



House of Commons

Environment, Food and Rural
Affairs Committee

**Pre-legislative
scrutiny of the Draft
Environment (Principles
and Governance) Bill**

Fourteenth Report of Session 2017–19

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

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The Environment, Food and Rural Affairs Committee

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Summary

The Environment Bill, announced by the Prime Minister in July 2018, will be a landmark piece of legislation in the history of environmental policy. It is essential for generations to come that the Government gets it right.

The draft Environment (Principles and Governance) Bill, published in December 2018, will form part of the wider Environment Bill, which is yet to be published. The draft Bill sets out how the Government plans to maintain environmental standards as we leave the European Union. Given the importance of the draft Bill in relation to the future direction of UK environmental policy, we have welcomed the opportunity to conduct pre-legislative scrutiny on the draft clauses.

The published draft clauses seek to ensure that environmental principles continue to inform policy decisions as we leave the EU, and to establish a new environmental watchdog body—the Office for Environmental Protection (OEP) - to deliver functions relating to environmental governance currently undertaken by European institutions. As environmental policy is a devolved matter, the draft Bill mainly applies to England only, applying to Wales, Scotland and Northern Ireland only in respect to environmental matters that are not devolved.

The overwhelming narrative from the evidence to our inquiry is that the draft Bill's provisions for principles and governance are not equivalent to the current environmental protections provided by membership of the EU. In some areas they mark a significant regression on current standards. Although the Government has made a real attempt to establish a robust framework for our future environmental governance, it still has some way to go to match its ambition “to ensure the environment is even better protected in future”.

For the Government to meet its own ambitions for the environment, we consider that the draft Bill needs significant revision. Before the Bill is introduced in Parliament, we have recommended that, amongst other recommendations, the Government will need to revise the draft clauses to:

- Set out a clear overarching objective for the UK's future environmental governance and to ensure that environmental principles do not lose the legal status and priority they currently possess in European law.
- Ensure that Ministers and all relevant public authorities must act in accordance with environmental principles, rather than the weaker duty proposed in the draft Bill that Ministers must “have regard to” environmental principles.
- Strengthen the Office for Environmental Protection's independence from Government by ensuring all decisions relating to the membership of its board require the consent of our Committee, and by committing to a multi-annual budgetary framework in the Bill.

- Sharpen the teeth of the Office for Environmental Protection's proposed enforcement powers by providing it with further compliance tools beyond review in the courts and empowering it to issue emergency and interim measures in urgent cases of environmental harm.
- Provide the Office for Environmental Protection with the necessary powers to enforce Government targets and objectives relating to Climate Change to ensure there is no governance gap after we leave the EU.

1 Introduction

1. After the United Kingdom's exit from the European Union, the European Commission and the European Court of Justice (CJEU) will no longer have oversight of UK environmental law and policy. The forthcoming departure from the EU has therefore provided both the need and the opportunity to replace and rethink the UK's wider framework of environmental governance.

2. Following the result of the referendum in June 2016, concerns were raised by stakeholders and in Parliament that the UK's environmental standards could be weakened after Brexit.¹ These included the loss of the enforcement mechanisms used by European institutions to uphold environmental standards, and a weakening of the European legal requirements that currently ensure environmental policy is based on environmental principles.² In May 2018, the Government published a consultation on "Environmental Principles and Governance" to address these concerns.³

3. In June 2018 the European Union (Withdrawal) Act received Royal Assent.⁴ Section 16 of the European Union (Withdrawal) Act 2018 included a requirement on the Secretary of State to publish a draft Bill with particular provisions on environmental principles and governance.⁵ The Act specified that within these provisions there should be a list of environmental principles, and that the Secretary of State should publish a policy statement in relation to the application and interpretation of these principles.⁶ The Act also required that the draft Bill must define environmental law and make provision for the establishment of a new public authority with proportionate enforcement powers (including legal proceedings if necessary) to take action where a Minister of the Crown was not complying with environmental law.⁷

4. In July 2018, the Prime Minister, the Rt Hon Theresa May MP, announced that the Government would publish an Environment Bill.⁸ Further to this announcement and the responses to the consultation on environmental principles and governance, the Government decided that the new provisions for environmental principles and governance would form part of the wider Environment Bill.⁹

5. In December 2018, the Environment Minister, Dr Thérèse Coffey MP, wrote to us, ahead of publication of the draft clauses relating to environmental principles and governance, confirming that we would have the opportunity to conduct pre-legislative

1 For further context see *Environmental Principles and Governance: the draft Bill*, [Briefing Paper CBP-8484](#), House of Commons Library, 30 January 2019, pp 6–11

2 *Environmental Principles and Governance: the draft Bill*, [Briefing Paper CBP-8484](#), House of Commons Library, 30 January 2019, pp 6–11

3 Department for Environment, Food and Rural Affairs, [Environmental Principles and Governance after the United Kingdom leaves the European Union: Consultation on environmental principles and accountability for the environment](#), May 2018

4 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 3

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

6 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 8

7 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 9

8 Oral evidence taken before the Liaison Committee on 18 July 2018, [HC \(2017–19\) 1393](#)

9 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 2

scrutiny.¹⁰ The draft Environment (Principles and Governance) Bill was published by the Department for Environment, Food and Rural Affairs (Defra) on 19 December 2018.¹¹ Defra subsequently informed us that the full Environment Bill would be published promptly after the next Queen’s Speech.¹²

6. The draft Environment (Principles and Governance) Bill provides for “a new domestic framework for environmental governance and accountability as the United Kingdom (UK) leaves the European Union (EU), as well as introducing various measures to improve environmental protection more broadly”.¹³ In the foreword of the draft Bill, the Rt Hon Michael Gove MP, Secretary of State for Environment, Food and Rural Affairs, stated that it would establish “a robust new system of green governance” and show “the strength of our commitment to a Green Brexit”.¹⁴ The Secretary of State also made clear his intention to “not only maintain our current protections, but surpass them, taking new steps to ensure our environment is even better protected in future”.¹⁵

7. The draft Bill includes provisions to:

- ensure the publication of a policy statement on environmental principles setting out how the environmental principles specified in the Bill are to be interpreted and applied by Ministers of the Crown during the policymaking process;
- create a new, statutory and independent environmental body, the Office for Environmental Protection (OEP), to hold public authorities to account on environmental law;
- define the nature of the OEP, including considerations of membership, remuneration, staffing, powers, reporting, funding, accounts and other issues;
- define the advisory, scrutiny, complaints and enforcement functions of the OEP and their scope; and
- require the Government to produce an annual report on the current Environmental Improvement Plan. The 25 Year Environment Plan will be the first environmental improvement plan upon which the Government is required to report.¹⁶

10 Dr Thérèse Coffey ([DEB0100](#))

11 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, front page

12 Oral evidence taken on 28 November 2018, [HC \(2017–19\) 1669](#), Q6

13 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 1

14 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, p 3

15 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, p 3

16 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 4

8. In response to publication of the draft Bill, we issued a joint call for evidence with the Environmental Audit Committee (EAC) on 20 December 2018 and received over 90 written submissions.¹⁷ We then conducted five public evidence sessions separately from EAC, which simultaneously conducted its own inquiry into the same draft clauses.¹⁸ We would like to thank everyone who contributed to our inquiry.

9. We have agreed and published this Report in a timely manner to ensure that Defra has sufficient time to act upon our recommendations. Our Report focuses solely on the contents of the draft Environment (Principles and Governance) Bill and is divided into three main sections: Chapter 2 addresses the provisions on environmental principles; Chapter 3 addresses the establishment of the new environmental watchdog, the Office for Environmental Protection (OEP); and Chapter 4 addresses the remit, functions and scope of the new body as set out in the draft Bill.

10. The Environment Bill presents the Government with an opportunity to establish a new and improved framework for the future of environmental governance. We have welcomed the opportunity to conduct pre-legislative scrutiny on the draft Environment (Principles and Governance) Bill. However, given the importance of the Environment Bill for generations to come, it is disappointing that we have not been granted the opportunity to look at the full Bill before its publication in the next parliamentary session. Without knowledge of the final contents of the Bill it has been a challenge to fully scrutinise the draft clauses, and this has frustratingly limited the scope of our inquiry. *We recommend that the Government should leave enough time between introduction of the Bill and Second Reading to allow the Committee to conduct proper scrutiny of the remaining clauses in the Bill in order to inform the House's consideration of it.*

17 Environment, Food and Rural Affairs Committee, [Scrutiny of the draft Environment \(Principles and Governance\) Bill inquiry launched](#), 20 December 2018

18 Environmental Audit Committee, [Draft Environment \(Principles and Governance\) Bill inquiry](#), accessed 15 April 2019

2 The policy statement on environmental principles

Environmental principles

11. Environmental principles are currently enshrined in European law to help protect the natural world and provide guidance to policy-makers, legislators and the judiciary. They are used by governments and public authorities across the EU to take decisions that could impact on the environment.¹⁹ Environmental principles in the UK stem from a number of different sources, including international agreements, EU Treaties, or both.²⁰ Articles 11 and 191 to 193 of the Treaty on the Functioning of the European Union (TFEU) set a legal basis for the principles of precaution, prevention, rectification at source, and polluter pays in EU law.²¹

12. When the UK leaves the European Union, the UK Government will no longer be under a legal requirement to ensure these environmental principles guide policy-making.²² The explanatory notes in the draft Bill state that although environmental principles are central to UK government policy, and are already enshrined in some domestic legislation, such as the Natural Environment and Rural Communities Act 2006, they are not currently set down or defined in one place at a national level.²³ The explanatory notes further state that this may lead to “potential confusion as well as a high risk of reducing standards on environmental decision-making, owing to the removal of the foundational environmental principles”.²⁴

13. Clauses 1–4 of the draft Bill outline provisions for environmental principles and a requirement on the Secretary of State to publish a policy statement.²⁵ The principles to be included in this statement are intended to serve as a foundation for the future development of UK environmental policy and law.²⁶ Clause 2 provides a list of principles which the UK has committed to carry across from European law in the EU (Withdrawal) Act 2018:

- the precautionary principle, so far as relating to the environment;
- the principle of preventative action to avert environmental damage;
- the principle that environmental damage should as a priority be rectified at source;

19 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, paras 18–19

20 Environmental Principles and Governance: the draft Bill, Briefing Paper [CBP-8484](#), House of Commons Library, 30 January 2019, p 5

21 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 19

22 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 22

23 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, paras 21–22

24 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 22

25 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Clauses 1–4

26 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 54

- the polluter pays principle;
- the principle of sustainable development;
- the principle that environmental protection requirements must be integrated into the definition and implementation of policies and activities;
- the principles of public access to environmental information;
- the principle of public participation in environmental decision-making; and
- the principle of access to justice in relation to environmental matters.²⁷

The explanatory notes explain that the policy statement produced by the Secretary of State under Clause 1 will include a fuller definition of each of the environmental principles included in Clause 2.²⁸ The explanatory notes also state that the “principles cannot be changed without primary legislation”.²⁹ Further information on the Government’s intended meaning and application of each principle was set out in an accompanying information paper.³⁰

14. Nigel Haigh, an Honorary Fellow of the Institute for European Environmental Policy, told us that that the nine general environmental principles listed in Clause 2 “all deserve to be included” in the Bill.³¹ However, he also called for the objective of “a high level of protection and improvement of the environment” to be added to the list.³² He noted that this objective is currently included within Article 191(2) of the Treaty on the Functioning of the European Union which states that EU policy on the environment “shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union”.³³ Nigel Haigh stated that the absence of the “high level of protection” objective from Clause 2 was both “striking and surprising”. “Striking” given that “high level” as a principle is prominently stated in the TFEU and “surprising” because the principle is consistent with the Secretary of State’s own admission that “all eyes are on us to prove that our standards will remain high”.³⁴ Greener UK, an umbrella group of 14 environmental organisations, also called for the Bill to include an overarching environmental objective and ensure that the principles aim for a “high level of environmental protection”.³⁵ Greener UK considered that linking the principles listed in Clause 2 to an overarching objective would “give them coherence and [...] elucidate what it means to apply them proportionately”.³⁶ Similarly, Professor Colin Reid, representing both the UK Environmental Law Association

27 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Clause 2

28 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 55

29 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 57

30 Department for Environment, Food and Rural Affairs, *Information paper on the policy statement on Environmental Principles*, December 2018, pp 10–15

31 Mr Nigel Haigh ([DEB0019](#)) para 4

32 Mr Nigel Haigh ([DEB0019](#)) para 4.1

33 Mr Nigel Haigh ([DEB0019](#)) para 4.1

34 Mr Nigel Haigh ([DEB0019](#)) para 4.1

35 Greener UK ([DEB0027](#)) paras 1, 32

36 Greener UK ([DEB0027](#)) para 32

(UKELA) and the Brexit and the Environment group, supported the inclusion of a “high level of protection” objective as a “general aim to go to” to address any possible tensions between the other principles listed.³⁷

15. In response to the Government’s consultation on environmental principles and governance, stakeholders had also suggested additional principles for inclusion in the new legislation; however, none were included in the draft Bill.³⁸ Nigel Haigh called for the “prudent and rational utilisation of natural resources” principle to be included on the grounds that it was an important point “not covered by the other principles”, and for the inclusion of a subsidiarity principle given that environmental policy is carried out at different levels of government and across the devolved administrations.³⁹ In order to avoid conflict he argued that “there must be a principle to guide the allocation of tasks”.⁴⁰ The Chemical Industries Association called for the inclusion of an “innovation principle” and noted that the European Commission was already implementing such a principle.⁴¹ They argued that its inclusion would help to enable the UK to “develop world-leading new technologies that are often of significant benefit to the environment and our society”.⁴² The National Farmers’ Union (NFU) also stated that an innovation principle was needed to help “balance the precautionary principle” and to ensure an “appropriate balance is struck between protecting the environment and allowing business expansion and the development of new technology”.⁴³

The legal status of the policy statement

16. Clause 1 places a duty on the Secretary of State to prepare a statement that “must explain how the environmental principles are to be interpreted and proportionately applied by Ministers of the Crown in making, developing and revising their policies”.⁴⁴ The accompanying information paper explains that the policy statement on environmental principles will be a statutory document, and that it will be a legislative requirement that it be prepared and published, as set out in clauses 1 and 3 of the draft Bill.⁴⁵

17. Commenting on the provisions for environmental principles and the policy statement, Professor Maria Lee argued that it fell “very far short of what we were promised” and fell “very far short of the situation we currently enjoy”.⁴⁶ This position was reflected by Greener UK who considered the provisions for the policy statement on environmental principles to be a “significant step backwards from the status quo”.⁴⁷ Professor Maria Lee told us that the proposed policy statement would not match the legal protections currently granted by EU equivalents. She went on to explain that:

37 [Q84](#)

38 *Environmental Principles and Governance: the draft Bill*, [Briefing Paper CBP-8484](#), House of Commons Library, 30 January 2019, p 19

39 Mr Nigel Haigh ([DEB0019](#)) paras 4.2–4.3

40 Mr Nigel Haigh ([DEB0019](#)) para 4.3

41 Chemical Industries Association ([DEB0022](#)) para 4

42 Chemical Industries Association ([DEB0022](#)) para 4

43 National Farmers’ Union ([DEB0067](#)) p 3

44 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Clause 1

45 Department for Environment, Food and Rural Affairs, [Information paper on the policy statement on Environmental Principles](#), December 2018, p 4

46 [Q2](#)

47 Greener UK ([DEB0027](#)) para 28

In EU law, as listed in the treaty rather than as listed in the draft Bill, the environmental principles have legal status. [...] They are legally binding on all public authorities, not just Ministers, in all of their functions when relevant, so not just on high-level policy. What the Bill does is take that legal provision, that legal settlement, and turn it into a pure policy settlement.⁴⁸

