)); see also the National Audit Office [Code of Conduct](#), Jan 2015

160 [Q37](#)

161 Dr David Wolfe ([DEB0081](#));

162 [Q50](#)

84. **The appointments process for Members of the Office for Environmental Protection does not provide for enough independence from Government as the balance of power lies with the Secretary of State. Parliament must have a greater role in the appointments process with a Parliamentary Committee having a veto over the appointment of the Office for Environmental Protection’s Members and Chief Executive.**

85. *We recommend that Schedule 1 should be amended to reflect Paragraph 1 of Schedule 1 to the Budget Responsibility and National Audit Act 2011 for the appointment of the Office for Environmental Protection’s Members and Chief Executive and paragraph 6(3) of Schedule 1 of the same Act to set out a process to protect Office for Environmental Protection members against dismissal by the Secretary of State. This appointments process would utilise the statutory body of parliamentarians as the appointing Committee.*

86. *We recommend that the Government makes a political commitment to providing the Office for Environmental Protection with a five year budget in line with spending reviews. Precedents for this exist for other non-Departmental public bodies.*

87. *We recommend that the Office for Environmental Protection should have its own estimate, to be negotiated directly with HM Treasury, and to be voted on by Parliament in the yearly Supply and Appropriation (Main Estimates) Bill. Paragraph 15 of Schedule 1 to the Railways and Transport Safety Act 2003 provides a useful precedent.*

88. *We recommend that the funding architecture for the Office for Environmental Protection mirrors that of the National Audit Office. For example, there would be a role for the Environmental Audit Committee to conduct an annual review of the Office for Environmental Protection’s work and progress against its purpose and objectives, including whether it is receiving adequate funding to fulfil its duties. The statutory body of parliamentarians would then scrutinise and review the funding estimate produced by the Office for Environmental Protection. The National Audit Office would audit and certify the Office for Environmental Protection’s annual accounts.*

89. *Clause 12(1)(a) and 12(3)(a) should have “independent” added to the list of requirements which the Office for Environmental Protection must follow and “have regard to the need to act” should be changed to “must act”. A duty to report interference should be added to Paragraph 10 of the schedule.*

Scope - Definition of natural environment and environmental law

90. The definitions of natural environment (clause 30) and environmental law (clause 31) are important as they define the scope of the OEP’s enforcement remit. Clause 31 sets out that environmental law is “mainly concerned with an environmental matter” and “is not concerned with an excluded matter”.¹⁶³ The excluded matters include most climate change mitigation legislation, disclosure of, or access to information legislation (to avoid overlap with the Information Commissioner’s Office); and legislation relating to the armed forces, defence, national security, taxation, spending or the allocation of resources within Government.¹⁶⁴

163 Clause 31(1)

164 Clause 31(3)

91. The draft explanatory note provides examples of what would normally be considered to fall within the definition of environmental law and what would be excluded.¹⁶⁵ Yet this note has caused confusion between what is explicitly excluded by the Bill and what could be perceived as excluded through the explanatory note.¹⁶⁶ Ruth Chambers said that this confusion on the definition could have implications for the public if they want to make a complaint about a breach of environmental law to the OEP.¹⁶⁷ For example, although planning is listed as excluded in the notes, it would fall within the definition when it is environmentally relevant.¹⁶⁸ Professor Richard Macrory QC, Emeritus Professor of Environmental Law at University College London, said that the explanatory notes should explicitly say that environmental assessment requirements (for forestry, drainage, agriculture, and planning etc.) and Strategic Environmental Assessment requirements are included within the definition.¹⁶⁹

92. Greener UK recommended that the definition of environmental law should be replaced with that of ‘environmental information’ in the Aarhus Convention, which includes climate, heritage and planning.¹⁷⁰ Barrister William Wilson recommended that the Government use the definition of environment in the *Environmental Protection Act 1990*:

The “environment” consists of all, or any, of the following media, namely the air, water and land: and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground.¹⁷¹

93. The National Trust considered that the definition of ‘natural environment’ excluded the historic environment because clause 30 explicitly excludes “buildings or other structures”.¹⁷² Other witnesses including the Campaign to Protect Rural England and the Heritage Alliance brought this to our attention.¹⁷³ Professor Lee said that one could argue that the building or structure itself is excluded, but the impact of the building or structure on the ‘natural environment’ is included.¹⁷⁴ She said that this lack of clarity should be resolved. Natural England said the definitions of both the natural environment and environmental law in the explanatory notes would benefit from further clarification.¹⁷⁵ It considered the definition of natural environment does not align well with the *Natural Environment and Rural Communities Act 2006*, which includes landscape and people’s access to the natural environment.¹⁷⁶

165 Included are air quality; water resources and quality; marine, coastal or nature conservation; waste management; pollution; and contaminated land. Those suggested as normally outside of the scope are: forestry; flooding; navigation; planning; cultural heritage; animal welfare or sentience; animal or plant health; health and safety at work; and people’s enjoyment of or access to the natural environment. Draft Explanatory Note 31

166 E.g [Q69](#) [Professor Jordan]. [Qq170–172](#)

167 [Q175](#)

168 Professor Maria Lee ([DEB0076](#))

169 Emeritus Professor of Environmental Law Richard Macrory ([DEB0094](#))

170 Greener UK ([DEB0091](#))

171 Environmental Protection Act 1990, [Section 1\(2\)](#); the same definition as was used in the Environment Act 1995, [section 56](#)

172 [Q70](#) [Georgina Holmes-Skelton]; National Trust ([DEB0018](#))

173 [Q70](#); CPRE ([DEB0058](#)); Chartered Institute for Archaeologists and Council for British Archaeology ([DEB0053](#)); National Trust ([DEB0018](#)); The Heritage Alliance ([DEB0014](#))

174 Professor Maria Lee ([DEB0076](#))

175 Natural England ([DEB0023](#));

176 [Q260](#)

94. When asked about the confusion in the drafting of the definition of environmental law, Minister for the Environment, Dr Thérèse Coffey MP said:

... in hindsight, some of the wording in some of the explanatory notes that came with this were being explicit about what Acts currently guide, say, the Forestry Commission. Absolutely, anything environmental in there is completely within scope. I do not think it has been worded brilliantly.¹⁷⁷

Climate change law

95. In the Bill, emissions of greenhouse gases (with the exception of fluorinated greenhouse gases (F-gases)) have been excluded from the definition of environmental law.¹⁷⁸ This means that the OEP will not have an enforcement function for climate change even though the Committee on Climate Change (CCC) has no enforcement powers.¹⁷⁹ We previously recommended that the OEP should be able to conduct its own investigations on climate change and should have a role for enforcement where legal duties are breached.¹⁸⁰

96. Chris Stark, chief executive of the CCC, explained that he did not think this power was needed, as Parliament is the ‘enforcer’ of climate budgets.¹⁸¹ He told us the governance framework set out in the *Climate Change Act 2008*, between Parliament, Government and the CCC “works very well” and would be “loosened” by the OEP being involved.¹⁸² He considered that there was a more legitimate space for the OEP to undertake enforcement around the Energy Efficiency Directive, the Renewable Energy Directive and the Waste Framework Directive.¹⁸³

97. The difficulty for the OEP in enforcing climate mitigation is that the requirement to meet, or fail to meet, carbon budgets will happen in the future. The CCC provides an assessment of how likely it is that the Government will meet its carbon budgets, so it would be difficult for the OEP to know when to intervene with enforcement based on this assessment and whether that would result in successful enforcement proceedings.¹⁸⁴ Another aspect that requires consideration is that the geographical scope of the OEP, is limited to England (and now Northern Ireland), whereas the CCC has a four nation remit (see Chapter 6).¹⁸⁵

98. The National Farmers Union agreed with the approach set out in the Bill that the OEP did not need enforcement powers for climate change.¹⁸⁶ Yet the majority of witnesses said that they would like to see climate change falling within the definition of environmental

177 [Q331](#)

178 Clause 31(3)(a)

179 Professor Maria Lee ([DEB0006](#))

180 House of Commons Environmental Audit Committee, [The Government’s 25 Year Plan for the Environment](#), 24 July 2018, HC803, para 74

181 [Q269](#)

182 [Q18](#); [Q33](#)

183 [Q35](#); Committee on Climate Change ([DEB0066](#))

184 [Qq33–34](#)

185 [Q40](#)

186 Environmental Services Association ([DEB0038](#)); see also Mineral Products Association ([DEB0021](#)); National Farmers’ Union ([DEB0067](#))

law and the OEP therefore having enforcement powers for climate change.¹⁸⁷ Under the current governance arrangements there is nothing to stop a public challenge on climate change mitigation through a judicial review, but this could be prohibitively expensive for a member of the public.¹⁸⁸ Allowing the OEP to enforce climate change mitigation would provide greater access to justice.

99. Michael Gove said he was open as to how climate change could be included in the Bill and said it was an issue to be resolved through pre-legislative scrutiny:

There is a delicate question as to whether and how the OEP should take into account these considerations. I am totally open-minded about how that is resolved, and would be grateful for the Committee's advice.¹⁸⁹

International law

100. International law has not been included in the definition of environmental law. Ruth Chambers from Greener UK said the omission was “startling” and Dr Tom West from ClientEarth considered there was an opportunity to be quite ambitious on international law.¹⁹⁰ Professor Macrory explained that the UK has ratified over 40 international environmental treaties whose implementation will become increasingly important post EU exit.¹⁹¹ Witnesses agreed that the OEP need not have an enforcement role for international law, but it should be able to advise and investigate on its implementation.¹⁹²

101. The definition of environmental law has significant implications for the scope of the Office for Environmental Protection's enforcement powers. As drafted, clauses 30 and 31 and their explanatory notes are confusing, and we welcome the Ministers' acknowledgement of this.

102. We recommend that the Government provides greater clarity on the definition of environmental law and natural environment, particularly in the explanatory notes to the Bill. The notes should set out that environmental assessments and strategic environmental assessments are within the definition of environmental law.

103. Clause 31(1)(a) on environmental law should be changed from 'is mainly concerned with' to 'relating to'. The Government should consider using existing definitions, such as those in the Natural Environment and Rural Communities Act 2006, the Environmental Protection Act 1990 and the Aarhus Convention.

187 [Q173](#); [Q177](#); [Q2](#); Aldersgate Group ([DEB0060](#)); Chartered Institution of Water and Environmental Management ([DEB0010](#)); CIBSE (Chartered Institution of Building Services Engineers) ([DEB0034](#)); ClientEarth ([DEB0039](#)); Countryside Alliance ([DEB0061](#)); Greener UK ([DEB0027](#)); Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#)); London Councils ([DEB0078](#)); Mayor of London ([DEB0025](#)); National Trust ([DEB0018](#)); Professor Eloise Scotford ([DEB0065](#)); Professor Maria Lee ([DEB0006](#)); Professor Maria Lee ([DEB0076](#)); RSPB ([DEB0045](#)); Surfers Against Sewage ([DEB0044](#)); The Woodland Trust ([DEB0054](#)); WWF ([DEB0063](#)); UKELA ([DEB0048](#)); Broadway Initiative ([DEB0084](#)); The Sustainable Soils Alliance ([DEB0082](#))

188 [Q33](#)

189 [Q323](#)

190 [Q171](#) [Ruth Chambers]; [Q171](#) [Dr West]

191 Emeritus Professor of Environmental Law Richard Macrory ([DEB0094](#))

192 [Q171](#) [Dr West]; Emeritus Professor of Environmental Law Richard Macrory ([DEB0094](#)); Greener UK ([DEB0091](#))

104. *We recommend that international law is included within the scope of the Office for Environmental Protection's scrutiny and advice functions. Clause 31 should be amended by providing that, in relation to its functions under clauses 15 and 16, environmental law shall also include (a) any area of law with significant environmental implications and (b) international environmental law.*

105. Climate change mitigation, except for the regulation of fluorinated gases, has been specifically excluded from the Bill. This will create a gap in enforcement which is currently undertaken by the European Commission, as the Committee on Climate Change has no enforcement powers. To date the governance framework established under the Climate Change Act has worked well and there has been no need for Parliament to intervene to achieve carbon budgets. Yet, according to the Committee on Climate Change, it is the forthcoming fourth and fifth carbon budgets that are not on track to be achieved. We therefore consider that there is a need for the enforcement of climate change law.