18. Professor Eloise Scotford pointed out that the environmental principles “have prominent places in the EU treaties” which in turn provide them with “legal prominence and legal priority”.⁴⁹ These principles “inspire and inform what the equivalent is to primary legislation in environmental areas in EU law”.⁵⁰ Dr Viviane Gravey, a lecturer at Queen’s University Belfast, similarly outlined to us the difference between legal and political commitments relating to environmental principles, explaining that via EU law the UK has “a constitutional commitment to go for increased environmental protection”.⁵¹ She suggested that the policy statement represented a shift to just a “political” commitment, which was much weaker.⁵² Daniel Greenberg, Speaker’s Counsel for Domestic Legislation, explained that a policy statement was ultimately “miles away” from law.⁵³

19. When we asked how the legal force of the policy statement could be strengthened, Professor Maria Lee stated that it would be “completely plausible” to have a provision in the Bill that said, “all public authorities shall apply the environmental principles in the exercise of their functions”.⁵⁴ She argued that this would give the policy statement a “proper legal underpinning” and would be “closer to what we have currently as members of the European Union”.⁵⁵ Professor Lee also called for “stronger provisions for consultation and Parliamentary approval” of the policy statement.⁵⁶ Overall, she concluded that the draft Bill, taken at face value, suggested “an intention to reduce the legal and strategic effect of the existing EU environmental principles, so that they are less protective of the environment, less constraining of government and administration, and do not apply in difficult cases”.⁵⁷ She argued that “if that is not the intention, major changes to the draft Bill are necessary.”⁵⁸

20. The Chartered Institution of Water and Environmental Management (CIWEM) considered that it was difficult to assess the effectiveness and legal enforceability of the principles without sight of a draft policy statement alongside the draft clauses on principles and governance.⁵⁹ CIWEM also expressed concern that the ability of the Secretary of State to revise the policy statement at any time provided 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)”.⁶⁰ Greener UK also called for the power of revision for the Secretary of State to be narrowed, and suggested that, as drafted, the Clause gave “the Secretary of State *carte blanche* to amend the statement in any way at

48 [Q8](#)

49 Oral evidence taken before the Environmental Audit Committee on 27 February 2019, [HC \(2017–19\) 1951](#), Q85

50 Oral evidence taken before the Environmental Audit Committee on 27 February 2019, [HC \(2017–19\) 1951](#), Q85

51 [Q86](#)

52 [Q86](#)

53 [Q9](#)

54 [Q8](#)

55 [Qq8–13](#)

56 Professor Maria Lee ([DEB0006](#)) para 23(b)

57 Professor Maria Lee ([DEB0006](#)) para 24

58 Professor Maria Lee ([DEB0006](#)) para 24

59 Chartered Institution of Water and Environmental Management ([DEB0010](#)) para 44

60 Chartered Institution of Water and Environmental Management ([DEB0010](#)) para 46

any time, with no requirement for stakeholder consultation or parliamentary scrutiny”.⁶¹ They further suggested that the timescales and processes for drafting, consulting on, publishing and reviewing the policy statement needed to be clarified on the face of the Bill, to avoid the risk that the policy statement’s timings “could slip” and its processes “be weakened by stealth”.⁶²

21. In contrast, the National Farmers’ Union (NFU) was satisfied that the principles were “legally enforceable” and interpreted Clause 4(1) to mean that Ministers “should be able to demonstrate that the policy statement was considered in the design and development of policy”.⁶³

22. The Environment Agency commented that as the application of principles was “indirect” through the policy statement, much depended on “what that policy statement says”.⁶⁴ However, it welcomed the commitment to consult on the policy statement and considered that the statement would need to explain how the principles should be applied, “including appropriate checks and balances, for example in relation to other policy objectives”.⁶⁵ Emma Howard Boyd, Chair of the Environment Agency, expressed her support for the inclusion of an overarching “high level of protection” objective in the Bill, stating it could “set the tone of Act” and make clear “what we are trying to achieve for nature”.⁶⁶

23. The Secretary of State did not comment specifically on the omission of an overarching objective for a high level of protection for the environment from the draft Bill, but stated that “if people think that there are ways in which we are going to have regard to those principles which are insufficiently rigorous, we are open-minded”.⁶⁷ He disputed the claim that the current provisions in the Bill were too weak but stated that he would be willing to look at “a specific case about what we should add or alter”.⁶⁸

24. It is essential that environmental principles continue to guide environmental policy making and legislation after the UK’s departure from the European Union. We therefore support the list of principles included in Clause 2 of the draft Bill. However, the Government has not included within the list of principles a clear overarching objective for the UK’s future environmental governance. Notably, the Government has not carried across the objective of “a high level of protection for the environment” as currently stated in Art 191(2) of the Treaty on the Functioning of the European Union. This is a surprising omission given the Secretary of State’s clear commitment to improving the state of the environment.

25. We are also concerned that the Bill turns what are currently legal provisions for environmental principles into a policy statement which will be much weaker and easier to revise. In reducing the legal status of the principles, the draft Bill therefore marks a significant regression on the current levels of protection guaranteed under the European Union treaties.

61 Greener UK ([DEB0027](#)) para 34

62 Greener UK ([DEB0027](#)) para 33

63 National Farmers’ Union ([DEB0067](#)) p 3

64 Environment Agency ([DEB0080](#)) para 5.1

65 Environment Agency ([DEB0080](#)) para 5.1

66 [Qq256-7](#)

67 [Q328](#)

68 [Q329](#)

26. *We recommend that Clauses 1–4 of the draft Bill are redrafted to provide a stronger legal commitment to the protection of the environment. An overarching objective to ensure a “high level of protection for the environment”, as is currently outlined in the Treaty on the Functioning of the European Union, should be inserted into the draft Bill to underpin the other environmental principles. The interpretation and application of the environmental principles in Clause 2 should not be left to just a policy statement but should be further outlined on the face of the Bill. Given the importance it has placed on the policy statement, the Government should also clarify and reinforce in the draft Bill the timescales and process for drafting, consulting on, publishing and reviewing the statement. This is essential for effective public and parliamentary scrutiny.*

The effect of the policy statement

“have regard to”

27. Clause 4(1) states that Ministers “must have regard to” the policy statement when “making, developing or revising policies dealt with by the statement”.⁶⁹ The explanatory notes further clarified that “policy-makers must consider the environmental principles policy statement and follow the approach which is set out in the statement”.⁷⁰

28. The Law Society of Scotland explained that Clause 4(1) allowed a Minister to “have regard to” the principles but “choose to attach little or no weight to them”.⁷¹ Professor Richard Macrory QC, Emeritus Professor of Law at UCL, went further and stated that “it is all too easy to dismiss this as completely meaningless”.⁷² Alan Law, Deputy Chief Executive of Natural England, highlighted that a Lords Select Committee review of the Natural Environment and Rural Communities (NERC) 2006 Act, had concluded that a similar “have regard to” duty in that Act was “a somewhat toothless responsibility”.⁷³

29. Professor Maria Lee suggested that:

What would be more familiar and closer to what we have currently as members of the European Union, would be a legal obligation in statute to apply, act in accordance with or comply with the principles, and then there would be, in addition, statutory guidance, the policy statement, which you would have regard to, but the “have regard to” duty would not sit alone as it does at the moment. It would be underpinned by a statutory obligation to comply with the principles.⁷⁴

The Aldersgate Group, an alliance of businesses, academic institutions and civil society organisations, expressed that businesses would like to see “continued robustness and consistent application of the environmental principles”.⁷⁵ For that reason they similarly argued that “the drafting of the Bill should be amended so that Ministers are required to

69 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Clause 4(1)

70 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 65

71 Law Society of Scotland ([DEB0072](#)) p 4

72 Emeritus Professor of Environmental Law Richard Macrory ([DEB0094](#)) para 10

73 [Q253](#)

74 [Q13](#)

75 Aldersgate Group ([DEB0060](#)) para 19

‘act in accordance with’ (or wording of equivalent strength) the environmental principles and the policy statement on environmental principles.”⁷⁶ Emma Howard Boyd, Chair of the Environment Agency supported a revision of the wording from “have regard to” to “something like ‘acting in accordance with the principles’”.⁷⁷ The Law Society of Scotland also considered the alternative formulation of “act in accordance with” to be stronger but recognised that it still might “limit the flexibility sought for the application of the principles”.⁷⁸

30. The Secretary of State stated that the duty to “have regard to” was a “well-understood” term used widely across legislation, and referred to an example of being challenged on the basis of a similar duty from his time as Education Secretary.⁷⁹ In written evidence further to the Secretary of State’s appearance, Defra reaffirmed its assertion that the duty to “have regard” placed “substantial, clear duties on Ministers of the Crown” and that case law had shown that these duties were strong enough to confer “clear legal expectations”.⁸⁰ Defra therefore stated that duty in the draft Bill was “broadly equivalent” to the practical effect of the principles in Article 191(2) of the Treaty on the Functioning of the European Union.⁸¹

Ministerial discretion and application

31. Clause 4(2) states that the policy statement does not require Ministers to consider the environmental principles where the action would have “no significant environmental benefit” or would be “in any other way disproportionate to the environmental benefit”.⁸²

32. Professor Maria Lee suggested that Clause 4 gave Ministers a “very generous discretion not to take action” and “should be removed”.⁸³ UKELA argued that the overall proportionality limit in Clause 4(2) was “unnecessary” and created scope to “avoid applying environmental principles where this requires considerable cost or systemic change to meet environmental standards”.⁸⁴ They also said that there needed to be clear definitions of the terms “environmental benefit” and “significant environmental benefit” within the Bill.⁸⁵

33. Professor Colin Reid pointed out that the Bill as currently drafted took a “narrow view” that the principles should only apply to Ministers and not all public authorities.⁸⁶ He suggested that “if you are trying to integrate the principles to make sure they apply across the whole, having all public authorities take account of them would seem the obvious thing to do”.⁸⁷ Professor Maria Lee similarly argued that, rather than just applying to “Ministers of the Crown” and only to “policy”, the principles should apply to all public

76 Aldersgate Group ([DEB0060](#)) para 19

77 [Q252](#)

78 Law Society of Scotland ([DEB0072](#)) p 5

79 [Q335](#)

80 Department for Environment, Food and Rural Affairs ([DEB0096](#)) p 3

81 Department for Environment, Food and Rural Affairs ([DEB0096](#)) p 1

82 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Clause 4

83 Professor Maria Lee ([DEB0006](#)) para 23(e)

84 UKELA ([DEB0048](#)) para 2

85 UKELA ([DEB0048](#)) para 2

86 [Q89](#)

87 [Q89](#)

authorities and to all relevant administrative decisions, as is currently the case.⁸⁸ UKELA further argued that there should be an obligation for written confirmation from Ministers that the principles had been considered in making policies.⁸⁹

34. **The draft Bill requires Ministers to merely “have regard to” environmental principles. This places too weak a duty on the Government and risks a possible regression on current standards of environmental protection. The duty to “have regard to” is also fundamentally undermined by Clause 4(2) which gives far too much discretion for Ministers to not act to protect the environment.**

35. *The Government should amend Clause 4(1) to replace the duty to “have regard to” environmental principles with the stronger wording of “act in accordance with”. Clause 4(2) should also be redrafted to reduce the level of discretion for Ministers to not act to protect the environment.*

36. *The principles should not just apply to Ministers of the Crown and policy decisions but to all public authorities and all relevant administrative decisions, as is currently the case. The Bill should be amended so that the effect of the policy statement extends to all public authorities when making any decisions. There should also be an obligation on all public authorities for written confirmation that the principles have been applied in their decisions.*

Exemptions from the policy statement

37. At present, under Clause 1(6), the policy statement would not deal with:

- (a) the armed forces, defence or national security;
- (b) taxation, spending or the allocation of resources within government;
- (c) any other matter specified in regulations made by the Secretary of State.⁹⁰

Clause 1(6)(c) is a delegated power. The explanatory notes states that this sub-clause “may be necessary to provide the Secretary of State with flexibility to ensure that inappropriate policy areas are not covered by environmental principles”.⁹¹ The Delegated Powers Memorandum further notes that the policy statement “will provide a level of detail that would be inappropriate to set out on the face of the Bill”, and that as the power relates to a new statutory duty, it may require updating to “fully incorporate emerging best practice or case law”.⁹²

38. William Wilson, an environmental lawyer and former legal manager of government bills, told us that the policy statement approach was “riddled with very curious exceptions”.⁹³ He argued that the “armed forces, defence and national security” exemption would “take

88 Professor Maria Lee ([DEB0006](#)) para 23(c)

89 UKELA ([DEB0048](#)) para 6

90 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Clause 1

91 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 52

92 Department for Environment, Food and Rural Affairs, *Environment (Principles and Governance) Bill: Memorandum from Defra to the Delegated Powers and Regulatory Reform Committee*, 19 December 2018, para 14

93 [Q11](#)

environmental law back about 70 years, when any mention of ‘defence’ led to blanket exclusions”.⁹⁴ He suggested that this exemption went against the Ministry of Defence’s current position on the environment, which allowed for compliance with “almost all environmental law, with no obvious detriment to defence or national security”.⁹⁵ William Wilson also considered the exemption under Clause 1(6)(b) of “taxation, spending or the allocation of resources within government” to be “almost equally absurd”, and suggested that it was an exemption that had been inserted by the Treasury.⁹⁶

39. Dr Viviane Gravey suggested that Clause 1(6)(c) was a “get out of jail free” card by which the Secretary of State could decide not to abide by the principles.⁹⁷ The Institute of Environmental Management and Assessment (IEMA) stated that the ability of the Secretary of State to exclude policies if they were deemed to be “not relevant” was one of several “loopholes” that were “open to interpretation and potential abuse by future Secretaries of State”.⁹⁸ William Wilson argued that Clause 1(6)(c) showed how “uncomfortable Whitehall feels when faced with the declaration in statute of any kind of principle”.⁹⁹

40. Overall, Daniel Greenberg, Speaker’s Counsel for Domestic Legislation, questioned the need for exemptions at a “high level” and suggested that Clause 1(6) should be revised.¹⁰⁰ He told us that he would expect exemptions “once we come down to the statutory instruments and specific obligation level”.¹⁰¹

41. Emma Howard Boyd, Chair of the Environment Agency, told us that the exemptions in Clause 1(6) caused her concern.¹⁰² She considered that the defence exemption was problematic given the amount of land owned by the Ministry of Defence.¹⁰³ Emma Howard Boyd also highlighted the “taxation, spending or the allocation of resources within government” exemption as a concern.¹⁰⁴ The Environment Agency stated that policy decisions relating to public expenditure and taxes can have significant direct and indirect impact on the environment.¹⁰⁵ It explained that specific environmental taxes and tax incentives, such as encouraging drivers to purchase and use diesel cars, require HM Treasury approval and are therefore an area where Ministers can be held to account with respect to environmental principles.¹⁰⁶ Emma Howard Boyd cautioned us that if the provisions on environmental principles were really about “putting the environment at the heart of government decision-making” careful thought was needed to “make sure that we capture all the tools that exist in different parts of government.”¹⁰⁷

94 WYESIDE CONSULTING LTD ([DEB0001](#)) para 20

95 WYESIDE CONSULTING LTD ([DEB0001](#)) para 20

96 WYESIDE CONSULTING LTD ([DEB0001](#)) para 20

97 [Q94](#)

98 IEMA - Institute of Environmental Management and Assessment ([DEB0028](#)) para 24

99 WYESIDE CONSULTING LTD ([DEB0001](#)) para 20

100 [Q18](#)

101 [Q18](#)

102 [Q258](#)

103 [Q259](#)

104 [Q259](#)

105 Environment Agency ([DEB0098](#)) p 2

106 Environment Agency ([DEB0098](#)) p 2

107 [Q259](#)

42. We are very concerned by the exemptions to the policy statement listed in Clause 1(6). The exemptions relating to defence and general taxation are too broad and could lead to significant gaps in environmental protection within the Ministry of Defence and HM Treasury. The delegated power also offers a “get out of jail free card” for a future Secretary of State to disapply environmental principles from any particular policy area.