106. *We recommend that the Office for Environmental Protection should have climate change mitigation in its remit and therefore clause 31(3)(a) should be deleted. This would allow the OEP to bring cases against the Government in relation to the implementation of the Energy Efficiency Directive, the Renewable Energy Directive, the Waste Framework Directive and the meeting of carbon budgets. We recognise that this will not resolve the issue that carbon budgets are in the future and therefore effective enforcement could be limited until after carbon budgets are missed. Yet we do not think this is a reason to preclude enforcement on climate change mitigation from the OEP and we recognise that there will still be a significant role for the Committee on Climate Change's advice, and for Parliament to decide whether the Government's plans are adequate to meet carbon budgets.*

5 Role and Powers of the Office for Environmental Protection

Scrutiny and advice functions

107. The role of the OEP in scrutinising Environmental Improvement Plans (clause 14) has been discussed in Chapter 3. This Chapter discusses the scrutiny and advice functions set out in clauses 12, 15 and 16 and the enforcement functions in clauses 17 to 29.

Monitoring and reporting on environmental law

108. Clause 15 sets out requirements for the OEP to monitor and report on environmental law. Professor Richard Macrory QC said this would provide a useful picture on the implementation and enforcement of environmental law in different areas. While nearly every EU Directive has systematic provisions to make reports, it has never been done before in UK environmental law.¹⁹³ Professor Maria Lee from University College London, considered clause 15 could be very important, as it could open a dialogue with public authorities on whether they are taking the “most effective, most ambitious, most efficient way of implementing the law”.¹⁹⁴ She suggested that it should be strengthened so that public authorities should be required to report on their ‘implementation’ of environmental law, which could then tie into the OEP’s investigation and enforcement mechanisms.¹⁹⁵

109. Professor Liz Fisher, from the University of Oxford, was concerned that the Bill placed greater onus on environmental improvement plans rather than environmental law, as the obligations in clause 15 are far less significant than those in clause 14 (monitoring and reporting on environmental improvement plans). She recommended that clause 15 be strengthened in-line with clause 14 to place a duty on the OEP to report on environmental law.¹⁹⁶

Overlap with existing bodies

110. We heard concerns that the scrutiny and advice functions could overlap with existing bodies.¹⁹⁷ Clause 12 requires the OEP to set out in its strategy how it intends to avoid any overlap of its monitoring, reporting and advising functions with those of the Committee on Climate Change (CCC).¹⁹⁸ Chris Stark, chief executive at the CCC, said that while the scrutiny of climate change adaptation would be the main source of overlap between the OEP and the CCC, it would not cause a problem as long as the relationship is clearly laid out in “both the statute and in a memorandum of understanding”.¹⁹⁹

193 [Q6](#) Oral evidence taken before House of Lords Select Committee on the European Union Energy and Environment Sub-Committee 6 February 2019

194 Professor Maria Lee ([DEB0006](#))

195 Professor Maria Lee ([DEB0006](#))

196 E.g. [Qq130–131](#); see also ClientEarth ([DEB0039](#))

197 National Farmers’ Union ([DEB0067](#))

198 Clause 12(3)(b)

199 [Qq275–277](#)

111. Emma Howard Boyd, Chair of the Environment Agency and Alan Law, deputy chief executive at Natural England, said that the role of their organisations in providing evidence to support the OEP’s scrutiny should also be set out in specific memoranda of understanding.²⁰⁰ When asked about the possible overlap with other bodies, Michael Gove said:

I do not think it will be a turf war. We have sought to delineate pretty clearly what functions the OEP would fulfil. As we say, some are functions that the Commission currently fulfils, and there is also learning from the experience of the Parliamentary Commissioner for the Environment in New Zealand and others.²⁰¹

Dr Coffey added that the OEP will be taking a more strategic role than looking at “individual decisions on one particular piece of advice or another”.²⁰²

112. *We recommend that clause 15(2) is changed to read, “The OEP must report on any matter concerned with the implementation of environmental law”.*

113. *Further memoranda of understanding should be considered to avoid duplication of the scrutiny and advice functions of the Office for Environmental Protection and existing bodies such as the Environment Agency and Natural England. These need not be set out on the face of the Bill.*

Advising on changes to environmental law

114. Clause 31(5) provides a delegated power to the Secretary of State to amend the definition of “environmental law” by regulations. Clause 16 requires the OEP to give advice to Ministers on any proposed changes to environmental law or any matter relating to the natural environment that a Minister requires. Debbie Tripley, director of environmental advocacy and policy at WWF, said this “could be bolstered” to mirror the way the CCC provides advice to Government.²⁰³ Instead of the OEP publishing the advice, it could be laid before Parliament, with the Secretary of State then having to respond and explain whether the advice will be followed, and give their reasoning.²⁰⁴ Yet Andrew Bryce, former Solicitor and Chair of UKELA, did not think it was appropriate for the OEP to be required to advise the Minister on environmental law matters as it could conflict with the OEP’s duties to complainants and in reviewing EIPs. He said it would be more appropriate for the OEP to be consulted on new environmental law proposals.²⁰⁵

115. *We recommend that clause 16 should require the Office for Environmental Protection to be consulted on any changes to environmental law, rather than having a duty to give advice. The Office for Environmental Protection’s response on changes to environmental law should be published, with the Secretary of State required to lay before Parliament a response to this advice.*

200 [Q241](#); [Q238](#)

201 [Q312](#)

202 [Q311](#)

203 [Q148](#)

204 See also Agricultural Law Association ([DEB0037](#))

205 Andrew Bryce ([DEB0089](#)); see also Emeritus Professor of Environmental Law Richard Macrory ([DEB0094](#))

The OEP's enforcement functions

Failure of public authorities to comply with environmental law

116. Clause 17 sets out that the scope of the OEP's enforcement functions relating to "failures by public authorities to comply with environmental law". This includes "failing to take proper account of environmental law" or "unlawfully exercising, or failing to exercise, any function it has under environmental law".²⁰⁶

117. Professor Lee explained that she thought the scope for enforcement action was "very tightly drawn" and would leave "the OEP with little to get its teeth into".²⁰⁷ She said under these provisions, as with judicial review, the threshold for failure will be dominated by questions of procedural lawfulness. Andrew Bryce agreed clause 17 was "unduly restrictive".²⁰⁸ Professor Scotford, from University College London, was also concerned that enforcement would be limited to administrative compliance (the *Wednesbury* test),²⁰⁹ rather than achieving environmental standards, which she said was a departure from the enforcement procedure of the European Commission.²¹⁰

118. Another departure from the Commission's approach is that the Bill makes individual public authorities responsible, rather than the Government as a whole. Professor Scotford said, since environmental problems are often collective with multiple causes and multiple agencies needed to remedy breaches, it was "strange" to make individual public authorities accountable.²¹¹ She recommended that the enforcement functions should make the Government accountable as this "focusses minds and resources at the highest level" and is what makes the current enforcement mechanism by the European Commission so powerful.²¹² Tim Buley QC, barrister at Landmark Chambers, agreed with collective accountability for collective environmental problems,²¹³ and the UK Sustainable Investment and Finance Association (UKSIF) said it should then be for the OEP to determine whether Government or another public authority is responsible.²¹⁴ Professor Macrory argued that an additional power to direct its enforcement action at the Secretary of State would be "invaluable" to ensure that the OEP is focused on systematic or very serious breaches.²¹⁵

119. We asked the Minister whether it would be better to make the whole of Government responsible for complying with environmental law, as is the case with the European Commission. Dr Coffey said that from the European Union perspective, "it is the UK Government, but in effect it is the Department [Defra] that is responsible for that [and] will respond to and in fact lead on any infraction proceedings".²¹⁶ She added that it could be either a Department or public body:

206 Clause 17(2)

207 Professor Maria Lee ([DEB0006](#))

208 Andrew Bryce ([DEB0089](#)); see also UK Sustainable Investment and Finance Association ([DEB0073](#))

209 [Wednesbury unreasonableness](#), Thomson Reuters practical law.

210 [Q115](#); [Q123](#); Professor Eloise Scotford ([DEB0095](#))

211 [Qq115-116](#)

212 Professor Eloise Scotford ([DEB0065](#))

213 [Q116](#)

214 UK Sustainable Investment and Finance Association ([DEB0073](#))

215 Emeritus Professor of Environmental Law Richard Macrory ([DEB0094](#))

216 [Q191](#)

The intention is that the OEP has the possibility to go further and hold all public bodies accountable, but they do not have to. There could be an element of their choice.²¹⁷

120. **As drafted, the definition of failure to comply with environmental law narrows the scope of the Office for Environmental Protection’s enforcement powers to look solely at process. It does not achieve equivalence with the European Commission’s powers, nor does it reflect the integration principle.**

121. *The enforcement mechanism must go beyond that of traditional judicial review and the Wednesbury test to a more proportionate approach involving a structured examination of effectiveness.*

122. *We recommend that clause 17 sets out that the Office for Environmental Protection’s enforcement functions relate to failure to achieve environmental targets and standards (the framework for which will be established in part two of the Bill), rather than questions of administrative compliance. Government as a whole should be accountable for the achievement of environmental standards and targets, rather than individual public authorities, as is the case with the European Commission’s infringement procedure. This would require different areas of Government (central Government, local Government and public bodies) to work together cooperatively to address an environment problem. We welcome the Ministers’ acknowledgement that the Office for Environmental Protection will be able to decide which authority is responsible and take enforcement action.*

Investigations of complaints

123. The European Commission allows individuals to raise complaints on breaches of EU law free of charge. Clauses 18 and 19 set out the OEP’s complaints process. A person may make a complaint to the OEP if they believe a public authority has failed to comply with environmental law. The OEP will then investigate to ascertain whether the public authority has failed to comply with environmental law and the failure is ‘serious’.²¹⁸

124. As in clause 17, we consider that it should not be for the individual to decide which authority is at fault or what law has been breached.²¹⁹ UKSIF said the individual should be able to approach the OEP with what s/he believes is an illegally poor environmental outcome, and it should be for the OEP to then investigate and determine whether the Government or another public authority is responsible.²²⁰

125. We also heard that the threshold for determining failure was significant. Professor Fisher explained:

Just the threshold, “serious”, again that is a word open to interpretation, but it is not just that it is serious. It is also that it “must indicate”—so the complaint must indicate, it is not just an allegation. It must be that the complaint put in indicates that there has been a serious breach of environmental law, which again is quite a significant hurdle.²²¹

217 [Q191](#)

218 Clause 19(1)

219 UK Sustainable Investment and Finance Association ([DEB0073](#)); Professor Eloise Scotford ([DEB0095](#))

220 UK Sustainable Investment and Finance Association ([DEB0073](#))

221 [Q111](#); see also Unicef UK ([DEB0059](#)); RSPB ([DEB0045](#)); Newcastle Law School ([DEB0020](#))

126. Professor Fisher said that the Human Rights and Equality Commission can investigate *alleged* conduct.²²² Andrew Bryce and Professor Macrory said that to minimise disputes between complainants and the OEP as to what is or is not serious, the consideration of complaints should specifically link to OEP’s enforcement policy.²²³ This would give a clearer indication to members of the public of the types and nature of complaints it is likely to investigate.²²⁴

127. The National Trust was concerned that while the OEP is given the power to “do anything” it considers appropriate in accordance with its function, it is not given a specific power of investigation that the European Commission has.²²⁵ The explanatory notes state that the OEP can take enforcement action, “if it has some other reason to suspect there has been a serious breach (for example, based on information presented in a report on the implementation of a law, or arising from a parliamentary inquiry or other source)”.²²⁶ Yet this is not set out on the face of the Bill. Greener UK recommended that the OEP should have the power to undertake formal investigations into potential breaches of environmental law and the power to conduct inquiries into systemic problems.²²⁷

128. The enforcement procedure is also constrained by a 12 month time limit for complainants to make a complaint (clause 18(6)), which is not the case with complaints to the European Commission.²²⁸ Yet there is no time limit for the OEP, between receiving a complaint and acting, or between receiving a response to an information notice and taking further action.²²⁹ This is a serious and significant weakness.