43. *Clause 1(6) should be redrafted to ensure that any exemptions necessary are more narrowly defined, with their implications in practice clarified in the explanatory notes. The Government should seek to substantially minimise the scope of the exemptions and to reduce their generality of application. Clause 1(6)(c) should be revised to ensure that the Secretary of State cannot exclude further policy areas from the scope of the Policy Statement without public consultation and notifying the relevant parliamentary committees.*

3 The Office for Environmental Protection (OEP)

44. As part of the European (Withdrawal) Act 2018 the Government was required to publish draft legislation to make provision for “the establishment of a public authority with functions for taking proportionate enforcement action (including legal proceedings if necessary) where the authority considers that a Minister of the Crown is not complying with [...] environmental law” as defined in that draft legislation.¹⁰⁸ The draft Bill therefore establishes the Office for Environmental Protection (OEP) and defines its functions.¹⁰⁹ The Government stated that the OEP would be “a world leading, statutory and independent environment body” and would have the following aims:

[The OEP] will provide independent assurance of government’s delivery of environmental law and the 25 Year Environment Plan, and impartial advice to support the development of improved measures for future application. [...] This will ensure that the current level of accountability and environmental protection is not weakened after the U.K. leaves the EU, while providing for a wide range of additional social, environmental and economic benefits through improved policy design due to the scrutiny and advice functions.¹¹⁰

The draft Bill proposes that the OEP would be set up as a Non-Departmental Public Body (NDPB).¹¹¹ A schedule outlines the membership, terms of appointment, remuneration, staffing, powers, procedure, funding, reporting commitments, annual accounts and the status of the OEP.¹¹²

45. Comparing the proposals for the OEP to the existing EU arrangements, Professor Maria Lee noted that the Commission was independent in a “very special way” in that “it is funded by 28 member states and its appointment is by 28 member states”. She stated that it was “simply a fact” that “we cannot have something as independent as that” and that “every single step that can be taken [...] to enhance independence should be built into the wording of the legislation, not left to discretion”.¹¹³ The campaign group 38 Degrees conducted a survey asking questions about the draft Bill, to which 72,635 members of the public responded: 98% of respondents said the OEP “should be independently funded”; and 99% said the OEP “should be led by people completely independent from the government”.¹¹⁴ The Broadway Initiative, a group representing interests from business, environmental groups, professional bodies and academia, was also clear that the OEP needed to be “genuinely independent”.¹¹⁵ It stated that independent accountability was “essential to

108 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 9

109 *Environmental Principles and Governance: the draft Bill*, [Briefing Paper CBP-8484](#), House of Commons Library, 30 January 2019, p 22

110 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill: Statement of Impacts*, December 2018, pp 2–3

111 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 107

112 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Schedule

113 [Q44](#)

114 38 Degrees ([DEB0042](#)) paras 1.2–1.3

115 Broadway Initiative ([DEB0084](#)) recommendation 5

give not only the public but also business confidence in government policymaking on the environment and that any administration will be properly held to account”.¹¹⁶ Overall, it suggested that the OEP’s independence “should be judged primarily by who funds it, who makes appointments and oversees it”.¹¹⁷

46. We recognise that it is not possible for the UK to replicate the existing model of environmental governance as part of the European Union. However, the Government has made clear its commitment to the same outcomes. In setting up the new Office for Environmental Protection, it is therefore essential that every step is taken to ensure the Office for Environmental Protection is as independent from the Government as possible, to give the public confidence that the Government will be properly held to account on its duty to protect the environment.

Appointments

47. The Schedule of the draft Bill states that membership of the OEP’s board will consist of:

- A Chair (who is to be a non-executive member);
- between two to five other non-executive members;
- a Chief Executive (who is to be the accounting officer);
- and between one and three other executive members.¹¹⁸

The subparagraphs outline the rules for appointment. Paragraph 1(2) states that non-executive members, including the Chair, are to be appointed by the Secretary of State.¹¹⁹ The explanatory notes state that this is “customary for NDPBs and reflects the need for adequate ministerial oversight”.¹²⁰ Paragraph 1(7) also states that the Chair must consult the Secretary of State before appointing a Chief Executive.¹²¹ Paragraph 2(3) states that a non-executive member must be appointed for a fixed term of no more than 5 years.¹²² Paragraph 2(5) outlines the grounds on which a non-executive member may be removed by the Secretary of State.¹²³

48. The UK Sustainable Investment and Finance Association expressed concern that “the draft Bill does not provide for terms of the appointment of members that protect and guarantee their independence.”¹²⁴ The Aldersgate Group noted that the proposed appointment process was similar to that of the Committee on Climate Change (CCC), but

116 Broadway Initiative ([DEB0084](#)) recommendation 5; see also Aldersgate Group ([DEB0060](#)) para 10

117 Broadway Initiative ([DEB0084](#)) recommendation 5

118 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Schedule, para 1

119 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Schedule, para 1(2)

120 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 230

121 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Schedule, para 1(7)

122 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Schedule, para 2(3)

123 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Schedule, para 2(5)

124 UK Sustainable Investment and Finance Association ([DEB0073](#)) p 2

that in the CCC's case "its UK-wide remit means that other national authorities are also involved in decision-making".¹²⁵ This, it suggested, "improves the perceived independence of the appointment."¹²⁶ It also argued that the OEP's enforcement functions warranted appointments being made in a more independent manner than the CCC's.¹²⁷ Dr David Wolfe QC went further and questioned whether the Secretary of State needed to be involved in any of the appointments at all.¹²⁸ He argued:

If it wants to be truly independent, to my mind there should not be more than advisory input from the Government. By all means, have the Minister express a view on the proposed candidates in a transparent kind of way, but do not have them be the person who makes the decision.¹²⁹

The National Trust suggested that board members and other non-executive staff should be interviewed and appointed by an independent appointments panel.¹³⁰ It also suggested that the Chief Executive should in turn be appointed by these board members or non-executive staff.¹³¹

49. The Institute for Government (IfG) pointed out that it was not clear from the Bill whether the Chair would be subject to a pre-appointment hearing by the relevant select committees and that this left a risk "that the Government could seek to neuter the body by appointing a compliant chair".¹³² Numerous stakeholders similarly suggested that select committees should play a role in the appointment of the Chair of the OEP.¹³³ The IfG suggested that the process could be prescribed in the Bill in a similar fashion to the appointments process for the Chair and members of the Budget Responsibility Council at the Office for Budget Responsibility (OBR).¹³⁴ The equivalent schedule for the OBR puts the appointments process on a statutory footing:

- 1 (1) The Office is to consist of—
 - (a) a member to chair it, appointed by the Chancellor of the Exchequer with the consent of the Treasury Committee of the House of Commons,
 - (b) 2 other members appointed by the Chancellor of the Exchequer after consultation with the member appointed under paragraph (a) and with the consent of that Committee, and
 - (c) not fewer than 2 members nominated by the Office and appointed by the Chancellor of the Exchequer. [...] ¹³⁵

125 Aldersgate Group ([DEB0060](#)) para 7

126 Aldersgate Group ([DEB0060](#)) para 7

127 Aldersgate Group ([DEB0060](#)) para 7

128 [Q37](#)

129 [Q37](#)

130 National Trust ([DEB0018](#)) p 2

131 National Trust ([DEB0018](#)) p 2

132 Institute for Government ([DEB0030](#)) para 9

133 For example UK Sustainable Investment and Finance Association ([DEB0073](#)); Aldersgate Group ([DEB0060](#)) para 8; Greener UK ([DEB0027](#)) paras 15–16; Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#)) para 13

134 Institute for Government ([DEB0030](#)) para 11

135 Budget Responsibility and National Audit Act 2011, [Schedule 1](#), para 1

The IfG also noted that in paragraph 6(3) of Schedule 1 of the same Act there is a process enshrined to protect members against dismissal by the Secretary of State:

[...] the appointment of a member appointed under paragraph 1(1)(a) or (b) is not to be terminated without the consent of the Treasury Committee of the House of Commons.¹³⁶

The IfG stated that a statutory role for a parliamentary committee in the appointment process “appears to have worked well for the OBR, but has not been replicated so far for any other government arm’s length body” and that “it would be a clear way of underlining the Government’s commitment to the independence of the OEP”.¹³⁷

50. The independence of the Chair of the Office for Environmental Protection will be crucial to its ability to hold the Government to account. It is therefore inappropriate for the Chair and the other non-executive members of the board to be appointed solely by the Secretary of State.

51. The Government must revise the appointments process to ensure greater independence and transparency. We recommend that the process should be modelled on the equivalent process for the appointment of the Chair of the Budget Responsibility Council at the Office for Budgetary Responsibility. The Chair and all non-executive members of the board should be appointed by the Secretary of State only with the consent of the Environment, Food and Rural Affairs Select Committee. The Chair should be subject to a pre-appointment hearing prior to the Committee consenting to her appointment. Similarly, a non-executive member should not be dismissed from the Board of the OEP without the consent of the Environment, Food and Rural Affairs Select Committee.

Funding

52. The Schedule of the draft Bill also outlines the funding model for the OEP:

9 (1) The Secretary of State must pay to the OEP such sums as the Secretary of State considers are reasonably sufficient to enable the OEP to carry out its functions.

(2) The Secretary of State may provide further financial assistance to the OEP (including by way of grants, loans, guarantees or indemnities) subject to such conditions as the Secretary of State may determine.¹³⁸

The explanatory notes explain that paragraph 9 “places a duty on the Secretary of State to fund the OEP sufficiently to perform its functions” and that funding will be provided to the OEP in the form of grant-in-aid, “which will be set out as a separate line in the overall estimate of [Defra] to ensure adequate transparency”.¹³⁹

136 Institute for Government ([DEB0030](#)) para 12; Budget Responsibility and National Audit Act 2011, [Schedule 1](#), para 6(3)

137 Institute for Government ([DEB0030](#)) para 14

138 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Schedule, para 9

139 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 244

53. The IfG expressed concern that under the grant-in-aid model “a Department that wants to rein in a body can cut its funding with relatively little visibility”.¹⁴⁰ For example, the IfG pointed out that the Equality and Human Rights Commission (EHRC), which the Minister referred to as an existing example of the powers of an NDPB, had its budget reduced from £70.3 million in 2007 to £18.3 million in 2018.¹⁴¹ The IfG further stated that “the EHRC has repeatedly said that, in its view, it could better discharge its duties if [it] reported directly to Parliament”.¹⁴² Greener UK argued that the proposed funding mechanism for the OEP had “shown little durability in providing public bodies with adequate funding to deliver their functions” and cited two examples of budget cuts with Natural England and the Committee on Climate Change.¹⁴³ In November 2018, Andrew Sells, then Chair of Natural England, told us that “what started as cost savings has run over into something that feels more like less freedom [...] we have lost a great deal of independence”.¹⁴⁴ Greener UK also noted comments made by Lord Deben, Chair of the Committee on Climate Change, who referred to the “long history” of bodies “starting off as independent and being brought more and more under the control” of the Department.¹⁴⁵

54. Prospect, the trade union, expressed concern about the ability of the OEP to scrutinise the Government effectively based on its resourcing, rather than its proposed constitution.¹⁴⁶ It noted the impact of funding cuts on the ability of the Environment Agency and Natural England to operate effectively, and added that years of pay restraint had contributed to problems with recruitment and retention of specialist staff.¹⁴⁷ It suggested that, given the body’s large remit, it would be “totally inadequate” for the OEP to have fewer than 100 staff.¹⁴⁸ Professor Richard Macrory QC also stressed the link between adequate resourcing of existing bodies and effective enforcement, referencing the four-fifths drop in Environment Agency formal cautions in the last three years, and the drop in prosecutions from 515 in 2011 to 113 in 2017.¹⁴⁹

55. Greener UK proposed a Government commitment to a multi-annual budgetary framework for the OEP.¹⁵⁰ It noted that there was precedent for such a commitment with the Office for Budget Responsibility (OBR), which agreed a five-year funding allocation from the Treasury from 2016–17.¹⁵¹ Greener UK highlighted HM Treasury’s own advice which recognised that “setting a multi-annual funding commitment supports the OBR’s independence” and that such an approach is “consistent with international best practice, strengthening institutional independence through delegated budgetary autonomy”.¹⁵² The IfG also suggested the Bill could be redrafted so that the OEP had its own estimate, to be negotiated directly with HM Treasury, and voted on by Parliament in the yearly Supply and Appropriation (Main Estimates) Bill.¹⁵³

140 Institute for Government ([DEB0030](#)) para 16

141 Institute for Government ([DEB0030](#)) para 16; [Qq290–291](#)

142 Institute for Government ([DEB0030](#)) para 16

143 Greener UK ([DEB0027](#)) paras 10–11

144 Oral evidence taken on 21 November 2018, [HC \(2017–19\) 1728](#), Q10

145 Greener UK ([DEB0027](#)) para 11; Oral evidence taken before the Environmental Audit Committee on 19 June 2018, [HC \(2017–19\) 1062](#), Q50

146 Prospect ([DEB0046](#)) para 3

147 Prospect ([DEB0046](#)) para 3

148 Prospect ([DEB0046](#)) para 4

149 Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#)) para 3

150 Greener UK ([DEB0027](#)) para 13

151 Greener UK ([DEB0027](#)) para 13

152 Greener UK ([DEB0027](#)) para 13; [Letter from Nicholas Macpherson, Permanent Secretary, HM Treasury, to Robert Chote, Chairman, Office for Budget Responsibility](#), 31 March 2016

153 Institute for Government ([DEB0030](#)) para 18

56. Both Natural England and the Environment Agency spoke positively about five-year settlements.¹⁵⁴ According to Emma Howard Boyd, the Environment Agency had benefited from such settlements for their work on flood and coastal risk management programmes, as it had allowed for “greater freedom” and delivery.¹⁵⁵ Alan Law stressed that a five-year budget settlement in line with spending reviews would help “to ensure that the body is able to fulfil its requirements without in-year changes compromising them”.¹⁵⁶

57. The Secretary of State’s response was that it was “a direct responsibility of any Secretary of State to make sure that, if you are setting up a body as important as this, it is properly resourced” and that he expected the Chair and the board of the OEP to make it clear to him if the OEP was in need of additional resources.¹⁵⁷ The Environment Minister noted that, under the draft Bill, the OEP could make a statement if it felt it was inadequately resourced, and she considered that the Government would have the “political sensitivity” to recognise and anticipate such a situation.¹⁵⁸ She further suggested that the resourcing of Natural England was not comparable, as Natural England is a delivery partner and regulator, whereas the OEP would play a different role “scrutinising government”.¹⁵⁹

58. A history of sustained budget cuts to Defra’s arm’s length bodies does not fill us with confidence that the current funding provisions for the Office for Environmental Protection in the draft Bill are sufficient. Given the importance of the OEP’s independence from Government it should have additional budgetary protections than is customary for Non-Departmental Public Bodies.

59. *The Government should commit to providing a multi-annual budgetary framework for the Office for Environmental Protection in the Bill. This commitment would help to ensure the Office for Environmental Protection’s independence from Government and is consistent with best practice as seen with the Office for Budgetary Responsibility. Rather than grant-in-aid, the Office for Environmental Protection should also have its own estimate which should be negotiated directly with HM Treasury, and voted on by Parliament in the yearly Supply and Appropriation (Main Estimates) Bill.*

Independence and parliamentary accountability

60. Prior to publication of the draft Bill there were calls from stakeholders, including the Environmental Audit Committee, that a new environmental oversight body should be directly accountable to Parliament and set up as a parliamentary body, modelled on the Public Accounts Commission and the National Audit Office.¹⁶⁰ The Government’s response was that establishing the OEP as a parliamentary body would “prevent it from taking legal proceedings against the government if it were to remain within the well-established constitutional boundaries by which Parliament currently operates”.¹⁶¹

154 [Qq246–249](#)

155 [Q246](#)

156 [Q248–249](#)

157 [Q281](#)

158 [Q284](#); See Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, Cm 9751, December 2018, Schedule, para 11(3)

159 [Q284](#)

160 Environmental Audit Committee, Eighth Report of Session 2017–19, *The Government’s 25 Year Plan for the Environment*, HC 803, paras 70–71

161 Department for Environment, Food and Rural Affairs, *Environmental Principles and Governance after the United Kingdom leaves the European Union: Summary of responses and government response*, 19 December 2018, p 19

61. The explanatory notes state that the draft Bill sets out provisions for the OEP, established as a NDPB, to reflect the “need for transparency and accountability in the body’s exercise of its statutory powers and functions”.¹⁶² In the Statement of Impacts published alongside the draft Bill, the Government defended the decision to set up the OEP as an NDPB and said the model “would provide sufficient scope and capacity to deliver the strategic objectives required”.¹⁶³ It also stated that it would be “inappropriate in constitutional terms” and “without precedent” for the OEP both to be a body of Parliament and to be able to take enforcement action against the Government.¹⁶⁴ The draft Bill references and outlines the various mechanisms via which the OEP would be accountable to Parliament:

- it must lay its annual report before Parliament;¹⁶⁵
- it must lay its strategy before Parliament;¹⁶⁶
- it must arrange for a progress report on the environmental improvement plan to be laid before Parliament;¹⁶⁷
- it must arrange for its reports on the implementation of environmental law to be laid before Parliament;¹⁶⁸ and
- it must arrange for its statement of accounts to be laid before Parliament.¹⁶⁹

62. The IfG argued that the OEP as outlined in the Bill was only accountable to Parliament in the “weakest sense”.¹⁷⁰ It suggested that changes to appointments and funding would go some way to making the OEP more accountable to Parliament, but reasserted that further accountability would be assured by making the OEP “a parliamentary rather than a departmental body”.¹⁷¹ It further noted there was some international precedent for a parliamentary body of this sort, with the Environment Commissioner in New Zealand being an Officer of Parliament, although it recognised that the Commissioner had different powers to those envisaged for the OEP, and could not take binding enforcement action.¹⁷²

162 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 227

163 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill: Statement of Impacts*, December 2018, p 8

164 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill: Statement of Impacts*, December 2018, p 8

165 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Schedule, para 10

166 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Clause 13

167 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Clause 14

168 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Clause 15

169 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Schedule, para 11(6)

170 Institute for Government ([DEB0030](#)) para 21

171 Institute for Government ([DEB0030](#)) para 22

172 Institute for Government ([DEB0030](#)) para 24

63. Greener UK argued that the government “should revisit the OEP’s legal status to provide greater independence than a standard NDPB model allows” and urged for a degree of “imaginative and innovative legislation” for the Government to meet its own ambition of “a pioneering new system of green governance”.¹⁷³ The Chartered Institution of Water and Environmental Management stated it strongly considered “that the most appropriate form for OEP should be a Parliamentary Body (an Entity Set Up by and Accountable to Parliament)” and called for “an element of the novel about OEP” to allow this body to appropriately be declared as “world leading”.¹⁷⁴

64. William Wilson, an environmental lawyer and former legal manager of government bills, challenged Defra’s statement that it would be constitutionally inappropriate for the OEP to be a parliamentary body as “nonsense”.¹⁷⁵ He stated that “taking enforcement functions back from the (unelected) European Commission and giving them to a UK body answerable to Parliament” would not be “inappropriate in constitutional terms”, and stated that “if Parliament wishes the body to adhere to financial standards this can be spelled out in the legislation”.¹⁷⁶ Dr David Wolfe QC argued that there is another constitutional model that Defra could have chosen to adopt.¹⁷⁷ He compared his experience as a non-executive member of the Legal Services Board (an NDPB) and as Chair of the Press Recognition Panel (a body established by a Royal Charter), and stated that the difference between the two in terms of independence was “stark”.¹⁷⁸ Overall, he considered that his experience of the Press Recognition Panel equated to “proper independence” and was “entirely different from the NDPB experience”.¹⁷⁹

65. When questioned by us on why the OEP needed to be constituted as a NDPB, the Environment Minister stated that there had been “a lot of consideration” on this issue, including a meeting with the parliamentary commissioner for New Zealand.¹⁸⁰ She restated the argument that it would be “constitutionally challenging” for Parliament to have a body that is accountable directly to it and that could take the Government to court.¹⁸¹ She also further stated that other NDPBs such as the Information Commissioner’s Office (ICO) and the Equality and Human Rights Commission (EHRC) had powers to take the Government to court and that nobody accused either the EHRC or the ICO of being “a patsy of Government” because it is an NDPB.¹⁸²

66. The Secretary of State told us that the aim had been to give the OEP the “most stable constitutional footing”.¹⁸³ He later stated to the Environmental Audit Committee that “the advice that we have received is that this body can exercise full independence as a non-departmental public body”.¹⁸⁴ The Secretary of State told us that, under the proposed model, the ultimate protection of the OEP’s budget would come from Parliament:

173 Greener UK ([DEB0027](#)) paras 3, 18

174 Chartered Institution of Water and Environmental Management ([DEB0010](#)) paras 24, 28

175 WYESIDE CONSULTING LTD ([DEB0001](#)) para 17

176 WYESIDE CONSULTING LTD ([DEB0001](#)) para 17

177 Dr David Wolfe ([DEB0081](#)) para 9

178 Dr David Wolfe ([DEB0081](#)) para 7

179 Dr David Wolfe ([DEB0081](#)) para 8

180 [Q290](#)

181 [Q290](#)

182 [Q291](#)

183 [Q291](#)

184 Oral evidence taken before the Environmental Audit Committee on 20 March 2019, [HC \(2017–19\) 1951](#), Q150

The key question is that all Ministers are responsible to Parliament and all Ministers are responsible for the bodies for which their department is the sponsor department. Were it to be the case that I or any successor Secretary of State did not fund any of the arms of government or the appropriate bodies that we are responsible for appropriately, Parliament could take a view.¹⁸⁵

67. Under the current proposals we are not convinced that the Office for Environmental Protection will be sufficiently independent of Government or accountable to Parliament. The Office for Environmental Protection must not be seen to be just another arm's length public body attached to Defra, given its elevated watchdog status. We also do not consider that the Office for Environmental Protection will have anything close to the same level of independence as currently exercised by the European Commission.

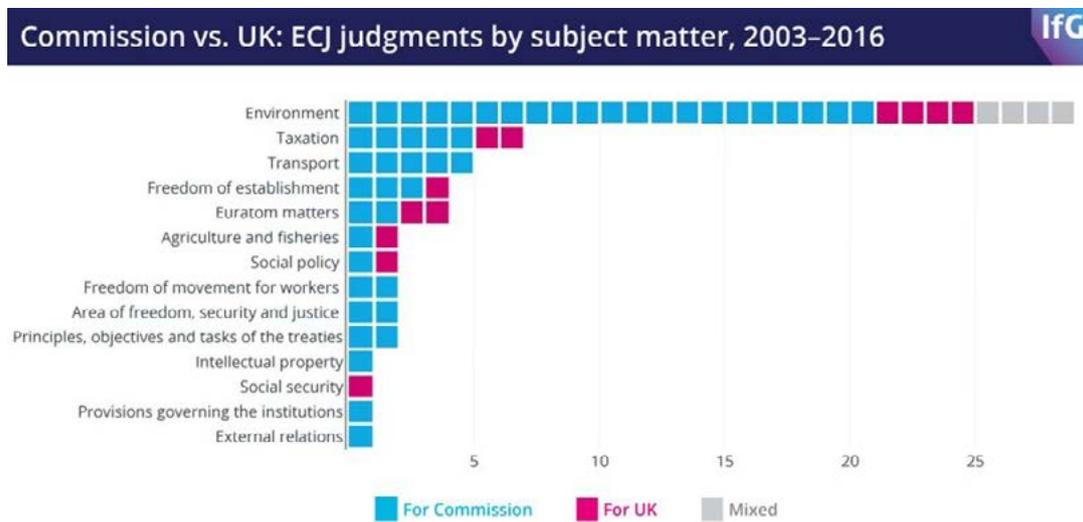
68. To achieve equivalence with the existing arrangements as members of the European Union, the Bill should be redrafted to ensure greater independence for the Office for Environmental Protection. The Office for Environmental Protection must not be solely a body of Government. The Government should revisit the legal status of the Office for Environmental Protection to provide greater independence than a standard Non-Departmental Public Body allows. Lack of precedent should not be a barrier to establishing a constitutionally innovative model, especially given the Secretary of State's ambition for the watchdog to be "world leading".

4 The functions of the Office for Environmental Protection

69. The Government has stated that the forthcoming Environment Bill will provide for domestic adoption of some EU environmental governance functions.¹⁸⁶ The implementation of UK environmental law and policy is currently monitored and enforced by EU mechanisms and institutions, mainly the European Commission, as provided for by the EU Treaties.¹⁸⁷ Where necessary, the Commission brings enforcement cases in the Court of Justice of the European Union (CJEU), which provides rulings on the interpretation of EU environmental law to ensure it is applied correctly by Member States.¹⁸⁸ The Commission is also supported in its environmental governance functions by the European Environment Agency (EEA), a statutory body of the EU, which is tasked with providing sound, independent information and conducting assessments on wide range of issues relating to the environment.¹⁸⁹

70. The Office for Environmental Protection is therefore an important attempt to fill the wider environmental governance gap that will emerge after the UK's exit from the European Union. Analysis from the IfG in 2017 showed the central role currently played by EU institutions in enforcing environmental law in the UK.¹⁹⁰ Around half of the European Court of Justice cases fought by the Commission against the UK between 2003 and 2016 concerned the environment and the Commission won the majority.¹⁹¹

Figure 1: CJEU cases involving the UK and the European Commission¹⁹²



Source: Institute for Government analysis of judgments retrieved from InfoCuria, a database of the case law of the European Court of Justice

BY-NC

186 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, Cm 9751, December 2018, explanatory notes, para 29

187 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, Cm 9751, December 2018, explanatory notes, para 13

188 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, Cm 9751, December 2018, explanatory notes, para 15

189 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, Cm 9751, December 2018, explanatory notes, para 16

190 Institute for Government (DEB0030) para 2

191 Institute for Government (DEB0030) para 2

192 Institute for Government (DEB0030) fig 1

The IfG noted that this represented less than a third of the Commission’s environmental enforcement action against the UK, and that most infringement cases were resolved before they reached court stage.¹⁹³

Case Study: Air Quality

European Union legislation sets limits on the levels of permissible outdoor air pollution. The UK is in breach of the EU 2008 Directive on Ambient Air Quality for nitrogen dioxide (NO₂) concentrations, which had a compliance deadline of 2010. In February 2014, the European Commission initiated an infringement case against the UK for its failure to cut ‘excessive’ levels of NO₂. In February 2017, the UK received a Reasoned Opinion (RO), a final written warning before a case is referred to the Court of Justice of the European Union (CJEU). The RO required the UK to show how it would comply with legal limits within the European Commission’s timeline. The UK submitted its response in April 2017.¹⁹⁴

Several judgements of the CJEU have clarified that where the limit values set by the Ambient Air Quality Directive are breached, concerned individuals and groups have the right to go before national courts to demand that action is taken. The CJEU has also clarified that Member States are under an obligation of result to achieve compliance with the limit values. This means that the fact that an air quality plan has been adopted is not enough to achieve compliance. National courts should review the content of the plan and determine whether it contains all the measures necessary to secure compliance in the shortest time possible.¹⁹⁵

The OEP’s investigation and enforcement functions

71. Clauses 17 to 29 of the draft Bill outline the OEP’s investigation and enforcement functions.¹⁹⁶ Following a complaint, the Bill gives the OEP powers in the form of a three-step procedure: information notices; decision notices; and a review application to the courts.¹⁹⁷ The model proposed is similar to the existing European Commission infringement procedure, which incorporates a formal letter of infringement, a Reasoned Opinion, and a reference to the European Court of Justice.¹⁹⁸ The process in the draft Bill is illustrated in a diagram included in the explanatory notes:

193 Institute for Government ([DEB0030](#)) para 3

194 Environment, Food and Rural Affairs, Environmental Audit, Health and Social Care, and Transport Committees, Fourth Report of the Environment, Food and Rural Affairs Committee, Fourth Report of the Environmental Audit Committee, Third Report of the Health and Social Care Committee, and Second Report of the Transport Committee of Session 2017–19, *Improving air quality*, HC 433, para 20

195 ClientEarth, [Highest administrative court grants access to justice and upholds right to clean air in France](#), December 2017, accessed 24 April 2019

196 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Clauses 17–29

197 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Clauses 22–23, 25

198 European Commission, [Infringement procedure](#), accessed 8 April 2019

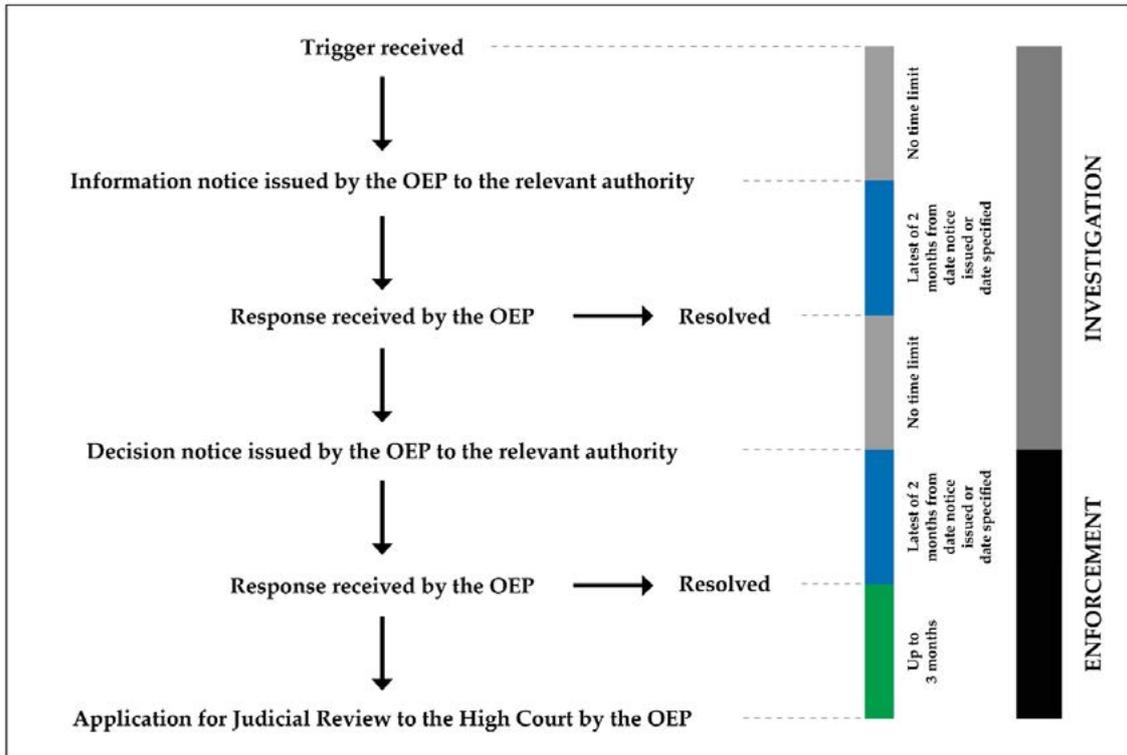
Figure 2: Proposed enforcement model¹⁹⁹

FIGURE 3 ENFORCEMENT PROCESS TIMELINE

72. As a first step, the draft Bill proposes that the OEP will have a complaints function that would allow a person or organisation (other than another public body) to submit a complaint to the OEP if it believes that a public authority has failed to comply with environmental law.²⁰⁰ The OEP is given the power to investigate the complaint, and must prepare a report once the investigation is concluded, which must then be passed on to the public authority in question.²⁰¹ The OEP would also have the power under the draft Bill to issue an information notice and request information from the public authority, where it has reasonable grounds for suspecting a failure to comply with environmental law and when it considers that the failure is “serious”.²⁰²