Co-ordination of investigations

129. Clause 21 sets out how the OEP should coordinate its activities with other bodies that have an investigative remit, such as the Local Government and Social Care Ombudsman (LGSCO) and the Parliamentary and Health Service Ombudsman (PHSO). It requires the OEP and these bodies to jointly prepare a memorandum of understanding (MoU) regarding the coordination of investigations. The LGSCO and PHSO agreed that there could also be an overlap as complaints may not fall neatly into one category.²³⁰ However, they considered that the requirement for a MoU should not be on the face of the Bill as it would probably be on a case by case basis. Instead the Ombudsmen told us that the OEP should set out how it would avoid overlap - in the same way as the need to avoid overlap is set out with the Committee on Climate Change - in clause 12. They recommended that the OEP should be required to publish its criteria for investigation, along with a requirement to consult on and review those criteria at regular intervals so they can be adjusted in light of operational experience.²³¹

222 [Q112](#)

223 Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#)) and Andrew Bryce ([DEB0089](#)); Clause 12(3) says that the OEP will set its complaints and enforcement policy

224 Emeritus Professor of Environmental Law Richard Macrory ([DEB0094](#))

225 National Trust ([DEB0018](#))

226 Explanatory note clause 22

227 Greener UK ([DEB0027](#))

228 The Woodland Trust ([DEB0054](#)); Subsection 7 provides that in exceptional circumstances the OEP may consider a complaint made outside of this time limit

229 UK Sustainable Investment and Finance Association ([DEB0073](#))

230 LGSCO and PHSO ([DEB0024](#)); The OEP’s remit is to investigate breaches of environmental law and their respective jurisdictions investigate maladministration or service failure

231 LGSCO and PHSO ([DEB0024](#))

130. Serious damage may sometimes take years to become apparent. We cannot understand the justification for a time limit on complaints. This is not used by the European Commission and should be removed. *Clause 18(6) which specifies time limits to complaints and 18(7) which says that out of time complaints can be considered in exceptional circumstances, should be removed.*

131. *Clause 19(1) should provide a power for the Office for Environmental Protection to be able to instigate its own investigations and not just those that it receives a complaint on. It should also be able to investigate alleged breaches rather than those that are, in its view, ‘serious’. Clause 19(1) should have the following subclause added: “(c) and is consistent with its enforcement policy”.*

132. *Clause 12(3) requires that the Office for Environmental Protection must set out how it will avoid any overlap in functions with the Committee on Climate Change and a similar duty should be included to set out how it will avoid any overlap with the Local Government and Social Care Ombudsman and Parliamentary and Health Service Ombudsman complaints-handling functions. The Office for Environmental Protection should also be required to consult on, publish and review its criteria for investigation.*

Enforcement

133. The enforcement process against public authorities begins with an information notice.²³² The recipient of an information notice must respond in writing and provide the OEP with the information requested in the notice within two months or by the date set. If the OEP is satisfied that on the balance of probabilities an authority has failed to comply with environmental law and this failure is “serious”, it will be able to issue a decision notice. This sets out the steps the OEP considers the public authority should take in relation to the failure (this may include actions to remedy, mitigate or prevent reoccurrence of that failure).²³³ The authority will be required to respond to a decision notice in writing within two months, but it will not be compelled to carry out the steps detailed in the notice.²³⁴ As a final step, the OEP may apply for judicial review from the High Court (in England, Wales and Northern Ireland) or an application to the supervisory jurisdiction of the Court of Session in Scotland.²³⁵

134. Many witnesses suggested that the enforcement powers of the OEP are limited or narrow.²³⁶ We heard that the combination of clause 17, the failure to comply with environmental law, and the enforcement procedure in clause 25, mean that many environmental obligations of result (such as achieving good water status or air quality standards) do not come within the scope of its enforcement provisions.²³⁷

135. Several witnesses were concerned that the “review” proposed under clause 25 looks at whether the original conduct of the public body was a breach of environmental law, not at the decision notice or the failure to comply with it.²³⁸ ClientEarth said that this “is a very

232 Clause 22

233 Clause 23(2)

234 Clause 23(3) and 23(4)

235 Clause 25(3)

236 E.g. [Q12](#) [Professor Macrory] Aldersgate Group ([DEB0060](#)); Brexit and Environment ([DEB0008](#)); ClientEarth ([DEB0039](#)); Greener UK ([DEB0027](#)); Unicef UK ([DEB0059](#)); APPG on Air Pollution ([DEB0004](#)); National Trust ([DEB0018](#)); Newcastle Law School ([DEB0020](#)); Professor Maria Lee ([DEB0006](#)); WWF ([DEB0063](#)); UKELA ([DEB0048](#))

237 Professor Eloise Scotford ([DEB0095](#))

238 [Q117](#); UKELA ([DEB0048](#)); See also ClientEarth ([DEB0039](#)); ClientEarth ([DEB0088](#))

weak enforcement power” and “may even be narrower than simply bringing a traditional judicial review”.²³⁹ Professor Macrory said the use of judicial review as a final step is not equivalent to the way the European Court of Justice (CJEU) approaches infringement cases.²⁴⁰

136. Judicial review is concerned with the interpretation of law and whether the right procedures have been followed, rather than the outcome of a process and whether those were ‘right’, (the *Wednesbury* test).²⁴¹ Professor Macrory explained that the CJEU is prepared to apply a proportionate approach and engage in quite complex evidential issues, rather than just looking at the process of the decision.²⁴² He suggested that the Government had chosen to use judicial review as it is what it is most comfortable with; “they know the limitations and the courts will not go too far”.²⁴³ Dr Tom West, Law and Policy Advisor, from ClientEarth explained that the drawbacks to judicial review are underlined by the court cases brought by ClientEarth against the Government on air quality,²⁴⁴ where even though there has been action, the UK is “still in breach of air quality limits”.²⁴⁵ He was also concerned that claimants may have to have exhausted the OEP’s procedures before being able to bring their own judicial review.²⁴⁶

137. We asked Michael Gove whether it would be better to comply with environment standards rather than procedural correctness. He considered environmental standards could be upheld by the OEP:

No, I think if we fail, then it is clearly the case that we can be challenged by the OEP and, if necessary, taken to court.²⁴⁷

Alternative enforcement procedures

138. We heard that there will be strategic policy failures that can be dealt with over a period and those where an urgent remedy may be required.²⁴⁸ Tim Buley QC, from Landmark Chambers, and Professor Fisher said it may be inappropriate to try to design “a one-size-fits-all mechanism for enforcement” since failure to comply with environmental law comes in many different forms.²⁴⁹

139. The UK Environmental Law Association (UKELA) told us the proposed notice procedures are very slow, with two-month time periods for response. It said that if a breach is serious or ongoing, this could be too long a delay before court action can be taken by the OEP.²⁵⁰ Tim Buley agreed that since the time limit for judicial review is very strict, “three

239 ClientEarth ([DEB0039](#)); see also [Qq190–191](#) [Andrew Bryce]

240 Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#))

241 UKELA Conference. A First Response to the Environment Bill: The New Body, the Courts and the Future of UK Environmental Law. 14 Jan 2019; Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#)); [Wednesbury unreasonableness](#), Thomson Reuters practical law.

242 Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#)); See also [Q116](#) [Tim Buley]

243 [Q187](#)

244 ClientEarth has taken the Government to court three times since 2010 as a response to the UK’s failure to meet the requirements of the EU’s Ambient Air Quality Directive which came into force in 2008.

245 [Q12](#) Oral evidence taken before House of Lords Select Committee on the European Union Energy and Environment Sub-Committee 6 February 2019; see also [Q187](#)

246 ClientEarth ([DEB0088](#)); see also [Q123](#)

247 [Q189](#)

248 [Q186](#); see also [Q114](#) [Tim Buley]; WWF ([DEB0063](#))

249 [Q121](#); [Q123](#); [Q128](#)

250 UKELA ([DEB0048](#))

months ordinarily, six weeks in some environmental contexts”, it would not be appropriate to have it at the end of the process while the OEP has been conducting its investigation and the harm may have already happened.²⁵¹ UKELA supported the OEP having a power to make an emergency application for judicial review and Tim Buley said the OEP should have the ability to bring a judicial review at the start of the process.²⁵² Professor Macrory outlined that it would be helpful for the OEP to have an additional power to be able to intervene in environmental judicial reviews undertaken by other parties. He said that the Equality and Human Rights Commission (EHRC) which has such powers under *Equality Act 2006*, has made very effective use of them.²⁵³

140. Natural England and many environmental organisations supported making decision notices legally binding.²⁵⁴ ClientEarth said that the Government had claimed this would be inappropriate, but pointed out that there is already precedent as both the EHRC and Information Commissioner’s Office have comparable powers.²⁵⁵ Professor Macrory cautioned against binding notices as he thought this could encourage litigation, when the aim should be to resolve cases out of court (90 per cent of cases at the European Commission are resolved out of court through discussion with Member States).²⁵⁶ He said that, provided the measures in the Bill (information notice, decision notice and judicial review) were ratcheted up over time, then there was no need for binding notices.²⁵⁷ When asked whether the Government would consider binding notices, Dr Coffey stated that it would completely undermine regulatory independence if the OEP were to overrule a regulator such as the Environment Agency.²⁵⁸

141. The Government has chosen not to include fines within its enforcement process. We heard mixed views on fines, with some supporting their use as a deterrent and to achieve equivalence with the CJEU process,²⁵⁹ and others cautioning that this would take resources away from public bodies.²⁶⁰ Professor Macrory explained that the CJEU issues fines for failure to comply with its judgments, rather than having a direct power to fine.²⁶¹ He said it is “like contempt of court” and that there are sufficient powers in the courts to hold the Government to account. Yet Professor Macrory claimed that the Government’s proposals “lack imagination” and said the Government should create something new, avoiding “all the baggage of [judicial review]”.²⁶² ClientEarth also argued that a bespoke enforcement process was necessary.²⁶³

251 [Q117](#); see also [Q250](#) [Dr David Wolfe]

252 [Q121](#); UKELA ([DEB0048](#))

253 Emeritus Professor of Environmental Law Richard Macrory ([DEB0094](#)); *Equality Act 2006* section 30

254 Natural England ([DEB0023](#)); APPG on Air Pollution ([DEB0004](#)); Greener UK ([DEB0027](#)); Newcastle Law School ([DEB0020](#)); Professor Maria Lee ([DEB0006](#)); WWF ([DEB0063](#))

255 ClientEarth ([DEB0039](#))

256 [Q193](#); [Q185](#)

257 [Q193](#)

258 [Q297](#)

259 Environmental Services Association ([DEB0038](#)); Wyeside Consulting Ltd ([DEB0001](#)), Wildlife and Countryside Link ([DEB0035](#))

260 [Qq122–123](#); Environment Agency ([DEB0080](#)); Newcastle Law School ([DEB0020](#)); UKELA ([DEB0048](#));

261 [Q12](#)

262 [Q12](#); UKELA Conference. A First Response to the Environment Bill: The New Body, the Courts and the Future of UK Environmental Law. 14 Jan 2019

263 ClientEarth ([DEB0088](#))

A specialist court - Environment Tribunal

142. Professor Macrory suggested that the role of the First-tier Tribunal, which deals with appeals from executive agency decisions, could be expanded and included as a step in enforcement before reaching judicial review (see box). He added that it has a much more informal procedure which means it can resolve things “very quickly if need be”.²⁶⁴

The Tribunal System

The current tribunal system is part of the court system and was created in 2008. It consists of two main tiers: The First-tier Tribunal and the Upper Tribunal.

The First-tier Tribunal currently consists of seven chambers structured around subject areas. Environment is dealt with in the General Regulatory Chamber which handles appeals in about 44 areas of environmental law.²⁶⁵ The tribunal combines legal members with expert members, who have expertise in environmental science.

The First tier Tribunal currently handles appeals against decisions made by local authorities and Government regulatory bodies. This includes appeals against civil sanctions issued by the Environment Agency, Natural England or another regulator.²⁶⁶ There are 28 days to appeal a decision. The full written decision by the tribunal is usually provided within four weeks of the hearing.²⁶⁷

The Upper Tribunal generally hears appeals arising from the First-tier Tribunal. The Administrative Appeals Chamber hears all appeals from the General Regulatory Chamber including appeals from the environment tribunal. Appeals to the Upper Tribunal are only available on a point of law.²⁶⁸ It has the equivalent status to the High Court, meaning that it can both set precedents and enforce its decisions. It is also the only tribunal to have the power of judicial review. Appeals from the Upper Tribunal are to the Court of Appeal.

143. Tim Buley explained two possible ways an expanded environmental tribunal approach could work:

- The Bill provides the OEP with more powers such as binding recommendations, which public authorities have the right to appeal to the tribunal; or
- The OEP makes recommendations through non-binding decision notices, and, if dissatisfied with the action taken by public authorities, it then goes to the tribunal to seek remedies.²⁶⁹

264 [Q12](#) [Professor Macrory]

265 [Q12](#) [Professor Macrory]

266 The [Environmental Civil Sanctions \(England\) Order 2010](#) gives the Environment Agency and Natural England (the regulators) the power to impose civil sanctions for a range of environmental offences. Civil sanctions include compliance notices, restoration notices, enforcement undertakings, fixed monetary penalty notices, stop notices.