73. Once an information notice has been issued, should the OEP decide that, on the balance of probabilities, the public authority has failed to comply with environmental law, and that it considers that failure to be serious, then the OEP would have the power to issue a decision notice setting out the steps it considers the public authority should take in relation to the failure.²⁰³ Under the proposals in the draft Bill, while the authority would be required to respond to the decision notice, it would not be compelled to carry out the

199 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, Cm 9751, December 2018, explanatory notes, p 59

200 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, Cm 9751, December 2018, Clause 18

201 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, Cm 9751, December 2018, Clause 19

202 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, Cm 9751, December 2018, Clause 22

203 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, Cm 9751, December 2018, Clause 23

steps detailed in the notice.²⁰⁴ As a final step in the enforcement procedure, the OEP may make a “review application”, defined as an application to the High Court in England and Wales or Northern Ireland, or an application to the supervisory jurisdiction of the Court of Session in Scotland.²⁰⁵

Public authorities

74. Water UK expressed concern that the definition of “public authority” in draft Clause 17(3) “inadvertently creates an overlap with existing regulators that could be inefficient, confusing and unpredictable”.²⁰⁶ Clause 17(3) defines a “public authority” as “a person carrying out any function of a public nature that is not a devolved function” and sets out a list of bodies which are excluded from the definition.²⁰⁷ Water UK noted that the Government’s intention was that “private companies, NGOs or landowners” would not be within the OEP’s scope.²⁰⁸ However, Water UK argued that the definition in the draft Bill was sufficiently broad that it could be interpreted to include statutory undertakers (private organisation that carry out functions of a public nature).²⁰⁹ It argued that it would be “entirely unnecessary for statutory undertakers to be within the scope of the OEP as existing regulators (for example the Environment Agency) already enforce compliance”.²¹⁰ It therefore suggested that a specific exclusion for statutory undertakers should be added to Clause 17(3) to avoid a duplication of functions with existing regulators and unnecessary litigation.²¹¹

75. The purpose of the Office for Environmental Protection is to replace the governance functions of the European Commission and hold public authorities to account. The Government should avoid unnecessary duplication with existing domestic regulators who already enforce compliance by private companies, NGOs or landowners. The definition of “public authorities” in Clause 17(3) should be clarified, with a specific exclusion added for statutory undertakers.

Complaints process

76. ClientEarth suggested that a weakness of the OEP’s enforcement powers was the restrictions “on when the OEP can act”.²¹² As currently provided in the draft Bill, ClientEarth noted that the OEP could only respond to a complaint received and had no powers to conduct its own investigation of a potential failure.²¹³ Greener UK and the Aldersgate Group both also argued that the draft Bill needed to be redrafted so that the

204 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, Cm 9751, December 2018, Clause 23(4)

205 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, Cm 9751, December 2018, Clause 25(3)

206 Water UK (DEB0085) para 4

207 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, Cm 9751, December 2018, Clause 17(3)

208 Water UK (DEB0085) para 13; Department for Environment, Food and Rural Affairs, *Environmental Principles and Governance after the United Kingdom leaves the European Union: Summary of responses and government response*, 19 December 2018, p 29

209 Water UK (DEB0085) para 14; see also Thames Water (DEB0026); Southern Water (DEB0079); United Utilities (DEB0043)

210 Water UK (DEB0085) para 15

211 Water UK (DEB0085) para 16

212 ClientEarth (DEB0039) p 3

213 ClientEarth (DEB0039) p 3

OEP could initiate an investigation without a complaint.²¹⁴ ClientEarth also questioned why a definition of “failing to comply with environmental law” in Clause 17(2) was needed and why a definition which constructed such a “narrow remit” had been chosen.²¹⁵ ClientEarth suggested that this Clause “problematically curtailed” the scope of the OEP’s powers and limited “its ability to increase the efficacy of environmental law”.²¹⁶

77. UKELA drew attention to the test included in Clause 19 (and also in Clause 22) that any failure to comply with environmental law by a public body must be deemed “serious”.²¹⁷ It pointed out that the explanatory notes defined serious as not “trivial”.²¹⁸ Client Earth stated that the failure to define “serious” rendered the purpose of its inclusion “opaque” and that it should either be defined or removed from the Bill.²¹⁹ UKELA similarly stated that the test meant that the OEP would need to make a value judgement “which could be the subject of much argument where the OEP chooses not to exercise its powers”.²²⁰

78. Andrew Bryce, Co-Chair of the Brexit working group for UKELA, suggested that the OEP would need to be very clear in its strategy (under Clause 12) about the nature of the cases it would pursue, and that the Bill might need to be amended to ensure that the OEP was not “endlessly judicially reviewed about its decisions on complaints”.²²¹ Professor Richard Macrory QC suggested that an amendment to Clause 19 to require that a complaint is consistent with the OEP’s complaints and enforcement policy would help to provide clarity to the public on the types of complaint it is likely to investigate.²²²

79. The OEP should have the power to initiate investigations into a suspected breach of environmental law and should not have to wait for a complaint to have been lodged to do so. It is important that members of the public are clear about the specific role of the OEP, and the types of complaints it is intended to deal with. *The Bill should be redrafted to ensure the OEP has the power to proactively carry out investigations into a serious failure to comply with environmental law on its own initiative, rather than just in response to a complaint. The discretionary and strategic nature of the OEP’s enforcement provisions should be made clearer in the Bill to ensure that it does not become inundated with complaints relating to local matters. The word “serious” in relation to a breach of environmental law should be clarified on the face of the Bill.*

Information and Decision Notices

80. Client Earth highlighted that the decision notices which the OEP could issue are not legally binding, and that although public authorities must respond to decision notices “they are not bound to take the steps set out in them”.²²³ The same arguments about the lack of binding powers for the OEP were made by environmental groups, academics and representatives of business.²²⁴ The British Heart Foundation highlighted that legally

214 Greener UK ([DEB0027](#)) para 48; Aldersgate Group ([DEB0060](#)) para 12

215 ClientEarth ([DEB0039](#)) p 3

216 ClientEarth ([DEB0039](#)) p 4

217 UKELA ([DEB0048](#)) para 21

218 UKELA ([DEB0048](#)) para 21; Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, Cm 9751, December 2018, explanatory notes, para 165

219 ClientEarth ([DEB0039](#)) p 4

220 UKELA ([DEB0048](#)) para 21

221 [Q218](#)

222 Emeritus Professor of Environmental Law Richard Macrory ([DEB0094](#)) para 2

223 ClientEarth ([DEB0039](#)) p 3

224 See for example RSPB ([DEB0045](#)), WWF ([DEB0063](#)); Professor Maria Lee ([DEB0006](#)); Aldersgate Group ([DEB0060](#)).

binding notices were particularly important in cases where a breach of environmental law had an impact on human health, such as air pollution.²²⁵ It argued that legally binding notices could be a “tool to instigate preventative and remedial action” and must be considered as “proportionate powers” and made available to the OEP in its enforcement role.²²⁶ Professor Maria Lee suggested that binding notices would provide a “minimal set of teeth for the watch dog” whereas Dr Tom West, representing Client Earth, suggested that they could help to give “meaning and effect to the rest of the OEP’s functions”.²²⁷

81. Conversely, Professor Richard Macrory QC argued that the information and decision notices did not need to be legally binding and expressed concern that this change “could simply encourage an over-litigious approach in the early stages of the procedure when more constructive dialogue should be encouraged”.²²⁸ He said that it was unclear what sort of legal penalty could be attached to a notice at an earlier stage in the process that would make it binding, and suggested that compliance should instead be driven by the “ratcheting” process of the three steps as drafted in the Bill. He suggested that a guiding proverb for the OEP might be to “talk softly but carry a big stick” and argued that invoking binding procedures at too early a stage in the infringement process might lead to more defensive attitudes from the relevant public authority, which in turn might increase the number of cases ending up in the courts.²²⁹

82. The regulators expressed slightly different views on the OEP’s notice procedure. Natural England recommended that the decision notices should be “of a binding rather than advisory nature”.²³⁰ Alan Law, Deputy Chief Executive of Natural England, suggested there should “be more bite at the upper end of the escalating enforcement process”, as this encouraged bodies to engage with earlier advisory notices, before escalation to the formal enforcement stages.²³¹ The Environment Agency on the other hand did not comment on the need for binding notices in either written or oral evidence, but stated that they believed the process of the OEP issuing information and then decision notices would lead to resolution in most cases, and would be equivalent to the “reasoned opinion” stage of infringement proceedings commenced by the European Commission.²³²

Emergency powers

83. Andrew Bryce, Co-Chair of the UKELA Brexit taskforce, outlined the need for the OEP to have emergency powers beyond the notice procedure (the information and decision notices) to act in cases where there was an urgent need to prevent environmental harm.²³³ He drew attention to the explanatory notes which outlined the approximate timings of the prelitigation period and enforcement procedure:

Given the normal two month response periods (Clauses 22 and 23) for notices, the prelitigation period would take at least 4 months. Since the OEP will need time to investigate a matter and consider responses to its notices,

225 British Heart Foundation ([DEB0057](#)) para 9

226 British Heart Foundation ([DEB0057](#)) para 9

227 Professor Maria Lee ([DEB0006](#)) para 15; [Q151](#)

228 Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#)) para 7

229 [Qq191–195](#)

230 Natural England ([DEB0023](#)) para 3.2

231 [Q267](#)

232 Environment Agency ([DEB0080](#)) para 3.2

233 Andrew Bryce ([DEB0089](#)) para 11

more realistically this could be over 6 months. If the OEP decides to apply for Judicial Review, it would normally need to do this within 3 months of the response to the decision notice (Clause 25). This could therefore be within a year of the matter in question coming to the OEP's attention, although its precise duration will vary from one case to the next.²³⁴

Andrew Bryce, along with other legal experts, pointed out that the process in the Bill was “relatively long-winded” and only suitable to deal with “non-urgent matters of long-term compliance”.²³⁵ UKELA told us that this was “a major defect” with the OEP’s enforcement powers and lamented “its inability to act quickly in an emergency or where third-party rights will rapidly be acquired”.²³⁶ Andrew Bryce therefore argued that the OEP should have additional powers to issue emergency measures and to apply for an injunction in urgent cases where it was needed to prevent a public body causing harm prior to a judicial review process.²³⁷ These additional powers were supported by Client Earth who said such powers may prove “especially pertinent given the potentially irreversible nature of environmental harm”.²³⁸ Dr Tom West argued that the ability to issue such interim measures would help to ensure that we did not end up in the “regretful situation, where down the line you rule that that is not what should have happened, but the damage has been caused”.²³⁹ Drawing on its own experience of using “Stop Notices, Restoration Notices and Enforcement Undertakings”, Natural England supported the OEP having a “range of remedies [that] would offer the OEP lighter-touch and quicker remedies as alternatives to judicial review”.²⁴⁰ Alan Law explained that such tools had been useful in Natural England’s experience of regulating sites of special scientific interest (SSSIs).²⁴¹

84. The Secretary of State defended the model of information and decision notices proposed in the Bill, adding that it would take a “brave government” to ignore any notice issued by the OEP in the first instance.²⁴² He explained that the intention had been to replicate “in broad respects” the infringement proceedings of the Commission, but that he was also “open-minded” to ways in which the watchdog’s teeth might be “sharpened”.²⁴³ The Environment Minister added that the Commission currently did not have powers to serve legally binding notices, so noted that this would be a change to the current arrangement.²⁴⁴ She further suggested that if the OEP were able to issue legally binding notices, it could undermine the independence of other regulators, such as the Environment Agency.²⁴⁵ She suggested that the OEP should not be able to just issue legally binding notices and thus override decision made by bodies, such as the Environment Agency, without the further step of going to court.²⁴⁶

234 Department for Environment, Food and Rural Affairs, Draft Environment (Principles and Governance) Bill, [Cm 9751](#), December 2018, explanatory notes, para 162

235 Andrew Bryce ([DEB0089](#)) para 11; see also Law Society of Scotland ([DEB0072](#)); Dr David Wolfe ([DEB0081](#)).

236 UKELA ([DEB0048](#)) para 16

237 Andrew Bryce ([DEB0089](#)) para 11

238 ClientEarth ([DEB0039](#)) p 4

239 [Q153](#)

240 Natural England ([DEB0023](#)) para 3.3

241 [Q268](#)

242 [Q295](#)

243 [Qq295–296](#)

244 [Q296](#)

245 [Q297](#)

246 [Q297](#)

Review Application

85. Clause 25 gives the OEP powers to bring legal proceedings, in the form of a “review application”, against a public authority that is deemed in breach of environmental law.²⁴⁷ Clause 25(3) states that a “review application” would be an application for judicial review (JR) in England, Wales or Northern Ireland; or an application to the supervisory jurisdiction of the Court of Session in Scotland.²⁴⁸ The Courts and Tribunals Judiciary define judicial review as:

a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body [...]

It is not really concerned with the conclusions of that process and whether those were ‘right’, as long as the right procedures have been followed. The court will not substitute what it thinks is the ‘correct’ decision.

This may mean that the public body will be able to make the same decision again, so long as it does so in a lawful way.²⁴⁹

Clause 25(9) outlines that once any legal proceeding has been concluded, the public authority in question must publish a statement outlining what steps it intends to take in light of the outcome of the proceedings.²⁵⁰ In evidence, the Minister suggested that judicial review was an appropriate enforcement mechanism for the OEP, and argued that it was an “established mechanism we already have in law in this country, in England and Wales, to establish the legality of the actions of public authorities”.²⁵¹ The Minister also told us it was her belief that the process that CJEU undertakes was “similar, in effect the same, as the JR process”.²⁵²

86. The Countryside Alliance was critical of judicial review as a legal recourse in environmental cases. It stressed that judicial review was flawed in that it “looks largely at process rather than the merits of a decision” and that “the remedies under judicial review are less dissuasive than those under the existing EU procedure”.²⁵³ Debbie Tripley, representing WWF, stated that there was a different “standard of review” between the European Court and the UK court.²⁵⁴ She explained that judicial review differs from the review powers in the European Court because it focuses solely on the Minister’s discretion and whether it was procedurally irregular or irrational, rather than the substance of any decision.²⁵⁵ She suggested therefore that the Bill contained an “incoherent mechanism” in that the OEP would look at the substance in the decision notice, but “we have no idea how that decision notice will be taken into account by the court” when the process is escalated to judicial review, because the court would be reviewing the Minister’s original

247 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Clause 25(1)

248 Environmental principles and governance: the draft Bill, [Briefing Paper Number 8484](#), House of Commons Library, 30 January 2019, p 34

249 Courts and Tribunal Judiciary, <https://www.judiciary.uk/you-and-the-judiciary/judicial-review/>, last accessed 8 April 2019

250 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Clause 25(9)

251 [Q303](#)

252 [Q303](#)

253 Countryside Alliance ([DEB0061](#)) para 14

254 [Q151](#)

255 [Q151](#)

decision.²⁵⁶ Professor Richard Macrory QC similarly said to us that “it is clear that the European court is more intensive in its review”.²⁵⁷ Referring to a recent study on the enforcement of European Court environmental law, Professor Macrory noted that the CJEU was prepared to engage in quite complex evidential issues, unlike its equivalent UK Court.²⁵⁸ Professor Eloise Scotford argued that the UK’s system of judicial review was “not designed to enforce the meeting of standards and targets or other environmental requirements” and suggested that judicial review was a “fundamentally inappropriate to resolve many failures of environmental law, which do not necessarily involve unlawful action by a public body but simply a failure to get to grip with a policy issue”.²⁵⁹

87. Dr Tom West suggested that the experience of Client Earth taking the Government to court exemplified the need for a system that had additional powers beyond judicial review to ensure legal compliance.²⁶⁰ He argued that as a result of Client Earth’s air quality challenges, policy had improved but “not quick enough or to a deep enough extent” and he pointed out that we still have illegal levels of air pollution in the UK.²⁶¹ Dr West made the case therefore that “when you have long-term and repeated failures to comply with the law—for example illegal levels of air quality—we think we need measures that go beyond those that are currently available to us”.²⁶²

88. The Marine Conservation Society considered that judicial review was “expensive, time critical, with a high bar to overcome requiring permission to be granted by the High Court and relies on challenging a specific decision”.²⁶³ The Countryside Alliance stated that the “current EU process has minimal costs” and suggested that if the OEP were to rely on judicial review as the ultimate sanction, then “the use and operation of the judicial review process needed to be reconsidered, incorporating some of the “distinctive features of the CJEU”.²⁶⁴

Incorporating the tribunal courts

89. As an alternative to the enforcement procedure outlined in the Bill, numerous academics and NGOs suggested that an enhanced Judicial Review procedure involving the First-Tier (Environmental Tribunal) could be established.²⁶⁵ The Environment Tribunal is “an independent judicial body that has been in existence since 2010 and handles appeals in some 44 areas of environmental legislation, from civil sanctions to emissions trading”.²⁶⁶ Professor Richard Macrory QC explained how the Tribunal could be incorporated into an enhanced enforcement procedure:

On this model, if the OEP is dissatisfied with the response to a Decision Notice, it could seek to have the Notice confirmed by the Environment

256 [Q151](#)

257 [Q187](#)

258 Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#)) para 9

259 Professor Eloise Scotford ([DEB0065](#)) para 26

260 [Q161](#)

261 [Q161](#)

262 [Q161](#)

263 Marine Conservation Society ([DEB0074](#)) para 2

264 Countryside Alliance ([DEB0061](#)) para 14

265 Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#)) para 10; Andrew Bryce ([DEB0089](#)) para 6; ClientEarth ([DEB0088](#)) para 3

266 Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#)) para 10

Tribunal. The Tribunal would then decide whether there has been a breach of environmental law (if that is in issue) or whether the steps proposed to deal with the situation are adequate or reasonable.²⁶⁷

Debbie Tripley, WWF, further explained to the Committee how incorporating the First-Tier Environment Tribunal might work in practice:

For instance, let us say the OEP issues a decision notice in the air quality case; the Government have failed to meet their targets, so the OEP says, “That is a breach of the law. We have looked at the facts and at the law, and we have issued a decision notice. We want you to do X, Y and Z”. The Government say, “No, we do not agree with you”. That could go before the First-tier Tribunal, which looks at the decision notice and says, “Yes, the Government do need to comply with the decision notice”, or, “No, you do not”. There remains an important public interest point of law there, which would have to go to the Upper Tribunal, which has a judicial review function.²⁶⁸

Professor Richard Macrory QC stated that the Environment Tribunal brought in “specialist expertise in environmental law, could involve non-legal members with relevant expertise (such as environmental science) where appropriate, and had very flexible rules of procedure”.²⁶⁹

90. Andrew Bryce supported the involvement of the tribunal courts as it “would enable the court to consider in detail the full factual background [of any case] and if necessary alter the Notice before confirming its binding nature and thereby provide what steps need to be taken by the public body to remedy the situation”.²⁷⁰ Client Earth stated that “the existing first-tier Environment Tribunal should be deployed as a forum for further substantive review of non-compliance with a notice”.²⁷¹ It cautioned however that “the creation of a bespoke procedure for the OEP must not create new barriers to access to justice for citizens”.²⁷²

91. Dr David Wolfe QC highlighted some potential problems with the Tribunal process; first, that it did not have the same public profile as the High Court which might in turn reduce the dissuasive effect of its decisions; second, that the Tribunal did not have, and would need to be given, contempt of court powers to be equivalent to the Administrative Courts.²⁷³ However, he suggested that “if the OEP enforcement approach were recast more generally”, the Tribunal and its approach could be “entirely appropriate”.²⁷⁴ He also noted that there was a good model for such an approach in the way in which the Information Tribunal deals with appeals from the Information Commissioner (ICO); he noted that “the ICO can order public authorities (including Government) to produce information and documents” and that if “such bodies do not wish to, following an appeal, the Tribunal can

267 Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#)) para 10

268 [Q164](#)

269 Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#)) para 10

270 Andrew Bryce ([DEB0089](#)) para 6

271 ClientEarth ([DEB0088](#)) para 3

272 ClientEarth ([DEB0088](#)) para 5

273 Dr David Wolfe ([DEB0081](#)) para 48

274 Dr David Wolfe ([DEB0081](#)) para 49

look at the matter afresh and confirm the order that the information must be produced”.²⁷⁵ This existing model could “provide a powerful template for the OEP and Environment Tribunal to take a similar approach”.²⁷⁶

92. When asked whether the existing EU infringement procedure could be improved, the Secretary of State stated that people had “a degree of confidence in the process whereby the Commission can give an opinion then, if necessary, go with infraction proceedings”, and that “people have a confidence [...] it is a good working model”.²⁷⁷ When questioned whether Defra might seek to incorporate tribunals, the Minister stated that they had considered the arguments and concluded that the “same outcomes are there [in the proposed procedure]”, and cited the air quality case as an example.²⁷⁸ The Secretary of State reaffirmed that he was “open-minded” and had sought “to replicate an easily understandable process, as far as possible”.²⁷⁹ He also added that the Administrative Court might have an advantage over a tribunal in that it “would probably have a bigger stick with which to beat the Government and a more profound way of exacting penalties that would determine compliance”.²⁸⁰

93. The Office for Environmental Protection needs to have the right balance of investigatory and enforcement powers, with sufficient legal teeth to ensure that compliance with environmental law is achieved without a majority of cases ending up in the courts. We welcome the OEP’s powers to issue information and decision notices but are concerned that at present these notices will not have sufficient legal force to compel action.

94. The OEP’s enforcement powers are entirely reliant on judicial review, which largely focusses on process and not the substance of a decision. We therefore do not consider that judicial review will be an appropriate or effective tool in all environmental cases. The OEP will need a more bespoke enforcement procedure to ensure wider compliance with environmental law. The Bill needs to incorporate other enforcement routes and appropriate tools to resolve environmental cases before they are taken to the High Court.

95. Given the weaknesses of the traditional judicial review process for dealing with environmental cases, an enhanced enforcement procedure should be established for the OEP. Clause 25 should be redrafted to ensure that there is a legislative requirement on the court to take account of the issued decision notice as part of the review process.

96. The OEP should be empowered to issue emergency and interim measures in urgent cases and to intervene in other legal proceedings relating to its purposes. These additional powers are essential given the potentially irreversible nature of environmental harm.

275 Dr David Wolfe ([DEB0081](#)) para 49

276 Dr David Wolfe ([DEB0081](#)) para 49

277 [Q304](#)

278 [Q303](#)

279 [Q303](#)

280 [Q307](#)

97. *Defra should also continue to engage with legal experts on how best to incorporate the First Tier (Environmental) Tribunal into the enforcement process. An appropriate role for the Tribunal would be to confirm any decision notices issued by the OEP. The Tribunal could have a role in deciding whether there has been a breach of environmental law or whether the steps proposed to deal with the situation are adequate or reasonable.*

Fines

98. The Brexit and the Environment group pointed out that there were some “important differences” between the OEP’s procedure and the Commission’s; including that EU members states must comply with the infringement procedure under the EU Treaties, and that in the later stages of the EU’s process the Commission has the power to recommend significant fines.²⁸¹ It described fines as “the new watchdog’s sharpest teeth” and stated that although there were complications to applying them in a domestic context, fines should be given more thought before they were removed entirely.²⁸² The RSPB, WWF and the Wildlife Trusts also all suggested the OEP should have the power to issue fines in cases of non-compliance.²⁸³ The Countryside Alliance and the Royal Town Planning Institute both highlighted how effective the threat of fines had been in bringing about compliance with environmental law.²⁸⁴

99. Not all stakeholders regarded fines as an appropriate enforcement tool for the OEP. UKELA stated that “without an elaborate structure for the application of fines for environmental purposes, little would be gained by this process” and that “however structured, it would simply divert resources from public authorities”.²⁸⁵ Dr David Wolfe QC similarly argued that “such organisational fines do not necessarily deter” and “may simply undermine the ability of the public authority in question to get on with the job of environmental protection”.²⁸⁶

100. Instead of fines, Dr David Wolfe QC stated that “what can really focus minds is a system of personal accountability” as senior officials or board members were rarely “publicly called to account for their failures or their organisation’s failures”.²⁸⁷ He argued that the Bill could be revised to give the OEP the power “directly and/or in the court of an OEP JR to require (say) the Chair and Chief Executive of the public authority under scrutiny to attend and publicly account for what has gone wrong”.²⁸⁸ Professor Richard Macrory QC similarly called for an enhanced enforcement procedure that incorporated an “extended notion of responsibility in public law” and suggested that, to reflect the force of the Commissions infringement proceedings, the OEP’s enforcement powers should be directed solely at the Secretary of State.²⁸⁹ Overall, he considered that “we should be looking to novel ways of resolving difficult issues concerning the implementation of environmental law duties”.²⁹⁰

281 Brexit and the Environment Group, ‘[The Environment \(Principles and Governance\) Bill: An overview and four unanswered questions](#)’, accessed 16 April 2019

282 Brexit and the Environment Group, ‘[The Environment \(Principles and Governance\) Bill: An overview and four unanswered questions](#)’, accessed 16 April 2019

283 RSPB ([DEB0045](#)) para 15; WWF ([DEB0063](#)) para 14; The Wildlife Trusts ([DEB0029](#)) p 1

284 Countryside Alliance ([DEB0061](#)) para 12; Royal Town Planning Institute ([DEB0050](#)) p 2

285 UKELA ([DEB0048](#)) para 27

286 Dr David Wolfe ([DEB0081](#)) para 38

287 Dr David Wolfe ([DEB0081](#)) para 39

288 Dr David Wolfe ([DEB0081](#)) para 40

289 Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#)) para 11

290 Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#)) para 11

101. In contrast, the NFU considered that the proposed enforcement powers for the OEP were proportionate.²⁹¹ Whilst noting that the Commission had greater enforcement powers, such as the power to fine, it argued that these powers were only appropriate in the context of the European Union and ensuring the compliance of member states.²⁹² They argued that, given that the OEP would be working in a “purely national context”, the enforcement tools available to the Commission would be inappropriate.²⁹³ This was also the position of the Environment Agency, which considered that the powers in the draft Bill provided a “proportionate and workable mechanism to take enforcement action”.²⁹⁴

102. Defra has previously stated that it would not be necessary or appropriate to give the OEP the power to issue fines against the government.²⁹⁵ It argued that public authorities have a duty to comply with court judgements, and that failure to comply with a court order would not only be a breach of the ministerial code but could lead to the responsible person being held in contempt of court, which could subsequently lead to fines, sequestration or even imprisonment.²⁹⁶ Defra also argued that fines could be “counterproductive” if they led to a reduction in a department’s budget, and limited the capacity of a department to fully implement environmental law due to resource limitations.²⁹⁷

103. Given the structural differences between the European Commission and the proposed OEP, we agree that it is inappropriate to simply try to replicate the Commission’s current enforcement powers. While fines have proven to be a powerful tool for compliance within the context of the Commission, we do not believe they are a suitable mechanism within a domestic context as they could reduce already depleted public authority budgets. However, in the absence of fines, we believe there needs to be an appropriate enforcement alternative. The watchdog will need sharper teeth than it is currently given. *In the absence of the power to fine, additional tools need to be given to the Office for Environmental Protection enforcement powers to ensure compliance with environmental law. Appropriate mechanisms to ensure greater personal accountability for failings will help to sharpen the watchdog’s teeth.*

The OEP’s scrutiny and advice functions

104. Beyond its enforcement function, the draft Bill sets out scrutiny and advisory functions for the OEP to undertake. The Secretary of State has committed to ensuring that the Government “is obliged to have a long-term plan for improving the environment; to publish indicators; and to measure and report on progress”.²⁹⁸ The explanatory notes state that the OEP will “generally assess progress in the implementation of the Environmental Improvement Plan and environmental law, and identify how the strategic direction could

291 National Farmers’ Union ([DEB0067](#)) p 2

292 National Farmers’ Union ([DEB0067](#)) p 2

293 National Farmers’ Union ([DEB0067](#)) p 2

294 Environment Agency ([DEB0080](#)) para 3.1

295 Department for Environment, Food and Rural Affairs, *Environmental Principles and Governance after the United Kingdom leaves the European Union: Summary of responses and government response*, 19 December 2018, p 27

296 Department for Environment, Food and Rural Affairs, *Environmental Principles and Governance after the United Kingdom leaves the European Union: Summary of responses and government response*, 19 December 2018, p 27

297 Department for Environment, Food and Rural Affairs, *Environmental Principles and Governance after the United Kingdom leaves the European Union: Summary of responses and government response*, 19 December 2018, p 27

298 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Foreword, p 3

be improved”.²⁹⁹ It will fulfil this role “alongside” the Environment Agency and Natural England who will also monitor progress and advise on possible improvements in specific areas.³⁰⁰

105. Some of the key functions outlined in the draft Bill include:

- Under Clause 12 subsection (2), the OEP is required to prepare a strategy setting out its operational framework. Clause 12, (3) (b) provides that the OEP must set out how it intends to avoid any overlap with the Committee on Climate Change in exercising its monitoring, reporting and advising functions.³⁰¹
- Under Clause 14, the OEP must “monitor progress in improving the natural environment in accordance with the current environmental improvement plan”.³⁰²
- Under Clause 15, the OEP must “monitor the implementation of environmental law” and “may produce a report on any matter concerned with the implementation of environmental law”.³⁰³ This function is deemed similar to the Committee on Climate Change, “which uses reports from academics and reputable organisations to monitor the implementation of the Climate Change Act 2008”.³⁰⁴
- Under Clause 16, the OEP must give advice to a Minister about “(a) any proposed change to environmental law, or (b) any other matter relating to the natural environment, on which the Minister requires it to give advice”.³⁰⁵

106. Professor Maria Lee argued that the OEP’s wider scrutiny and advice functions could be amended to empower the OEP and ensure wider political accountability for protecting the environment.³⁰⁶ She suggested that Clause 14 could be amended so that the OEP was empowered to advise on the development of environmental policy.³⁰⁷ Professor Maria Lee also argued that Clause 15, “suitably strengthened”, could make a “significant contribution to both accountability and environmental learning”.³⁰⁸ She suggested that this provision could allow the OEP to “delve into the exercise of discretion around the implementation” of environmental Law.³⁰⁹ She suggested that Clause 15 could be strengthened in two ways; first, by placing an obligation on public authorities to report on their implementation of environmental law; and second, by introducing a governance structure to support the work on implementation.³¹⁰ She considered that, strengthened in this way, Clause 15 had