267 HM Courts and Tribunals Service. 2015. [General Regulatory Chamber tribunal hearings and decisions, guidance](#)

268 Tribunals, Courts and Enforcement Act 2007, [s11](#).

269 [Q124](#); [Q126](#)

144. The first option would be more in line with the current European Commission procedure,²⁷⁰ whereas the second may suit the Government, as Ministers have said they do not want the OEP to issue binding notices.²⁷¹ ClientEarth supported an approach between the two options, where the OEP issues binding notices with a range of possible sanctions, the public authority must then comply with these or set out proportionate reasons why not. The onus would then be on the OEP to challenge the decision not to comply with the notice at the tribunal.²⁷² The tribunal would then undertake a substantive review of the authority's decision not to comply with the notice. ClientEarth argued that this bespoke enforcement procedure would allow for a more thorough review of decision-making:

While the ambition is always for matters to be resolved through mutually agreed solutions arrived at via transparent and deliberative processes, it must also contain the possibility of harder legal measures.²⁷³

145. Tim Buley noted that the benefit of a tribunal is that it has expert members who would be able to conduct their own factual findings.²⁷⁴ Professor Macrory said the tribunal should be able to consider both whether there has been a breach of environmental law duties (if there is still an issue) and the credibility and timeliness of the steps being taken to deal with the failure. He added that if the First-tier Tribunal approach was adopted then it would be sensible to include an explicit provision that failure to comply with a decision of the tribunal could amount to contempt and be referable to the Upper Tribunal (for a precedent see *The Data Protection Act 2018*).²⁷⁵ He also suggested another option instead of using the First-tier Tribunal, where the OEP could go straight to the Lands Chamber in the Upper Tribunal which has the status of the High Court.²⁷⁶

146. We asked Michael Gove whether he was considering an expanded role for the First-tier Tribunal. He said it was “genuinely arguable whether that is a more effective means of providing justice”, and that the Government had sought to replicate an easily understandable process, as far as possible.²⁷⁷

147. As we have already set out, the Office for Environmental Protection's enforcement procedure does not achieve equivalence with the European Commission's powers as it is limited to administrative compliance rather than achieving environmental standards and outcomes.

148. We recommend that, following the changes suggested to clause 17 (that the enforcement mechanism must go beyond that of traditional judicial review), the references in clause 25 to judicial review should be deleted and 25(1) should refer to failing to achieve environmental targets and standards set out in section 17.

270 [Q124](#)

271 [Q297](#)

272 ClientEarth ([DEB0088](#))

273 ClientEarth ([DEB0088](#));

274 [Q124](#)

275 Data Protection Act 2018, [section 202](#); Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#)); see also [Q165](#) [Debbie Tripley]

276 Emeritus Professor of Environmental Law Richard Macrory ([DEB0094](#))

277 [Q303](#); [Q200](#)

149. A one-size-fits-all approach to enforcement is not appropriate since the failure to comply with environmental law comes in many different forms. The procedure set out in the Bill is also slow and could preclude other, swifter forms of enforcement and remediation.

150. *We recommend that:*

- *The Bill should allow the Office for Environmental Protection to bring a judicial review at the start of the process in rare cases where a delay could cause further environmental harm.*
- *The Bill should specify that the Office for Environmental Protection bringing enforcement proceedings does not prevent others who wish to bring a judicial review.*
- *The Office for Environmental Protection should be given the power to act as an intervener in environmental judicial reviews undertaken by other parties.*
- *Clauses 22 and 23 should be amended to include an obligation on the Office for Environmental Protection to act on responses to information or decision notices, or to explain to the complainant why no further action has been taken. This would provide a ratcheting approach to enforcement.*

151. Overall, the enforcement procedure lacks imagination and the Government must consider alternative mechanisms. We have heard compelling evidence that there should be an expanded role for the First-tier Tribunal. This would help to resolve more cases before the need to apply for judicial review.

152. *We recommend the Government looks further into a bespoke enforcement procedure and an expansion of the role and remit of the General Regulatory Chamber in the First-tier Tribunal. For example, where the Office for Environmental Protection is able to issue notices (at first advisory, then latterly binding) with a range of compliance recommendations, to which the public authority must then comply, or set out proportionate reasons why not. The Office for Environmental Protection would then be able to challenge a decision not to comply with the notice at the tribunal. The tribunal would undertake a substantive review of the authority's decision not to comply with the notice. Any failure to comply with a decision should amount to contempt and be referable to the Upper Tribunal. Section 202 of the Data Protection Act 2018 provides a useful guide as to how this could be achieved in the legislation.*

Co-operation and information

153. Clause 26 sets out that any person whose functions are of a public nature must cooperate with the OEP in connection with an investigation, and information and decision notices.²⁷⁸ Professors Lee and Macrory said there should also be an obligation on public authorities to cooperate specifically in respect of monitoring and reporting on the implementation of environmental law (clause 15), since the OEP may require information from them to carry out its duties.²⁷⁹

278 Clause 26 (1)

279 Professor Maria Lee ([DEB0006](#)); see also Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#)); see also National Trust ([DEB0018](#))

154. Clause 27 seeks to enable public authorities to share information with the OEP, however it is limited to the OEP's enforcement functions.²⁸⁰ UKELA recommended that the power should be extended to clauses 14, 15 and 16 to enable the OEP to have all relevant information in performing its scrutiny functions.²⁸¹ Greener UK said it was important that the OEP has the power to require information from competent bodies, especially where this relates to information that may be commercially sensitive or not in the public domain.²⁸² The LGSCO and PHSO were concerned that restrictions within their respective legislative frameworks would constrain their ability to share information with the OEP.²⁸³ They recommended that clause 27 be amended to also cover the OEP's function to investigate complaints under clause 19. This would ensure the relevant provisions in the *Local Government Act 1974* and the *Parliamentary Commissioner Act 1967* amount to an obligation of secrecy within the meaning of clause 27.²⁸⁴

155. Clause 28 sets out the prohibitions on disclosure of information. The LGSCO and PHSO said that clause 28 could inhibit coordination of investigations between themselves and the OEP. They recommend clause 28 is amended to include reference to the provision of information which facilitates coordination between LGSCO, PHSO and the OEP.²⁸⁵

156. *We recommend:*

- *Clause 26(1) should have a subsection added: (d) any monitoring and reporting on the implementation of environmental law under section 15.*
- *Clause 27(1) should be amended to cover the Office for Environmental Protection's scrutiny and advice functions set out in clauses 14, 15 and 16 and its function to investigate complaints under clause 19.*
- *Clause 28(2) should be amended to include reference to the provision of information which facilitates coordination between the Local Government and Social Care Ombudsman, the Parliamentary and Health Service Ombudsman and the Office for Environmental Protection.*

280 LGSCO and PHSO ([DEB0024](#))

281 UKELA ([DEB0048](#)); see also Aldersgate Group ([DEB0060](#)) and Emeritus Professor of Environmental Law Richard Macrory ([DEB0094](#))

282 Greener UK ([DEB0027](#))

283 LGSCO and PHSO ([DEB0024](#))

284 [Local Government Act 1974](#); [Parliamentary Commissioner Act 1967](#)

285 LGSCO and PHSO ([DEB0024](#))

6 Collaboration with Devolved Administrations

UK Government approach

157. Environment is a devolved matter, subject to a small number of areas that are reserved. Clause 34 sets out the territorial extent of the clauses in the draft Bill. Environmental improvement plans and their scrutiny by the OEP extend to England and Wales only (clauses 5 to 10 and 14).²⁸⁶ The other provisions extend to England and Wales, Scotland and Northern Ireland on matters that are not devolved.²⁸⁷

158. The draft explanatory notes state that the OEP could exercise functions more widely across the UK “subject to the ongoing framework discussions with the devolved administrations”.²⁸⁸ Defra also acknowledged that it would be beneficial to work with the devolved administrations to co-design the proposals:

Overall, we recognise that protecting the environment is inherently an issue that cuts across boundaries, and we continue to welcome the opportunity to co-design with the devolved administrations, should they wish to join any proposals, to safeguard our shared natural environment.²⁸⁹

159. The Government’s response to our inquiry on the 25 Year Plan in November 2018, made clear that no devolved administration had agreed to the proposal of a UK-wide body to replace the role of the European Commission and European Environment Agency.²⁹⁰ We wrote to Roseanna Cunningham MSP, Cabinet Secretary for Environment, Climate Change, and Land Reform at the Scottish Government, Leslie Griffiths AM, Minister for Environment, Energy and Rural Affairs at the Welsh Government and Mr Denis McMahon, permanent secretary at the Department for Agriculture, Environment and Rural Affairs (DAERA) in Northern Ireland, to ask how well the Government’s proposals work with the devolution settlement. Their responses are detailed below.

Scotland

160. Roseanna Cunningham told us the Scottish Government will continue to work with the UK Government and the other devolved administrations to ensure that there are effective measures across the UK.²⁹¹ On 16 February 2019, the Scottish Government opened a consultation *Environmental Principles and Governance in Scotland*, to ensure that

286 The territorial extent of the Bill is the legal jurisdictions of which the Bill forms part of the law. The extent of a Bill can be different from its application.

287 [Draft Environment \(Principles and Governance\) Bill](#), Draft Explanatory Notes, para 42; House of Commons Library. *Environmental Principles and Governance: the draft Bill*. [Briefing paper no 8484](#), 30 Jan 2019

288 Explanatory note 42

289 [Environment Bill: policy paper](#), 19 December 2018

290 House of Commons Environmental Audit Committee, [The Government’s 25 Year Plan for the Environment: Government Response to the Committee’s Eighth Report](#) Twelfth Special Report of Session 2017–19, 6 November 2018, HC1672

291 [Letter from Roseanna Cunningham to the Chair on the UK Government’s draft Environment \(Principles and Governance\) Bill](#), 26 February 2019

measures fit with existing Scottish Institutions.²⁹² The consultation included proposals for a new duty on Scottish Ministers to have regard to four EU environmental principles in designing new policies and legislation and sought views on the design of governance arrangements consistent with the roles of the Scottish Parliament and courts.

161. The four principles included the precautionary principle, polluter pays principle, prevention principle and rectification at source principle. It asked whether other principles, drawn from international agreements should be included. On governance, the consultation proposed a number of possible options:

- establishing a Commissioner, such as The Scottish Information Commissioner;
- establishing a non-Departmental public body, which would require legislation;
- extending the powers of an existing public body to undertake scrutiny of environmental matters; and/ or
- create a function for a Scottish body to have the responsibility to refer the Scottish Government or a public authority to a Scottish court for failure to properly implement environmental law.²⁹³

162. Roseanna Cunningham said that she was concerned that devolved public authorities will be within the remit of the OEP in respect of reserved matters,²⁹⁴ yet the definition of environmental law closely matches the “purpose test” for judging when a measure is devolved (clauses 31(4)).²⁹⁵ She said it “is difficult to understand the scope of these OEP powers” and recommended that examples could be given of these provisions.²⁹⁶

Wales

163. In Wales, there are existing environmental governance frameworks in place that need to be taken into account. Sustainable development is already embedded in policy through the *Well-being of Future Generations (Wales) Act 2015*, which requires public bodies to “carry out sustainable development” and meet well-being objectives. It also established a *Future Generations Commissioner for Wales*, who provides advice and makes recommendations to Welsh Ministers.²⁹⁷ The *Environment (Wales) Act 2016* introduced a further set of principles to guide and support policy development towards the sustainable management of natural resources.²⁹⁸

292 Scottish Government. 2019. [Consultation on Environmental Principles and Governance in Scotland. Letter from Roseanna Cunningham to the Chair on the UK Government’s draft Environment \(Principles and Governance\) Bill](#), 26 February 2019

293 Scottish Government. 2019. [Consultation on Environmental Principles and Governance in Scotland](#), paras 69 and 92

294 Reserved matters are the areas of Government policy where the UK Parliament has kept the power to make laws in Scotland, Wales and Northern Ireland.

295 The purpose test to define legislative competence means that if an Act in some way relates to a reserved matter but its purpose is devolved it can still be within the legislative competence of the devolved administration.