299 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 33

300 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 33

301 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 111

302 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 121

303 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, paras 128–129

304 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 127

305 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, clause 16

306 Professor Maria Lee ([DEB0006](#)) para 8–11

307 Professor Maria Lee ([DEB0076](#)) p 2

308 Professor Maria Lee ([DEB0006](#)) para 9

309 [Q50](#)

310 Professor Maria Lee ([DEB0076](#)) p 1

the potential to be “genuinely world leading” as it would allow the OEP or parliamentary committees to enter into dialogue with environmental regulators about the ways in which they implement environmental law.³¹¹ Professor Richard Macrory QC similarly stated that Clause 15 had been drafted in very broad terms, and called for more systematic reviews to be incorporated in the Bill.³¹²

107. UKELA expressed concern that there was “an inevitable tension between the OEP’s two roles of being an advisory body to Government on environmental law and simultaneously being its regulator”, which might in turn “compromise its independence”.³¹³ UKELA suggested that the Government could seek appropriate legal advice when needed externally without depleting OEP resources.³¹⁴ Andrew Bryce, Co-Chair of the UKELA Brexit taskforce, argued that the OEP should not be required to give legal advice to a body it is regulating, and that any advice given should be at the discretion of the OEP.³¹⁵ The Countryside Alliance advocated a revision to Clause 16 to give the OEP power to offer advice to Ministers at its own discretion and suggested that “this would be a closer reflection of the current arrangements between the EU institutions”.³¹⁶ The Agricultural Law Association expressed concern that Clause 16 allowed discretion to the Minister as to whether to present the OEP’s advice to Parliament or not, and suggested that Ministers should be obliged to present all advice they received from the OEP.³¹⁷ The Committee on Climate Change also suggested that there was “a potential for conflict of interest within a body that both provides advice on aspects of environmental law, and then enforces that law”.³¹⁸

Overlap of functions

108. The NFU expressed concern about the possible duplication of roles and responsibilities, in particular between the OEP and the Natural Capital Committee, Natural England, the Joint Nature Conservation Committee and the Committee on Climate Change.³¹⁹ It suggested that it would be worthwhile to examine the functions of all of the bodies to resolve any potential future confusion or overlap.³²⁰ Mark July, a retired employee of the statutory nature conservation bodies in England, considered that the OEP’s role should be as a “high level, committed advocate based on the facts” and “not to duplicate or take-over established monitoring functions undertaken by other specialist statutory bodies”.³²¹ The Nature Friendly Farming Network also noted that it was not clear how the proposed Office for Environmental Protection (OEP) would work with the reformed farming regulation system proposed in the December 2018 Farm Inspection and Regulation Review.³²²

109. The Environment Agency did not see any material conflicts of interest between the OEP and “existing government bodies” but highlighted the risk of the OEP “having to employ from finite public money a parallel team of technical staff for specialist areas

311 Professor Maria Lee ([DEB0076](#)) p 1

312 Emeritus Professor of Environmental Law Richard Macrory ([DEB0003](#)) para 4

313 UKELA ([DEB0048](#)) para 12

314 UKELA ([DEB0048](#)) para 12

315 Andrew Bryce ([DEB0089](#)) para 3

316 Countryside Alliance ([DEB0061](#)) para 16

317 Agricultural Law Association ([DEB0037](#)) para 2.1.4

318 Committee on Climate Change ([DEB0066](#)) para 2

319 National Farmers’ Union ([DEB0067](#)) p 3

320 National Farmers’ Union ([DEB0067](#)) p 3

321 Mr Mark July ([DEB0031](#)) para 6

322 Nature Friendly Farming Network ([DEB0056](#)) pp 1–2

when that expertise already exists” and is “needed to regulate industry effectively”.³²³ The Environment Agency suggested that such factors might be sensibly considered in the OEP’s overall strategy (in Clause 12).³²⁴ Alan Law, Deputy Chief Executive of Natural England, suggested that the OEP’s relationship with Defra’s regulatory bodies could be captured through Memorandums of Understanding, and that he saw the OEP possessing quite “a distinct capability, particularly around its legal capability, and around audit and analysis, rather than being a body of technical environmental experts”.³²⁵

110. When asked whether there was potential for turf wars between the OEP and existing bodies, the Secretary of State dismissed this concern and explained that efforts had been made to “delineate pretty clearly what functions the OEP would fulfil”.³²⁶ The Environment Minister explained that she foresaw the OEP playing a similar advisory role to the Committee on Climate Change, driving a more strategic debate rather than reflecting on individual decisions.³²⁷ With regards to the use of memorandums of understanding, she considered that initially “there may be some trying to work out who is doing what” which was already the case to some extent.³²⁸ The Secretary of State later informed us that Defra was considering the “future landscape of Defra” and that this could include examining the responsibilities of each of its NDPBs.³²⁹ Suggesting there might be “an element of overlap” and also some “potential gaps”, he proposed that the project might “review whether or not responsibilities [of Defra’s NDPBs] need to be extended” or whether some NDPBs might be “merged”.³³⁰

111. The advisory and scrutiny functions of the Office for Environmental Protection are welcome but need to be clarified and revised. The OEP’s primary function must be to hold the Government to account on its obligations to protect the environment. It is therefore important that its wider scrutiny and advisory functions do not compromise its ability to enforce, either by limiting its independence or by restricting its resources. To avoid any tension between the OEP’s two roles as an advisory body and a watchdog, Clause 16 should be redrafted so that the OEP only has to offer advice to Ministers at its own discretion.

112. The Office for Environmental Protection (OEP) should act as a high-level strategic body. It should advise on matters relating to environmental law and the implementation of the Environmental improvement plans. The OEP must not take over well-established monitoring functions undertaken by other specialist statutory bodies. To avoid unnecessary and costly duplication of technical expertise the OEP must set out in its strategy how its wider scrutiny and advisory roles will relate to and impact upon the other statutory bodies within the ambit of Defra.

Definitions and Scope

113. Clauses 30 and 31 define the meaning of “natural environment” and “environmental law” in the draft Bill. The definitions “are important for understanding the scope and

323 Environment Agency ([DEB0080](#)) para 4.1

324 Environment Agency ([DEB0080](#)) para 4.1

325 [Q241](#)

326 [Q312](#)

327 [Q311](#)

328 [Q312](#)

329 Oral evidence taken on 27 March 2019, [HC 1669](#), Q255 [Rt Hon Michael Gove MP]

330 Oral evidence taken on 27 March 2019, [HC 1669](#), Q255 [Rt Hon Michael Gove MP]

nature of the new domestic governance and principles arrangements”.³³¹ For example, many of the OEP’s functions in the draft Bill are described by reference to “environmental law”.³³²

114. Clause 30 defines the meaning of “natural environment” as:

- (a) wild animals, plants and other living organisms;
 - (b) their habitats;
 - (c) land, water and air (except building or other structures and water or air inside them);
- and the natural systems, cycles and processes through which they interact.³³³

Clause 31 outlines that “environmental law” in the draft bill relates to areas that are “(a) mainly concerned with an environmental matter, and (b) is not concerned with an excluded matter”.³³⁴ Clause 31(3)(c) specifies which matters do not fall under this interpretation of “environmental law” and are therefore exempted from the scope of the OEP:

- (a) Emissions of greenhouse gases (within the meaning of the Climate Change Act 2008), but not the subject matter of the Fluorinated Greenhouse Gases Regulations 2015 (S.I. 2015/310);
- (b) disclosure of or access to information;
- (c) the armed forces, defence or national security; and
- (d) taxation, spending, or the allocation of resources within government.³³⁵

The explanatory notes further clarify that the policy areas that would “normally be considered to constitute environmental law” include “air quality (although not indoor air quality); water resources and quality, marine, coastal or nature conservation; waste management; pollution; and contaminated land”.³³⁶ Policy areas which “would not normally constitute environmental law as defined here” and therefore “would be outside of the scope of the OEP” were listed as:

- forestry;
- flooding;
- navigation;
- town and country planning;

331 *Environmental principles and governance: the draft Bill*, [Briefing Paper Number 8484](#), House of Commons Library, 30 January 2019, p 19

332 *Environmental principles and governance: the draft Bill*, [Briefing Paper Number 8484](#), House of Commons Library, 30 January 2019, p 19

333 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Clause 30

334 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Clause 31

335 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Clause 31

336 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 211

- people’s enjoyment of or access to the natural environment;
- cultural heritage;
- animal welfare or sentience;
- animal or plant health (including medicines and veterinary products);
- health and safety at work.³³⁷

115. Ruth Chambers, representing Greener UK, suggested that the definitions of both environmental law and the natural environment needed “some very careful scrutiny” and were “not very clear” in the way they were currently drafted.³³⁸ Greener UK suggested that the definition in Clause 31(1)(a) should be changed from law “mainly concerned with an environmental matter” to “relating to” such matters.³³⁹ Ali Plummer, representing the Royal Society for the Protection of Birds argued that the definition of environmental law did not match the existing definitions of environmental law, for example the definition of environmental information from the Aarhus Convention and the definition used for environmental impact regulations.³⁴⁰ She also drew attention to the exclusions in the explanatory notes, such as town and country planning, flooding and forestry, and suggested that if these areas were to be excluded “the Bill needs to be clearer as to why that is the case.”³⁴¹ Ruth Chambers explained to us that as drafted the Bill did not necessarily exclude these areas, but rather that they fell into a “category of accidental confusion”.³⁴²

116. In addition to some “accidental confusions”, Ruth Chambers also suggested that there were some “plain old-fashioned mysteries” in these definitions, including the exclusion of international law from the definition of environmental law. She considered this to be “a rather startling omission” and suggested that international law “should very much be part of that definition so that the OEP can include them and factor them in”.³⁴³ Dr Tom West explained that despite losing the “overarching framework of EU law”, international law might be able to compensate to a certain extent, and that this inclusion could be valuable.³⁴⁴

117. The National Trust drew specific attention to the definition of “natural environment” in Clause 30 and expressed concern that it did not include any reference to the “historic environment”.³⁴⁵ Similar concerns around this exemption were raised by the Heritage Alliance and the Chartered Institute for Archaeologists.³⁴⁶ The National Trust suggested that the specific exclusion of “buildings and other structures” from the definition might even proactively exclude historic features.³⁴⁷ It argued that the exclusion of features related to the historic environment contradicted and undermined the Government’s 25 Year Environment Plan, which identified enhancing “beauty, heritage and engagement with

337 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, Cm 9751, December 2018, explanatory notes, para 212

338 [Q172](#)

339 Greener UK ([DEB0027](#)) para 42

340 [Q170](#)

341 [Q170](#)

342 [Q171](#)

343 [Q171](#)

344 [Q171](#)

345 National Trust ([DEB0018](#)) para 7

346 The Heritage Alliance ([DEB0014](#)) para 11; Chartered Institute for Archaeologists and Council for British Archaeology ([DEB0053](#))

347 National Trust ([DEB0018](#)) p 4

the natural environment” as a specific goal.³⁴⁸ The National Trust therefore recommended that the understanding of the environment in the Bill should be widened to include the historic environment.³⁴⁹

118. On the policy areas exempted in the explanatory notes, Professor Maria Lee highlighted planning, noting that it “is a core institution in our framework of environmental protection, and the application of planning legislation (powers and duties) is an important way of ensuring compliance with environmental law as defined in the draft Bill”.³⁵⁰ She suggested that a similar analysis could be applied to forestry and flooding.³⁵¹ Professor Maria Lee also noted that, as drafted, all these areas fell within the draft Bill’s definition of environmental law, and suggested that there was a lack of clarity in the explanatory notes.³⁵²

119. Professor Richard Macrory QC suggested that the definitions were appropriate for the OEP’s enforcement role but advised that for the purposes of the OEP’s wider scrutiny and advice functions, there should be a “more generous definition”.³⁵³ UKELA expressed concern that the definitions could deny the OEP the power to review all elements of progress under the Environmental Improvement Plans (EIPs).³⁵⁴ It suggested that “significant difficulties” would exist if the OEP’s monitoring scope in relation to law and the EIPs was unduly constrained and that all matters of the EIPs needed to be within the jurisdiction of the OEP.³⁵⁵

120. Natural England agreed that the definitions of the “natural environment” and “environmental law” in the explanatory notes would benefit from further clarification.³⁵⁶ In reference to the list of excluded policy areas, it would have expected forestry “to be in scope” and also advocated for “the inclusion of people’s enjoyment of the natural environment” as it was a potential component of the EIPs.³⁵⁷ The Environment Agency expressed concern that exemptions under the definition of environmental law were “too broad”.³⁵⁸ In response to the explanatory notes it argued that it “would be difficult to separate what relates to the environment, or not, in most of the legislation” and that in turn this could lead to a lack of clarity and transparency for the role of the OEP.³⁵⁹ It recommended that “legislation, for example on taxation, flooding and forestry, should be in scope of the OEP when it has and only insofar as it has a significant impact on the natural environment”.³⁶⁰

121. The Minister conceded that the definitions within the explanatory notes had not been “worded brilliantly”.³⁶¹ She confirmed that “anything environmental in there is completely in scope”.³⁶²

348 National Trust ([DEB0018](#)) p 4

349 National Trust ([DEB0018](#)) p 4

350 Professor Maria Lee ([DEB0076](#)) p 2

351 Professor Maria Lee ([DEB0076](#)) p 2

352 Professor Maria Lee ([DEB0076](#)) p 2

353 [Q232](#); Emeritus Professor of Environmental Law Richard Macrory ([DEB0094](#)) para 7

354 UKELA ([DEB0048](#)) paras 29–30

355 UKELA ([DEB0048](#)) paras 30, 35

356 Natural England ([DEB0023](#)) para 8.3.1

357 Natural England ([DEB0023](#)) para 8.3.1

358 Environment Agency ([DEB0080](#)) para 8.1.1

359 Environment Agency ([DEB0080](#)) para 8.1.2

360 Environment Agency ([DEB0098](#)) p 1

361 [Q331](#)

362 [Q331](#)

122. The definitions in the draft Bill are currently a source of confusion. We therefore welcome the Minister’s commitment to review Clauses 30 and 31 and to rewrite the relevant explanatory notes. The definitions of natural environment and environmental law are of central importance as they will guide future Secretaries of State in their creation of Environmental Improvement Plans and frame the remit in which the new Office for Environmental Protection will operate. They must therefore cover all the necessary aspects of environmental law and the wider environment.