296 [Letter from Roseanna Cunningham to the Chair on the UK Government’s draft Environment \(Principles and Governance\) Bill](#), 26 February 2019

297 [Well-being of Future Generations \(Wales\) Act 2015](#); Q7 [Debbie Tripley]

298 [Environment \(Wales\) Act 2016](#)

164. Leslie Griffiths told us that as the existing environmental governance framework in Wales “is wider and more integrated”, than the approach proposed in the UK Bill, she did not think it was “an appropriate model to address the gaps in Wales”.²⁹⁹ She added that a UK-wide response could be beneficial for international commitments which require UK-wide action. The Welsh Government published a consultation on its future governance arrangements on 18 March 2019.³⁰⁰ The consultation proposals build on the existing legislation in Wales. It suggested that the principles that are already in legislation will be extended to apply to all those falling within devolved competence and it will incorporate the ‘polluter pays’ and ‘rectification at source’ principles, which are not included in the *Environment (Wales) Act 2016*, in new legislation.

165. For governance, the consultation does not propose a specific model but asked whether improvements could be made to existing structures or whether a specific oversight body is required. The Public Services Ombudsman and Auditor General for Wales currently provide oversight of public bodies and the Future Generations Commissioner provides advice on sustainable development, but its recommendations are not legally binding. The consultation sought views on what enforcement actions are needed in line with the Welsh devolution settlement.³⁰¹

Northern Ireland

166. Northern Ireland has not had a sitting Assembly since March 2017, so primary legislation cannot be passed through the Northern Ireland Assembly. In response to our letter, Denis McMahon confirmed that DAERA requested that the scope of the draft Environment Bill be extended to include Northern Ireland as recommended in our previous report, and the Secretary of State for Environment, Food and Rural Affairs agreed.³⁰² DAERA said that “this work is at an early stage” and new provisions are being drafted to ensure that they will work effectively in the Northern Ireland context.³⁰³

167. Ruth Chambers from Greener UK explained that the environment in Northern Ireland is already losing out as its environmental governance has been historically “rather weak”.³⁰⁴ Debbie Tripley from WWF considered that it has been difficult for devolved administrations, particularly those with their own legislation in this area, to fit within the Bill. She also questioned which body would bring each of the devolved bodies together.³⁰⁵

168. When asked whether Scotland and Wales had shown any interest in joining the UK Government’s approach, Dr Coffey replied:

299 [Letter from Lesley Griffiths to the Chair on the UK Government’s draft Environment \(Principles and Governance\) Bill](#), 28 February 2019

300 Welsh Government consultation document. [Environmental Principles and Governance in Wales Post European Union Exit](#), 18 March 2019

301 Welsh Government consultation document. [Environmental Principles and Governance in Wales Post European Union Exit](#), 18 March 2019

302 Under the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 a senior officer of a Northern Ireland Department can take a decision in the absence of Northern Ireland Ministers if the officer is satisfied that it is in the public interest to do so. See House of Commons Environmental Audit Committee, [The Government’s 25 Year Plan for the Environment](#), 24 July 2018, HC803

303 [Letter from the Permanent Secretary to the Chair on the Scrutiny of the Environment Bill](#), 27 February 2019

304 [Q7](#) [Ruth Chambers] House of Lords EU Committee

305 [Q7](#) [Debbie Tripley] House of Lords EU Committee

I have only just seen the proposals that came out from Wales. My understanding and discussions have been that they already had certain different commission bodies in there and they felt that was sufficient and that Scotland were pursuing another approach. [...] Having just read the consultation—I have not had a discussion personally with Lesley in the last 48 hours—then there may be other opportunities for collaboration, but up until recently, my impression has been that they were happy to use their own processes in order to achieve that oversight.³⁰⁶

169. We asked the Michael Gove how the OEP will be extended to Northern Ireland. He confirmed that there be a schedule to the Bill so that the OEP provisions can operate in Northern Ireland.³⁰⁷ When asked how it would work in practice he said that his preference was that the OEP “should be located outside London”.³⁰⁸

170. We are disappointed that limited effort has been made to co-design a body and governance framework to cover all four nations of the UK, given this would provide greater independence, a level playing field and more coordinated action. We consider that although it appears coordination has improved since the publication of the Bill, the lack of action in the lead-up to, and drafting of the Bill, had already ruled out possible areas of collaboration which could extend into the future.

171. The Government should set out in response to this report how it intends for the Office for Environmental Protection to work collaboratively and without overlap with its potential equivalent bodies in Wales and Scotland. The response should clearly set out which provisions are within the scope of the Office for Environmental Protection in respect of reserved matters.

172. The inclusion of Northern Ireland within the scope of the Bill is welcome but will require careful consideration. The Government must ensure that there is appropriate representation from Northern Ireland on both the Board and within the staff to ensure it can deal with country specific issues adequately. We are reassured that the Office for Environmental Protection need not be located within London, but thought should be given to whether it will operate effectively in Northern Ireland and should bear in mind the environmental impacts of travel.

Common frameworks

173. European Union law has provided a common framework within which domestic institutions have operated. Our previous inquiries have highlighted that common frameworks are vital to prevent any undermining of environmental protections to gain a competitive advantage.³⁰⁹ The UK Government and devolved administrations coordinate devolved and reserved powers in the Joint Ministerial Committee (JMC). In March 2018, the Government’s analysis suggested that there are 82 areas in which common frameworks

306 [Q171](#)

307 [Q166](#)

308 [Q167](#)

309 For example, *The Future of the Natural Environment*; Environmental Audit Committee, [EU and UK Environment Policy](#), Third Report of Session 2015–16, HC537 and House of Commons Environmental Audit Committee, [The Government’s 25 Year Plan for the Environment](#), 24 July 2018, HC803

may be necessary after leaving the EU, as well as in 24 areas where further discussion will be necessary to determine whether a common framework may be needed in full or in part.³¹⁰ Of these, six of the 82, and 15 of the 24 were identified as Defra responsibilities.

174. In some areas, such as water quality, the Government has suggested that common frameworks will not be required. We warned in our *25 Year Plan for the Environment* report that without common frameworks there will be little to prevent a decline in the quality of transboundary natural assets, such as air, water and biodiversity, should a future Government decide to reduce their protections or not create new targets for improvement.³¹¹ We asked Michael Gove for an update on the framework discussions with the devolved administrations. He said that there are only a small amount remaining and they were now down to “single figures”.³¹² The Secretary of State later responded in writing and stated that as of 29 March 2019, there were 14 EU exit statutory instruments left to lay. Seven of these were required before exit day and the Secretary of State assured the Committee that there were plans for these to be laid.³¹³

175. We reiterate our previous conclusion that common frameworks must be established as soon as possible to ensure that the environment is not simply reliant on the goodwill of this or any future Government. *The Government must ensure that common frameworks are in place by exit day or should explain why they are not time critical. We recommend the Government produces an update to its 2018 analysis on common frameworks in response to this report.*

310 Cabinet Office. Frameworks analysis. Breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland, March 2018

311 House of Commons Environmental Audit Committee, [The Government’s 25 Year Plan for the Environment](#), 24 July 2018, HC803

312 [Q218](#)

313 Secretary of State to Chair, 3 April 2019

7 Wider concerns on the draft Bill

176. The Bill has been drafted during the process of negotiations to leave the EU, which we recognise has meant that there are outstanding issues that need to be resolved before the Bill is introduced, for example, how to meet the requirements of the Withdrawal Agreement or emergency planning in the event of not reaching a deal.

Withdrawal Agreement

177. The UK-EU Withdrawal Agreement that was endorsed by EU leaders on 25 November 2018 sets out the draft agreement between the UK Government and the EU for the withdrawal of the UK from the EU.³¹⁴ As part of the Agreement, should the UK and EU not reach a future trade agreement at the end of the transition period specified in the Withdrawal Agreement, then the Northern Ireland protocol (referred to as ‘the backstop’) will come into force to maintain an open border on the island of Ireland. Under the backstop, the UK will conform to specific EU legislation on customs, taxation, the environment, labour law, state aid and competition.³¹⁵ This includes a non-regression clause on environment.

Non-regression

178. Non-regression means that environmental protection will not be reduced from common standards applicable within the EU and UK. It is environmentally important and will be a key factor in the UK’s ability to strike a free trade agreement with the EU.³¹⁶ The text sets out:

... the Union and the United Kingdom shall ensure that the level of environmental protection provided by law, regulations and practices is not reduced below the level provided by the common standards applicable within the Union and the United Kingdom at the end of the transition period ...³¹⁷

179. The Government has confirmed that the Bill’s proposals do not yet meet the non-regression clause and it will consider the provisions of the Withdrawal Agreement ahead of publishing the final Bill.³¹⁸ Greener UK said the Government’s explanatory notes provide no legal certainty on how the non-regression commitment will be delivered and said jointly agreed common environmental frameworks would need to be in place across the UK.³¹⁹ Nigel Haigh, formerly of IEEP, warned that the absence of an objective to achieve ‘high standards’ in the Bill “will not evade the eyes of the EU” during future trade negotiations. ClientEarth recommended that the Bill should specifically include a binding non-regression provision to prevent any lowering in environmental standards.³²⁰

314 [Draft Withdrawal Agreement](#); A Political Declaration setting out the framework for the future economic partnership between the UK and the EU was also published.

315 [Draft Withdrawal Agreement](#), Article 6

316 [Q43](#) [Jill Rutter]

317 [Draft Withdrawal Agreement](#)

318 [Environment Bill: policy paper](#), 19 December 2018

319 Greener UK ([DEB0027](#))

320 Mr Nigel Haigh ([DEB0019](#)), ClientEarth ([DEB0039](#))

180. The Secretary of State for Business, Energy and Industrial Strategy, Rt Hon Greg Clark MP, announced that the Government will legislate to ensure that where future Bills could affect environmental protections, Ministers will have to make a “statement of compatibility to Parliament and provide explanatory information”.³²¹ This proposal does not suggest what would happen if Parliament voted against strengthening standards to meet non-regression. Amy Mount from Greener UK said the proposal was unclear:

The Government would have a statutory requirement to report on changes at the EU level, but there is nothing there on independent scrutiny of the government’s response to those changes, nor clarity on how Parliament would consider any report. It is very vague.³²²

Enforcement

181. The Withdrawal Agreement commits the UK to ensure that “sanctions are effective, proportionate and dissuasive and have a real and deterrent effect”.³²³ The UK must implement “a transparent system for the effective domestic monitoring, reporting, oversight and enforcement” and the oversight body (the Office for Environmental Protection) must be “independent and adequately resourced”.³²⁴ The Brexit and Environment network said the Bill is not sufficient to meet the requirements of the Withdrawal Agreement as it “arguably opens the door to a weaker environmental protection regime after Brexit”.³²⁵ Andrew Bryce, former Chairman of UKELA agreed:

The process for the OEP to highlight a breach of law with non-binding notices and then obtain a declaration upon a Judicial Review with no provision for enforceable remedial solutions does not seem to me to meet this requirement.³²⁶

182. The Institute for Government (IfG) said that it “notable” that the Government’s explanatory notes do not mention that the Withdrawal Agreement makes a commitment to funding of the OEP.³²⁷ There are also requirements to put four of the principles into legislation.³²⁸

Regulatory alignment

183. The future relationship treaty or treaties, when they are negotiated, may impose different environmental obligations on the UK.³²⁹ The IfG has said that should the UK seek significant integration into the single market, then this may involve “dynamic alignment” with EU environmental rules, rather than non-regression. This could provide a further remit for the OEP, to provide oversight on whether the UK is transposing environmental law into UK law adequately and on time. The IfG has suggested that this may be better suited to a supranational rather than domestic body.³³⁰

321 Leaving the EU: Protection for Workers, 6 March 2019, [col 980](#)

322 Statutory duties and ‘good working models’, Business Green [article](#), 7 March 2019

323 [Draft Withdrawal Agreement](#)

324 Article 3, Paragraph 2 of the Protocol to the Withdrawal Agreement on Ireland and Northern Ireland

325 Brexit and Environment ([DEB0008](#)); see also Professor Colin Reid ([DEB0007](#))

326 Andrew Bryce ([DEB0089](#))

327 Institute for Government ([DEB0030](#))

328 Part 2, article 2, paragraph 2 of the Protocol to the Withdrawal Agreement on Ireland and Northern Ireland

329 Institute for Government ([DEB0030](#))

330 Institute for Government ([DEB0030](#))

184. Dr Coffey acknowledged that the Withdrawal Agreement would require a body similar to the OEP in Scotland, Wales and Northern Ireland.³³¹ We also asked whether there would be cross-border issues between Northern Ireland and Ireland. She said she did not think this would be a problem:

I believe that there is good co-operation that already exists. I think if you go to the Good Friday Agreement, while that is a key part of the element, it is about the collaboration and co-operation. It does not require necessarily that things be the same on how outcomes are achieved and what Directives are set.³³²

185. The Bill will need to be significantly upgraded to meet the requirements of non-regression under the Northern Ireland protocol to the Withdrawal Agreement. The Government will have to show that the Office for Environmental Protection is properly resourced, independent and able to issue effective sanctions. It will also require cooperation with the other devolved administrations. The Bill should include a binding non-regression provision. We conclude that without implementing the recommendations already presented in this report, on independence, accountability to Parliament, funding, the principles and enforcement, the Government will fail to meet its obligations under the Withdrawal Agreement.

No Deal

186. In the event that the UK leaves the EU without a deal, there will be not be a transition period and therefore there will be a gap between the jurisdiction of the European Court of Justice ending and the Office for Environmental Protection being established.³³³ We previously warned that this would be “an unthinkable prospect and the Government must do everything to avoid it”.³³⁴ The IfG has suggested that the OEP may not be in place until 2021 at the earliest.³³⁵ The Government has acknowledged that interim arrangements will be needed and has said that there will be a mechanism for the OEP to receive a report of any perceived or claimed breaches of environmental law made during this period.³³⁶ It said that the OEP will be able to consider any early action it may need to take upon its establishment.³³⁷

187. Greener UK said greater clarity was needed on the nature of the interim arrangements and how breaches of environmental law will be identified and managed.³³⁸ The House of Lords EU Energy and Environment Sub-Committee recommended that interim measures could involve “temporarily increasing the powers and remit of existing bodies” and providing them with the additional resources and governance structures to undertake these functions effectively and independently.³³⁹ The Mayor of London said that the Government must assign the same powers and functions to such an interim body.³⁴⁰

331 [Q171](#)

332 [Q169](#)

333 [What if there's no Brexit deal?](#) House of Commons Library, No 08397

334 House of Commons Environmental Audit Committee, [The Government's 25 Year Plan for the Environment](#), 24 July 2018, HC803

335 Institute for Government. 2019. [Brexit: two months to go](#)

336 [Environment Bill: policy paper](#), 19 December 2018

337 [Environment Bill: policy paper](#), 19 December 2018

338 Greener UK ([DEB0027](#)); see also Chartered Institution of Water and Environmental Management ([DEB0010](#))

339 [Letter from Lord Teverson to Rt Hon Michael Gove MP](#), 28 February 2019

340 Mayor of London ([DEB0025](#))

188. We asked Defra Ministers what measures would be in place in the event of no deal being reached with the EU. Dr Coffey told us that a staff of 16 full time civil servants had been established as an interim secretariat with a Chair (or Commissioner) and that they will be located separately from Defra with separate systems.³⁴¹ She added that the new Chair will be appointed to the post by our Committee, the EFRA Committee or by both Committees.³⁴² Michael Gove said that should the interim secretariat be needed then he “would lay out exactly what we were doing at that point”.³⁴³ Dr Coffey acknowledged that the OEP would not be able to fulfil all the roles of the Commission and the CJEU:

Chair: It is still a long way from the 60 to 120 [staff] that the Secretary of State was talking about for fully up and running though, isn't it?

Dr Coffey: I recognise that, but it is not necessarily fulfilling all the roles that the OEP would do. It is an Interim Secretariat to try to facilitate some of the initial procedures that will be there. [...]

Michael Gove: Our domestic courts would be fulfilling some of those roles as well.³⁴⁴

189. We welcome the Government's recognition that interim arrangements are necessary in the event of no deal being reached with the European Union and that the Committee will have a role in the appointment of its Chair. Yet a body with a staff of 16, rather than the 60–120 the Secretary of State acknowledged would be necessary, will leave a significant governance gap.

190. *The Government must set out what functions the interim OEP will be undertaking and what retrospective powers it will have as soon as it is established to allow for active scrutiny. We would also welcome clarity on interim arrangements for Northern Ireland.*

Part two of the Bill

191. The Government has stated that the final Environment Bill will also include legislative measures “to address the biggest environmental priorities of our age”.³⁴⁵ The policy paper sets out that this will include measures on air quality, nature recovery, waste and resource efficiency and water management.³⁴⁶ Further consultations are planned for wider aspects of the Bill including those on extended producer responsibility and biodiversity net gain.³⁴⁷ Officials from the Department for Transport told us that the Bill will also include the power to compel manufacturers to recall vehicles on environmental grounds.³⁴⁸ We welcome this.

341 [Qq206–211](#)

342 [Q206](#); see also oral evidence to the EFRA Committee on 27 March 2019 by Rt Hon Michael Gove MP.

343 [Q204](#)

344 [Qq212–213](#)

345 Draft Environment (Principles and Governance) Bill 2018, [press notice](#), 19 December 2018

346 [Environment Bill: policy paper](#), 19 December 2018

347 The Government is proposing to make biodiversity net gain necessary for developments when granting planning permission. Biodiversity net gain requires a development to leave the natural environment in a measurably better state than it was before.

348 Oral evidence taken before the Environmental Audit Committee on 3 April 2019, Sustainability in the Department for Transport, HC2109, Q86

192. Witnesses told us that the rest of the Bill will also need to set out how spatial aspects, such as the Nature Recovery Network from the 25 Year Plan, will be established.³⁴⁹ Ruth Chambers from Greener UK said it was difficult to judge the effectiveness of the future governance framework under the Bill until all of it is published:

We cannot stress enough the urgency of seeing the complete package, the full Bill, the overarching objective that is going to deliver the Government's aim to leave the environment in a better state than it inherited it. Whatever targets and metrics are going to be enshrined in law, it is a complete system of governance and the OEP is going to be the beating heart of that system. Until we can see it all together and decide how it all works together, it is very hard to answer questions.³⁵⁰

193. When asked when the full Bill will be published, Michael Gove stated that he hoped it would be in the Queen's speech.³⁵¹

194. It has been difficult to assess how oversight and enforcement will work without having sight of the framework for setting targets and milestones, nor the process for how these will be achieved. Our recommendations in this report are qualified by the fact that we have not seen the rest of the Bill. We need clarity from the Government on what other environmental gaps or weaknesses in UK environmental law they plan to address with the Environment Bill. We are also concerned that the Government has not signalled its intention for us to be able to conduct pre-legislative scrutiny on the entire Environment Bill, given the importance of topics such as biodiversity net gain, extended producer responsibility, nature recovery networks and air quality. Nevertheless, we will be closely watching when the Bill is published.

349 The Wildlife Trusts ([DEB0029](#)); WWF ([DEB0063](#))

350 [Q72](#)

351 [Q344](#)

Conclusions and recommendations

Environmental Principles

1. We remain convinced that the Bill should include an objective to achieve a high level of environmental protection to guide the application of the principles. *We recommend that a high level of environmental protection is put on the face of the Bill. This should be inserted at the start of clause 2, as an overarching guiding objective rather than a principle, in the same way as Article 191(2) of the Treaty of the Functioning of the European Union, for example: “Environmental policy shall pursue a high level of protection and it should be based on the principles”.* (Paragraph 11)
2. The Bill has confused the three Aarhus Convention rights as environmental principles under clause 2. These rights should be kept separate from the principles. (Paragraph 14)
3. *We recommend that the Bill does not include the three Aarhus convention rights explicitly in the list under clause 2 as this would reduce their current effect by putting them on a qualified basis. The Bill should better secure and give further effect to the Aarhus Convention, for example, by ensuring access to justice in relation to environmental matters by providing an adequate standard of review through its enforcement and complaints mechanisms, in cases within the scope of the Aarhus Convention.* (Paragraph 15)
4. We have heard a great deal of concern over the way the environmental principles and their application have been set out in the Bill. We remain convinced that the requirement to ‘have regard to’ the policy statement on principles is so vague that every decision could result in litigation. The Bill downgrades the principles’ legal effect and does not connect to the rest of the Bill or other pieces of environmental legislation. This aspect of the Bill is not fit for purpose. (Paragraph 23)
5. *We recommend the environmental principles are put on an unqualified legal basis in relation to environmental policy. All public bodies should have a duty to apply the principles as is currently the case under EU law. We welcome the Secretary of State’s consideration of the wording in clause 4(1) and recommend it should be amended so that, “all public authorities will act in accordance with the policy statement and have due regard to the environmental principles in the exercise of their functions”.* (Paragraph 24)
6. *One of the Office for Environmental Protection’s principal duties should include the application and promotion of the principles. This should be included in clause 12(3) on the exercise of its functions.* (Paragraph 25)
7. The principles should be broadly applied to have their intended effect. The exclusions set out in the Bill are so broad that the principles will not continue to have a meaningful influence on the development and application of environmental policy and law. It is likely that the exclusions set out in clause 4(2) will be immune from judicial review. (Paragraph 32)

8. *Any exclusions to the application of the principles ought to be very narrowly defined. The Bill should specify that the Ministry of Defence as a landowner is not excluded, nor should general taxation or spending be omitted since many environmental measures depend on changes to the tax system. We welcome the commitment that the Secretary of State will look again at the exclusions to the principles and recommend that:*
- *Clause 1(5) should be deleted*
 - *The exclusions in clause 1(6)(a) and (b) should be very narrowly defined and an adequate justification given for why they are necessary.*
 - *Clause 1(6)c should be deleted; and*
 - *Clause 4(2) should be deleted. (Paragraph 33)*
9. *We are disappointed that we have not had sight of the policy statement on principles and this limits our ability to comment. Clause 3 should be amended to require Parliament to approve the policy statement and any subsequent revisions to it. The provisions of the Planning Act 2008 which require public consultation and scrutiny of policy statements by Select Committees should also apply. (Paragraph 36)*

Environmental Improvement Plans

10. *We welcome the Government putting the requirement to prepare annual reports on the implementation of Environmental Improvement Plans in the Bill. Yet we are concerned that the approach to monitoring and data collection could hinder this process. While Defra's draft indicator framework is promising, we are concerned that a proportion of the indicators will not be ready until 2020 at the earliest and that the Natural Capital Committee considers that there are errors in the Government's approach. We recommend Defra urgently completes its indicator framework and takes on board the advice from the Natural Capital Committee to establish a robust baseline from which to measure progress. (Paragraph 50)*
11. *We heard that environmental policy rests upon having accurate, robust and comparable data. Yet much of the UK's environmental data has been driven by European requirements and this must not be lost upon leaving the EU. We recommend that clause 7 is amended to commit the Government to ensure that UK environmental data and information is collected to at least the same standards as the European Environment Agency for the European Union. The Bill should also require that the data collected under clause 7 is published and that under clause 14, there be a requirement for the Office for Environmental Protection to monitor and publish a commentary on this data. (Paragraph 51)*
12. *The National Audit Office has concluded that Defra has not yet done enough to engage other parts of Government with its approach on environmental targets, nor set clear accountabilities for performance. Given the weaknesses we have heard about the application of the principles and the broad exclusions to them that exist in the Bill, we do not think this will be enough to drive improved environmental performance across Government. We consider that legally binding targets and objectives are needed. (Paragraph 52)*

13. *We recommend that in addition to the objective of a high level of protection being included on the face of the Bill, the Bill should also include a framework for targets and interim milestones to be achieved by Government Departments. These should be set following stakeholder consultation and parliamentary scrutiny. Once these targets have been established, the Cabinet Office must issue guidance directing Departments to explain how their work programmes will achieve the delivery of these targets in their Single Departmental Plans. This will then assist the Office for Environmental Protection in holding Government Departments to account. (Paragraph 53)*
14. *Since the European Commission has a role in advising on target setting, one of the Office for Environmental Protection or the Joint Nature Conservation Committee's principal duties should also be to advise on the establishment of targets. This should be included in clause 12(3) on the exercise of its functions. (Paragraph 54)*
15. We welcome that the Government intends to put Environmental Improvement Plans on a statutory cycle of monitoring, reviewing and reporting in line with our previous recommendations. Yet we heard how the reporting timetable between the Government and the Office for Environmental Protection on Environmental Improvement Plans was “absurdly elastic” and could allow for a number of years between a poor decision taking place and a Minister being accountable for it. (Paragraph 58)
16. *We recommend that the timeframe for reporting is tightened with specific dates for the reporting duties put into the legislation. Clause 8 should be redrafted to reflect the reporting timetable in the Climate Change Act 2008, which is a helpful analogue. (Paragraph 59)*
17. Reporting on progress on an Environmental Improvement Plan by the Office for Environmental Protection does not make an assessment on the effectiveness of the plan. *Clause 14(3) should include an assessment of how well the Government has met its statutory targets and the effectiveness of its Environmental Improvement Plan. It should also include a requirement for the Government's response to the progress report to explain how it intends to take any action recommended by the Office for Environmental Protection, or why it does not intend to take such action. (Paragraph 60)*

The Office for Environmental Protection

18. The Government has promised the Office for Environmental Protection will be independent but has not provided enough evidence that its proposals do so. Nor has it provided enough reasoning for why it has not accepted our previous recommendations on governance which the majority of evidence supports and for which there are precedents. The Secretary of State suggested that the OEP could go further than the European Commission, yet the proposals in the Bill fall woefully short of this. (Paragraph 82)
19. *We stand by our previous recommendation that the Office for Environmental Protection should report to Parliament and that a statutory body of parliamentarians, modelled on the Public Accounts Commission, should set its budget, scrutinise its*

performance and oversee its governance. The Bill should be amended to require that this body of parliamentarians be established. Constitutional experts told us there was no impropriety in the OEP being established in this way. (Paragraph 83)

20. The appointments process for Members of the Office for Environmental Protection does not provide for enough independence from Government as the balance of power lies with the Secretary of State. Parliament must have a greater role in the appointments process with a Parliamentary Committee having a veto over the appointment of the Office for Environmental Protection's Members and Chief Executive. (Paragraph 84)
21. *We recommend that Schedule 1 should be amended to reflect Paragraph 1 of Schedule 1 to the Budget Responsibility and National Audit Act 2011 for the appointment of the Office for Environmental Protection's Members and Chief Executive and paragraph 6(3) of Schedule 1 of the same Act to set out a process to protect Office for Environmental Protection members against dismissal by the Secretary of State. This appointments process would utilise the statutory body of parliamentarians as the appointing Committee. (Paragraph 85)*
22. *We recommend that the Government makes a political commitment to providing the Office for Environmental Protection with a five year budget in line with spending reviews. Precedents for this exist for other non-Departmental public bodies. (Paragraph 86)*
23. *We recommend that the Office for Environmental Protection should have its own estimate, to be negotiated directly with HM Treasury, and to be voted on by Parliament in the yearly Supply and Appropriation (Main Estimates) Bill. Paragraph 15 of Schedule 1 to the Railways and Transport Safety Act 2003 provides a useful precedent. (Paragraph 87)*
24. *We recommend that the funding architecture for the Office for Environmental Protection mirrors that of the National Audit Office. For example, there would be a role for the Environmental Audit Committee to conduct an annual review of the Office for Environmental Protection's work and progress against its purpose and objectives, including whether it is receiving adequate funding to fulfil its duties. The statutory body of parliamentarians would then scrutinise and review the funding estimate produced by the Office for Environmental Protection. The National Audit Office would audit and certify the Office for Environmental Protection's annual accounts. (Paragraph 88)*
25. *Clause 12(1)(a) and 12(3)(a) should have "independent" added to the list of requirements which the Office for Environmental Protection must follow and "have regard to the need to act" should be changed to "must act". A duty to report interference should be added to Paragraph 10 of the schedule. (Paragraph 89)*
26. The definition of environmental law has significant implications for the scope of the Office for Environmental Protection's enforcement powers. As drafted, clauses 30 and 31 and their explanatory notes are confusing, and we welcome the Ministers' acknowledgement of this. (Paragraph 101)
27. *We recommend that the Government provides greater clarity on the definition of environmental law and natural environment, particularly in the explanatory*

notes to the Bill. The notes should set out that environmental assessments and strategic environmental assessments are within the definition of environmental law. (Paragraph 102)

28. *Clause 31(1)(a) on environmental law should be changed from ‘is mainly concerned with’ to ‘relating to’. The Government should consider using existing definitions, such as those in the Natural Environment and Rural Communities Act 2006, the Environmental Protection Act 1990 and the Aarhus Convention. (Paragraph 103)*
29. *We recommend that international law is included within the scope of the Office for Environmental Protection’s scrutiny and advice functions. Clause 31 should be amended by providing that, in relation to its functions under clauses 15 and 16, environmental law shall also include (a) any area of law with significant environmental implications and (b) international environmental law. (Paragraph 104)*
30. *Climate change mitigation, except for the regulation of fluorinated gases, has been specifically excluded from the Bill. This will create a gap in enforcement which is currently undertaken by the European Commission, as the Committee on Climate Change has no enforcement powers. To date the governance framework established under the Climate Change Act has worked well and there has been no need for Parliament to intervene to achieve carbon budgets. Yet, according to the Committee on Climate Change, it is the forthcoming fourth and fifth carbon budgets that are not on track to be achieved. We therefore consider that there is a need for the enforcement of climate change law. (Paragraph 105)*
31. *We recommend that the Office for Environmental Protection should have climate change mitigation in its remit and therefore clause 31(3)(a) should be deleted. This would allow the OEP to bring cases against the Government in relation to the implementation of the Energy Efficiency Directive, the Renewable Energy Directive, the Waste Framework Directive and the meeting of carbon budgets. We recognise that this will not resolve the issue that carbon budgets are in the future and therefore effective enforcement could be limited until after carbon budgets are missed. Yet we do not think this is a reason to preclude enforcement on climate change mitigation from the OEP and we recognise that there will still be a significant role for the Committee on Climate Change’s advice, and for Parliament to decide whether the Government’s plans are adequate to meet carbon budgets. (Paragraph 106)*

Role and Powers of the Office for Environmental Protection

32. *We recommend that clause 15(2) is changed to read, “The OEP must report on any matter concerned with the implementation of environmental law”. (Paragraph 112)*
33. *Further memoranda of understanding should be considered to avoid duplication of the scrutiny and advice functions of the Office for Environmental Protection and existing bodies such as the Environment Agency and Natural England. These need not be set out on the face of the Bill. (Paragraph 113)*
34. *We recommend that clause 16 should require the Office for Environmental Protection to be consulted on any changes to environmental law, rather than having a duty*

to give advice. The Office for Environmental Protection's response on changes to environmental law should be published, with the Secretary of State required to lay before Parliament a response to this advice. (Paragraph 115)

35. As drafted, the definition of failure to comply with environmental law narrows the scope of the Office for Environmental Protection's enforcement powers to look solely at process. It does not achieve equivalence with the European Commission's powers, nor does it reflect the integration principle. (Paragraph 120)
36. *The enforcement mechanism must go beyond that of traditional judicial review and the Wednesbury test to a more proportionate approach involving a structured examination of effectiveness. (Paragraph 121)*
37. *We recommend that clause 17 sets out that the Office for Environmental Protection's enforcement functions relate to failure to achieve environmental targets and standards (the framework for which will be established in part two of the Bill), rather than questions of administrative compliance. Government as a whole should be accountable for the achievement of environmental standards and targets, rather than individual public authorities, as is the case with the European Commission's infringement procedure. This would require different areas of Government (central Government, local Government and public bodies) to work together cooperatively to address an environment problem. We welcome the Ministers' acknowledgement that the Office for Environmental Protection will be able to decide which authority is responsible and take enforcement action. (Paragraph 122)*
38. Serious damage may sometimes take years to become apparent. We cannot understand the justification for a time limit on complaints. This is not used by the European Commission and should be removed. *Clause 18(6) which specifies time limits to complaints and 18(7) which says that out of time complaints can be considered in exceptional circumstances, should be removed. (Paragraph 130)*
39. *Clause 19(1) should provide a power for the Office for Environmental Protection to be able to instigate its own investigations and not just those that it receives a complaint on. It should also be able to investigate alleged breaches rather than those that are, in its view, 'serious'. Clause 19(1) should have the following subclause added: "(c) and is consistent with its enforcement policy". (Paragraph 131)*
40. *Clause 12(3) requires that the Office for Environmental Protection must set out how it will avoid any overlap in functions with the Committee on Climate Change and a similar duty should be included to set out how it will avoid any overlap with the Local Government and Social Care Ombudsman and Parliamentary and Health Service Ombudsman complaints-handling functions. The Office for Environmental Protection should also be required to consult on, publish and review its criteria for investigation. (Paragraph 132)*
41. As we have already set out, the Office for Environmental Protection's enforcement procedure does not achieve equivalence with the European Commission's powers as it is limited to administrative compliance rather than achieving environmental standards and outcomes. (Paragraph 147)

42. *We recommend that, following the changes suggested to clause 17 (that the enforcement mechanism must go beyond that of traditional judicial review), the references in clause 25 to judicial review should be deleted and 25(1) should refer to failing to achieve environmental targets and standards set out in section 17. (Paragraph 148)*
43. A one-size-fits-all approach to enforcement is not appropriate since the failure to comply with environmental law comes in many different forms. The procedure set out in the Bill is also slow and could preclude other, swifter forms of enforcement and remediation. (Paragraph 149)
44. We recommend that:
- *The Bill should allow the Office for Environmental Protection to bring a judicial review at the start of the process in rare cases where a delay could cause further environmental harm.*
 - *The Bill should specify that the Office for Environmental Protection bringing enforcement proceedings does not prevent others who wish to bring a judicial review.*
 - *The Office for Environmental Protection should be given the power to act as an intervener in environmental judicial reviews undertaken by other parties.*
 - *Clauses 22 and 23 should be amended to include an obligation on the Office for Environmental Protection to act on responses to information or decision notices, or to explain to the complainant why no further action has been taken. This would provide a ratcheting approach to enforcement. (Paragraph 150)*
45. Overall, the enforcement procedure lacks imagination and the Government must consider alternative mechanisms. We have heard compelling evidence that there should be an expanded role for the First-tier Tribunal. This would help to resolve more cases before the need to apply for judicial review. (Paragraph 151)
46. *We recommend the Government looks further into a bespoke enforcement procedure and an expansion of the role and remit of the General Regulatory Chamber in the First-tier Tribunal. For example, where the Office for Environmental Protection is able to issue notices (at first advisory, then latterly binding) with a range of compliance recommendations, to which the public authority must then comply, or set out proportionate reasons why not. The Office for Environmental Protection would then be able to challenge a decision not to comply with the notice at the tribunal. The tribunal would undertake a substantive review of the authority's decision not to comply with the notice. Any failure to comply with a decision should amount to contempt and be referable to the Upper Tribunal. Section 202 of the Data Protection Act 2018 provides a useful guide as to how this could be achieved in the legislation. (Paragraph 152)*
47. We recommend:
- *Clause 26(1) should have a subsection added: (d) any monitoring and reporting on the implementation of environmental law under section 15.*

- *Clause 27(1) should be amended to cover the Office for Environmental Protection's scrutiny and advice functions set out in clauses 14, 15 and 16 and its function to investigate complaints under clause 19.*
- *Clause 28(2) should be amended to include reference to the provision of information which facilitates coordination between the Local Government and Social Care Ombudsman, the Parliamentary and Health Service Ombudsman and the Office for Environmental Protection. (Paragraph 156)*

Collaboration with Devolved Administrations

48. We are disappointed that limited effort has been made to co-design a body and governance framework to cover all four nations of the UK, given this would provide greater independence, a level playing field and more coordinated action. We consider that although it appears coordination has improved since the publication of the Bill, the lack of action in the lead-up to, and drafting of the Bill, had already ruled out possible areas of collaboration which could extend into the future. (Paragraph 170)
49. *The Government should set out in response to this report how it intends for the Office for Environmental Protection to work collaboratively and without overlap with its potential equivalent bodies in Wales and Scotland. The response should clearly set out which provisions are within the scope of the Office for Environmental Protection in respect of reserved matters. (Paragraph 171)*
50. The inclusion of Northern Ireland within the scope of the Bill is welcome but will require careful consideration. *The Government must ensure that there is appropriate representation from Northern Ireland on both the Board and within the staff to ensure it can deal with country specific issues adequately. We are reassured that the Office for Environmental Protection need not be located within London, but thought should be given to whether it will operate effectively in Northern Ireland and should bear in mind the environmental impacts of travel. (Paragraph 172)*
51. We reiterate our previous conclusion that common frameworks must be established as soon as possible to ensure that the environment is not simply reliant on the goodwill of this or any future Government. *The Government must ensure that common frameworks are in place by exit day or should explain why they are not time critical. We recommend the Government produces an update to its 2018 analysis on common frameworks in response to this report. (Paragraph 175)*

Wider concerns on the draft Bill

52. The Bill will need to be significantly upgraded to meet the requirements of non-regression under the Northern Ireland protocol to the Withdrawal Agreement. The Government will have to show that the Office for Environmental Protection is properly resourced, independent and able to issue effective sanctions. It will also require cooperation with the other devolved administrations. The Bill should include a binding non-regression provision. We conclude that without implementing the recommendations already presented in this report, on independence, accountability to Parliament, funding, the principles and enforcement, the Government will fail to meet its obligations under the Withdrawal Agreement. (Paragraph 185)

53. We welcome the Government's recognition that interim arrangements are necessary in the event of no deal being reached with the European Union and that the Committee will have a role in the appointment of its Chair. Yet a body with a staff of 16, rather than the 60–120 the Secretary of State acknowledged would be necessary, will leave a significant governance gap. (Paragraph 189)
54. *The Government must set out what functions the interim OEP will be undertaking and what retrospective powers it will have as soon as it is established to allow for active scrutiny. We would also welcome clarity on interim arrangements for Northern Ireland.* (Paragraph 190)
55. It has been difficult to assess how oversight and enforcement will work without having sight of the framework for setting targets and milestones, nor the process for how these will be achieved. Our recommendations in this report are qualified by the fact that we have not seen the rest of the Bill. We need clarity from the Government on what other environmental gaps or weaknesses in UK environmental law they plan to address with the Environment Bill. We are also concerned that the Government has not signalled its intention for us to be able to conduct pre-legislative scrutiny on the entire Environment Bill, given the importance of topics such as biodiversity net gain, extended producer responsibility, nature recovery networks and air quality. Nevertheless, we will be closely watching when the Bill is published. (Paragraph 194)

Annex

List of principles

The Draft Environment (Principles and Governance) Bill includes the following principles in clause 2:

- a) the precautionary principle so far as relating to the environment,
- b) the principle of preventative action to avert environmental damage,
- c) the principle that environmental damage should as a priority be rectified at source,
- d) the polluter pays principle,
- e) the principle of sustainable development,
- f) the principle that environmental protection requirements must be integrated into the definition and implementation of policies and activities,
- g) public access to environmental information,
- h) public participation in environmental decision-making, and
- i) access to justice in relation to environmental matters.

Formal minutes

Wednesday 24 April 2019

Members present:

Mary Creagh, in the Chair

Geraint Davies Kerry McCarthy
Philip Dunne Anna McMorrin
Caroline Lucas Dr Matthew Offord

Draft Report (*Scrutiny of the Draft Environment (Principles and Governance) Bill*), proposed by the Chair, brought up and read.

Paragraphs 1 to 194 read and agreed to.

Annex agreed to.

Summary agreed to.

Resolved, That the Report be the Eighteenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[The Committee adjourned]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Wednesday 6 February 2019

Daniel Greenberg, Counsel for Domestic Legislation, House of Commons, **Raphael Hogarth**, Associate, Institute for Government, **Chris Stark**, Chief Executive, Committee on Climate Change [Q1–47](#)

Ruth Chambers, Senior Parliamentary Affairs Associate, Greener UK, **Georgina Holmes-Skelton**, Head of Government Affairs, National Trust, **Professor Andrew Jordan**, Professor of Environmental Sciences, University of East Anglia and co-Chair Brexit and Environment Network [Q48–83](#)

Wednesday 27 February 2019

Professor Liz Fisher, Professor of Environmental Law, Faculty of Law & Corpus Christi College, University of Oxford, **Professor Eloise Scotford**, Professor of Environmental Law, UCL Faculty of Laws, University College London, **Tim Buley**, Landmark Chambers [Q84–149](#)

Wednesday 20 March 2019

Rt Hon Michael Gove MP, Secretary of State for Environment, Food and Rural Affairs, **Dr Thérèse Coffey MP**, Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs [Q150–244](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

DEB numbers are generated by the evidence processing system and so may not be complete.

- 1 38 Degrees ([DEB0042](#))
- 2 Agricultural Law Association ([DEB0037](#))
- 3 Aldersgate Group ([DEB0060](#))
- 4 Andrew Bryce ([DEB0089](#))
- 5 Anglian Water Services ([DEB0041](#))
- 6 APPG on Air Pollution ([DEB0004](#))
- 7 Brexit and Environment ([DEB0008](#))
- 8 British Heart Foundation ([DEB0057](#))
- 9 Broadway Initiative ([DEB0084](#))
- 10 Chartered Institute for Archaeologists and Council for British Archaeology ([DEB0053](#))
- 11 Chartered Institution of Water and Environmental Management ([DEB0010](#))
- 12 Chemical Industries Association ([DEB0022](#))
- 13 CIBSE (Chartered Institution of Building Services Engineers) ([DEB0034](#))
- 14 Clean Highways ([DEB0015](#))
- 15 ClientEarth ([DEB0039](#))
- 16 ClientEarth ([DEB0088](#))
- 17 Committee on Climate Change ([DEB0066](#))
- 18 Confor - promoting forestry and wood ([DEB0017](#))
- 19 Countryside Alliance ([DEB0061](#))
- 20 CPRE ([DEB0058](#))
- 21 Diocese of London ([DEB0016](#))
- 22 Dr David Wolfe ([DEB0081](#))
- 23 Dr Mary Dobbs & Dr Ludivine Petetin ([DEB0068](#))
- 24 Ecosulis Ltd ([DEB0064](#))
- 25 Emeritus Professor of Environmental Law Richard Macrory ([DEB0094](#))
- 26 Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#))
- 27 Energy UK ([DEB0047](#))
- 28 Environment Agency ([DEB0080](#))
- 29 Environmental Industries Commission ([DEB0075](#))
- 30 Environmental Policy Forum ([DEB0055](#))
- 31 Environmental Protection UK ([DEB0062](#))
- 32 Environmental Services Association ([DEB0038](#))
- 33 European Subsea Cables Association ([DEB0049](#))

- 34 Greener UK ([DEB0027](#))
- 35 Greener UK ([DEB0086](#))
- 36 Greener UK ([DEB0087](#))
- 37 Greener UK ([DEB0091](#))
- 38 IEMA - Institute of Environmental Management and Assessment ([DEB0028](#))
- 39 Institute for Government ([DEB0030](#))
- 40 Laurence Wells ([DEB0002](#))
- 41 Law Society of Scotland ([DEB0072](#))
- 42 LGSCO and PHSO ([DEB0024](#))
- 43 London Councils ([DEB0078](#))
- 44 Marine Conservation Society ([DEB0074](#))
- 45 Mayor of London ([DEB0025](#))
- 46 Mineral Products Association ([DEB0021](#))
- 47 Miss Rebecca Wesson ([DEB0069](#))
- 48 Mr Mark July ([DEB0031](#))
- 49 Mr Nigel Haigh ([DEB0019](#))
- 50 Mr Victor Anderson & Dr Rupert Read ([DEB0036](#))
- 51 National Farmers' Union ([DEB0067](#))
- 52 National Oceanography Centre ([DEB0005](#))
- 53 National Trust ([DEB0018](#))
- 54 Natural England ([DEB0023](#))
- 55 Natural England ([DEB0093](#))
- 56 Nature Friendly Farming Network ([DEB0056](#))
- 57 Nature Matters NI ([DEB0040](#))
- 58 Newcastle Law School ([DEB0020](#))
- 59 NUS ([DEB0032](#))
- 60 Oil & Gas UK ([DEB0011](#))
- 61 Oxford Bioregion Forum ([DEB0013](#))
- 62 Professor Colin Reid ([DEB0007](#))
- 63 Professor Eloise Scotford ([DEB0065](#))
- 64 Professor Eloise Scotford ([DEB0095](#))
- 65 Professor Maria Lee ([DEB0006](#))
- 66 Professor Maria Lee ([DEB0076](#))
- 67 Prospect ([DEB0046](#))
- 68 RESCUE ([DEB0051](#))
- 69 Royal Town Planning Institute ([DEB0050](#))
- 70 RSPB ([DEB0045](#))
- 71 Scottish Environment LINK ([DEB0070](#))

- 72 Seabed User and Developer Group ([DEB0012](#))
- 73 Society for the Environment ([DEB0052](#))
- 74 Southern Water ([DEB0079](#))
- 75 Surfers Against Sewage ([DEB0044](#))
- 76 Thames Water ([DEB0026](#))
- 77 The Department for Environment, Food and Rural Affairs ([DEB0096](#))
- 78 The Heritage Alliance ([DEB0014](#))
- 79 The National Trust ([DEB0083](#))
- 80 The Sustainable Soils Alliance ([DEB0082](#))
- 81 The Wildlife Trusts ([DEB0029](#))
- 82 The Woodland Trust ([DEB0054](#))
- 83 UK Sustainable Investment and Finance Association ([DEB0073](#))
- 84 UKELA ([DEB0048](#))
- 85 Unicef UK ([DEB0059](#))
- 86 United Utilities ([DEB0043](#))
- 87 Water UK ([DEB0085](#))
- 88 Wildlife and Countryside Link ([DEB0035](#))
- 89 William Wilson ([DEB0077](#))
- 90 Written evidence submitted by Eloise Scotford, Professor of Environmental Law, Faculty of Laws, University College London, Maddy Thimont-Jack, Researcher, Institute for Government, Martin Baxter, Chief Policy Advisor, Institute of Environmental Management and Assessment (IEMA), Alastair Chisholm, Director of Policy, Chartered Institution of Water and Environmental Management (CIWEM), Ece Ozdemiroglu, Founding Director eftec and Member of the Committee on Climate Change – Adaptation ([DEB0092](#))
- 91 WWF ([DEB0063](#))
- 92 WYESIDE CONSULTING LTD ([DEB0001](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Plastic bottles: Turning Back the Plastic Tide	HC 339
Second Report	Disposable Packaging: Coffee Cups	HC 657
Third Report	The Ministry of Justice: Environmental Sustainability	HC 545
Fourth Report	Improving air quality	HC 433
Fifth Report	UK Progress on Reducing F-gas Emissions	HC 469
Sixth Report	Green finance: mobilising investment in clean energy and sustainable development	HC 671
Seventh Report	Greening Finance: embedding sustainability in financial decision making	HC 1063
Eighth Report	The Government's 25 Year Plan for the Environment	HC 803
Ninth Report	Heatwaves: adapting to climate change	HC 826
Tenth Report	Hand car washes	HC 981
Eleventh Report	UK Progress on Reducing Nitrate Pollution	HC 656
Twelfth Report	The Changing Arctic	HC 842
Thirteenth Report	Sustainable Development Goals in the UK follow up: Hunger, malnutrition and food insecurity in the UK	HC 1491
Fourteenth Report	Sustainable Seas	HC 980
Fifteenth Report	Interim Report on the Sustainability of the Fashion Industry	HC 1148
Sixteenth Report	Interim Report on the Sustainability of the Fashion Industry	HC 1952
Seventeenth Report	Pre-appointment hearing with the Government's preferred candidate for Chair of Natural England	HC 1979
Sixteenth Report	Fixing fashion: clothing consumption and sustainability	HC 1952
First Special Report	The Future of Chemicals Regulation after the EU Referendum: Government Response to the Committee's Eleventh Report of Session 2016–17	HC 313
Second Special Report	Marine Protected Areas Revisited: Government Response to the Committee's Tenth Report of Session 2016–17	HC 314
Third Special Report	Sustainable Development Goals in the UK: Government Response to the Committee's Ninth Report of Session 2016–17	HC 616

Fourth Special Report	Plastic bottles: Turning Back the Plastic Tide: Government Response to the Committee's First Report	HC 841
Fifth Special Report	Disposable Packaging: Coffee Cups: Government's Response to the Committee's Second Report	HC 867
Sixth Special Report	The Ministry of Justice: Environmental Sustainability: Government's Response to the Committee's Third Report	HC 982
Seventh Special Report	Improving air quality: Government Response to the Committee's Fourth Report	HC 1149
Eighth Special Report	UK Progress on reducing F-gas Emissions: Government's Response to the Committee's Fifth Report Eighth	HC 1406
Ninth Special Report	Green finance: mobilising investment in clean energy and sustainable development: Government Response to the Committee's Sixth Report	HC 1450
Tenth Special Report	Heatwaves: adapting to climate change: Government Response to the Committee's Ninth Report	HC 1671
Eleventh Special Report	Greening Finance: embedding sustainability in financial decision making: Government Response to the Committee's Seventh Report	HC 1673
Twelfth Special Report	The Government's 25 Year Plan for the Environment: Government Response to the Committee's Eighth Report	HC 1672
Thirteenth Special Report	UK Progress on Reducing Nitrate Pollution: Government Response to the Committee's Eleventh Report	HC 1911
Fourteenth Special Report	Hand car washes: Government Response to the Committee's Tenth Report	HC 1910
Fifteenth Special Report	The Changing Arctic: Government Response to the Committee's Twelfth Report	HC 2069
Sixteenth Special Report	Pre-appointment hearing with the Government's preferred candidate for Chair of Natural England: Government Response to the Committee's Seventeenth Report	HC 2096