123. *The definitions in Clauses 30 and 31 need to be expanded in scope and clarified in application and interpretation. We recommend that the Bill be redrafted to provide for a more holistic definition of the environment, with explicit reference made to the historic environment. Given the UK’s departure from the wider framework of EU environmental law, international law should be included within the definition of environmental law, so that the OEP can factor international law into its enforcement and wider advisory functions. The Bill should also be redrafted to ensure that the OEP has the power to review all aspects of the Environmental Improvement Plans in its monitoring role.*

Climate change

124. Clause 31 excludes greenhouse gas emissions (other than specific fluorinated gases) from its definition of Environmental Law and therefore from the wider remit of the OEP.³⁶³ In practice “most legislation concerning the mitigation of climate change, including that under the Climate Change Act 2008, will fall outside the remit of the OEP’s complaints and enforcement functions and its monitoring of environmental law, with the exception of the regulation of specific fluorinated greenhouse gases”.³⁶⁴

125. In response to the Government’s consultation on governance and principles a significant majority of stakeholders called for climate change to be within the scope of the OEP.³⁶⁵ The Government stated its intention was to ensure that the “vital role” of the existing Committee on Climate Change is “protected and [that] it is able to operate as it does currently”.³⁶⁶ Clause 12 of the draft Bill requires the OEP to prepare a strategy in which it sets out “how the OEP intends to avoid any overlap between the exercise of its functions under sections 14 to 16 (monitoring, reporting and advising) and the exercise by the Committee on Climate Change of that committee’s functions”.³⁶⁷ The Government has stated that the OEP and CCC will “operate under a Memorandum of Understanding, which would require them to coordinate the exercise of their functions in a mutually beneficial and complementary way”.³⁶⁸

363 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Clause 31

364 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 214

365 *Environmental principles and governance: the draft Bill*, [Briefing Paper Number 8484](#), House of Commons Library, 30 January 2019, p 36

366 Department for Environment, Food and Rural Affairs, *Environmental Principles and Governance after the United Kingdom leaves the European Union: Summary of responses and government response*, 19 December 2018, p 31

367 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, Clause 12

368 Department for Environment, Food and Rural Affairs, *Environmental Principles and Governance after the United Kingdom leaves the European Union: Summary of responses and government response*, 19 December 2018, p 32

126. The Mayor of London suggested that by excluding climate change from the Environment Bill, the Government was “creating a clear gap” in environmental governance.³⁶⁹ Professor Maria Lee argued that the exclusion of emissions of greenhouse gases may be unobjectionable in respect of the OEP’s monitoring and advisory functions but that its exclusion from its enforcement role was “significant,” given the Committee on Climate Change’s lack of enforcement powers.³⁷⁰ Ruth Chambers, Greener UK, explained that:

The Committee on Climate Change does not have enforcement powers, nor is it bidding to gain them. If the OEP is not able to enforce any potential breach of climate law in the future, there will be a gap in relation to the body that is going to do that. It is almost a basic principle of natural justice. The way to fix this is by including climate change within the definition of environmental law and, by extension, that would fall within the remit of the OEP and the public would be able to make complaints about any potential breaches of climate law.³⁷¹

Ruth Chambers suggested that the intention should not be to revise the role of the CCC, but instead to find ways to ensure there was an appropriate duty of cooperation, established both in legislation and via memorandums of understanding.³⁷² Debbie Tripley, Director of Environment Policy and Advocacy, WWF, expressed concern that there could be some incoherence between the OEP and the CCC, especially where, for example, in their separate advisory capacities the OEP and the CCC might give contradictory pieces of advice on an aspect of the Climate Change Act.³⁷³ She advocated that it should remain the sole remit of the CCC to advise on the Climate Change Act and highlighted the need for “some coherence in the drafting”.³⁷⁴

127. Chris Stark, Chief Executive of the CCC, did not foresee a gap in climate change enforcement but suggested there was an ambiguity.³⁷⁵ In particular, he explained that the ambiguity would arise with regards to the CCC’s scrutiny of climate change adaptation, a role undertaken by the Adaptation Sub-Committee (ASC) of the CCC.³⁷⁶ He explained that:

As the Environment Bill is drafted, it is possible that we will run into a point where we are providing independent advice on the impacts of climate change on the national environment and the OEP is expected to do the same thing. That is possible to manage, but it would be important for us to establish a clear memorandum of understanding about how we will operate with the OEP.³⁷⁷

Chris Stark explained that an “ideal arrangement” between the CCC and the OEP would allow the CCC to continue its independent assessment of climate change law directly to Parliament, but for it “as necessary” to direct its assessment to the OEP “to allow it to

369 Mayor of London ([DEB0025](#)) para 7.2

370 Professor Maria Lee ([DEB0006](#)) para 17

371 [Q177](#)

372 [Q179](#)

373 [Q181](#)

374 [Q177](#)

375 [Q273](#)

376 [Q273](#); Committee on Climate Change, ‘[Members of the Adaptation Committee](#)’, accessed 16 April 2019

377 [Q273](#)

undertake its enforcement functions as regards the natural environment”.³⁷⁸ In July 2018, Lord Deben, Chairman of the CCC, recommended to the Secretary of State that to “avoid the risk of duplication” the analysis of the 25 year environment plan related to climate change should not be delivered by the new watchdog, but rather that the watchdog should receive its analysis from the Adaptation Sub-Committee and use it to inform appropriate enforcement actions as necessary.³⁷⁹

128. The Secretary of State suggested that the extent to which climate law should be included within the remit of the OEP was “precisely an issue for pre-legislative scrutiny”.³⁸⁰ He stated that it was not his intention to upset the “smooth and effective working” of the CCC.³⁸¹ He also expressed again that he was “open minded” to considering how the new body’s remit should be extended to the enforcement of climate law.³⁸²

129. There must not be a governance gap in law in relation to climate change when the UK leaves the European Union. Given the lack of enforcement provision for the Committee on Climate Change, the Office for Environmental Protection should play a role in enforcing the Government’s targets and objectives relating to climate change. However, in undertaking this function, the OEP must not unnecessarily and negatively encroach upon the well-established advisory functions of the Committee on Climate Change.

130. *The Government should make clear via memorandums of understanding published alongside the Bill, how the Committee on Climate Change intends to co-operate with the Office for Environmental Protection. As the Climate Change Committee has no enforcement role, Clause 31 of the Bill should be redrafted to include Climate Change within the enforcement remit of the OEP. A duty should be placed on the OEP to consult the Committee on Climate Change before conducting any enforcement action in this area.*

Territorial extent

131. Currently the European Commission’s enforcement relates to the whole of the UK. However, within the UK, environmental policy is a devolved matter, subject to a small number of areas that are reserved.³⁸³ Clause 34 therefore sets out the territorial extent of the clauses in the draft Bill. The explanatory notes explain that:

the draft Bill will apply to England. Clause 1 to 4 [the policy statement on environmental principles] apply to Wales, Scotland and Northern Ireland in respect of the functions of UK Ministers only. The remainder of the Bill will apply to Wales, Scotland and Northern Ireland in respect of environmental matters that are not devolved.³⁸⁴

378 [Q274](#)

379 Committee on Climate Change ([DEB0066](#)) annex

380 [Q323](#)

381 [Q323](#)

382 [Qq323–325](#)

383 Department for Environment, Food and Rural Affairs, ‘[Environment Bill: policy paper](#)’, accessed 16 April 2019

384 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, [Cm 9751](#), December 2018, explanatory notes, para 41

132. The explanatory notes state that “the new body could, subject to the ongoing framework discussions with the devolved administrations, exercise functions more widely across the UK”.³⁸⁵ In an accompanying policy paper, Defra also extended a welcome to the devolved administrations to co-design legislation on the environment:

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.³⁸⁶

133. Professor Colin Reid and Dr Viviane Gravey, members of the Brexit and the Environment group, outlined the different arrangements for environmental governance in the devolved nations.³⁸⁷ Professor Reid stated that it was “important to realise” that as far as environmental governance is concerned “the different devolved administrations are starting in different places”.³⁸⁸ He stated that in Wales certain principles were already embedded in legislation and that there was an existing “machinery” with a “government architecture that could be used as a way of enforcing, implementing and reviewing what is happening”.³⁸⁹ In relation to Scotland, he suggested that there was “more interest in using existing audit mechanisms than perhaps setting up a separate body”.³⁹⁰ Professor Reid noted that Northern Ireland was in a “in a different position”.³⁹¹ Dr Gravey stated that “giving the OEP jurisdiction over Northern Irish devolved environmental policy and law raises questions about local buy-in and legitimacy of an institution developed for England/Reserved matters made common by default”.³⁹²

134. Despite the commitment to co-design, the Brexit and the Environment Group, concluded that there was “little concrete detail on how and when [co-design] will happen”.³⁹³ Whilst they acknowledged there were many incentives for co-operation, they expressed concern that “the limited trust between the devolved nations and the UK government may jeopardise the future development of environmental governance structures after Brexit”.³⁹⁴ The Royal Town Planning Institute considered that it was “unfortunate that the UK Government has pressed on with this process unilaterally”.³⁹⁵ It suggested that it “would have been preferable for the three sitting Governments in the UK to have jointly come to an agreement on how they wish to replace the European Commission and then consulted their peoples accordingly”.³⁹⁶ It further argued that the commitment to cooperation in the accompanying policy paper fell “far short” of the kind of cooperation which “which would effectively replace the role of the EU”.³⁹⁷

385 Department for Environment, Food and Rural Affairs, *Draft Environment (Principles and Governance) Bill*, Cm 9751, December 2018, explanatory notes, para 42

386 Department for Environment, Food and Rural Affairs, ‘[Environment Bill: policy paper](#)’, accessed 16 April 2019

387 [Qq110–121](#)

388 [Q116](#)

389 [Q116](#)

390 [Q116](#)

391 Brexit and the Environment, ‘[All in it together - but not yet? Devolution in the Environment Bill](#)’, accessed 16 April 2019

392 Queen’s University Belfast ([DEB0097](#)) para 1

393 Brexit and Environment ([DEB0008](#)) para 2

394 Brexit and the Environment, *Environmental policy in a devolved United kingdom: Challenges and opportunities after Brexit*, (October 2018), p 4

395 Royal Town Planning Institute ([DEB0050](#)) p 3

396 Royal Town Planning Institute ([DEB0050](#)) p 3

397 Royal Town Planning Institute ([DEB0050](#)) p 3

135. Professor Colin Reid suggested that, in the short term, there were “two things that could usefully be added to the Bill” to improve cooperation.³⁹⁸ He advocated for a provision in the Bill that explicitly allowed for “collaboration, co-operation and the sharing of data” between the OEP and bodies fulfilling the same functions in the devolved Administrations.³⁹⁹ Professor Reid also argued that, given the different starting points of the Devolved Administrations and the shortage of time, it was “extremely ambitious to think we are going to get commonly agreed unified arrangements by the time this Bill gets through”.⁴⁰⁰ He therefore suggested that there should be “a commitment to a review” the arrangements with the devolved administrations after a stated period of time once the OEP had come into effect.⁴⁰¹

136. The Secretary of State informed us that he met with the Devolved Administration Ministers monthly on a ministerial level, and “not quite daily but regularly at official level”.⁴⁰² The Environment Minister stated however that, apart from Northern Ireland, the Devolved Administrations had “not expressed any interest” in being part of the Bill.⁴⁰³ The Secretary of State stated that Defra was “more than happy” to cooperate should the devolved administrations wished to, and informed us that he had made the case to Fergus Ewing MSP that the OEP could be located in Scotland.⁴⁰⁴

137. Further to our public session, Dr Denis McMahon, Permanent Secretary, informed the Chair of the Environmental Audit Committee that officials in Northern Ireland’s Department of Agriculture, Environment and Rural Affairs (DAERA) were “working with Defra officials to draft provisions that will extend the principles and governance measures in the Bill to Northern Ireland”.⁴⁰⁵ Dr McMahon stated that work was “at an early stage” but consideration was being given “to the new provisions to ensure that they will work effective in the Northern Ireland context, including amongst others the “applicability of the principles”, the “remit of the OEP in Northern Ireland” and “trans-boundary issues”.⁴⁰⁶

138. Although environmental policy is a devolved matter, it is essential that the UK Government and the Devolved Administrations work together to protect the environment after the UK leaves the European Union. National boundaries are irrelevant in the context of environmental challenges such as air pollution or climate change. Common frameworks for governance after the UK’s exit from the European Union should be underpinned by common standards and principles to avoid gaps in the implementation of environmental policy across the UK.

139. We would welcome the extension of the Office for Environmental Protection to become a UK wide body but recognise that this decision sits within the power of the Devolved Administrations. The Bill should be redrafted so that, subject to the creation of separate bodies in the Devolved Administrations, the UK Government can establish

398 [Q116](#)

399 [Q116](#)

400 [Q116](#)

401 [Q116](#)

402 [Q338](#)

403 [Q340](#)

404 [Q340; Fergus Ewing MSP is the Cabinet Secretary for the Rural Economy, Scottish Government](#)

405 Department of Agriculture, Environment and Rural Affairs, [Letter from the Permanent Secretary to the Chair on the Scrutiny of the Environment Bill](#), (27 February 2019)

406 Department of Agriculture, Environment and Rural Affairs, [Letter from the Permanent Secretary to the Chair on the Scrutiny of the Environment Bill](#), (27 February 2019)

the necessary mechanisms for cooperation and the sharing of data. Given the rushed timescales for the creation of the OEP, the Government should commit to a future review of the provisions for environmental governance across the UK within five years.

Conclusions and recommendations

Introduction

1. The Environment Bill presents the Government with an opportunity to establish a new and improved framework for the future of environmental governance. We have welcomed the opportunity to conduct pre-legislative scrutiny on the draft Environment (Principles and Governance) Bill. However, given the importance of the Environment Bill for generations to come, it is disappointing that we have not been granted the opportunity to look at the full Bill before its publication in the next parliamentary session. Without knowledge of the final contents of the Bill it has been a challenge to fully scrutinise the draft clauses, and this has frustratingly limited the scope of our inquiry. *We recommend that the Government should leave enough time between introduction of the Bill and Second Reading to allow the Committee to conduct proper scrutiny of the remaining clauses in the Bill in order to inform the House's consideration of it.* (Paragraph 10)

The policy statement on environmental principles

2. It is essential that environmental principles continue to guide environmental policy making and legislation after the UK's departure from the European Union. We therefore support the list of principles included in Clause 2 of the draft Bill. However, the Government has not included within the list of principles a clear overarching objective for the UK's future environmental governance. Notably, the Government has not carried across the objective of "a high level of protection for the environment" as currently stated in Art 191(2) of the Treaty on the Functioning of the European Union. This is a surprising omission given the Secretary of State's clear commitment to improving the state of the environment. (Paragraph 24)
3. We are also concerned that the Bill turns what are currently legal provisions for environmental principles into a policy statement which will be much weaker and easier to revise. In reducing the legal status of the principles, the draft Bill therefore marks a significant regression on the current levels of protection guaranteed under the European Union treaties. (Paragraph 25)
4. *We recommend that Clauses 1–4 of the draft Bill are redrafted to provide a stronger legal commitment to the protection of the environment. An overarching objective to ensure a "high level of protection for the environment", as is currently outlined in the Treaty on the Functioning of the European Union, should be inserted into the draft Bill to underpin the other environmental principles. The interpretation and application of the environmental principles in Clause 2 should not be left to just a policy statement but should be further outlined on the face of the Bill. Given the importance it has placed on the policy statement, the Government should also clarify and reinforce in the draft Bill the timescales and process for drafting, consulting on, publishing and reviewing the statement. This is essential for effective public and parliamentary scrutiny.* (Paragraph 26)
5. The draft Bill requires Ministers to merely "have regard to" environmental principles. This places too weak a duty on the Government and risks a possible regression on

current standards of environmental protection. The duty to “have regard to” is also fundamentally undermined by Clause 4(2) which gives far too much discretion for Ministers to not act to protect the environment. (Paragraph 34)

6. *The Government should amend Clause 4(1) to replace the duty to “have regard to” environmental principles with the stronger wording of “act in accordance with”. Clause 4(2) should also be redrafted to reduce the level of discretion for Ministers to not act to protect the environment.* (Paragraph 35)
7. The principles should not just apply to Ministers of the Crown and policy decisions but to all public authorities and all relevant administrative decisions, as is currently the case. *The Bill should be amended so that the effect of the policy statement extends to all public authorities when making any decisions. There should also be an obligation on all public authorities for written confirmation that the principles have been applied in their decisions.* (Paragraph 36)
8. We are very concerned by the exemptions to the policy statement listed in Clause 1(6). The exemptions relating to defence and general taxation are too broad and could lead to significant gaps in environmental protection within the Ministry of Defence and HM Treasury. The delegated power also offers a “get out of jail free card” for a future Secretary of State to disapply environmental principles from any particular policy area. (Paragraph 42)
9. *Clause 1(6) should be redrafted to ensure that any exemptions necessary are more narrowly defined, with their implications in practice clarified in the explanatory notes. The Government should seek to substantially minimise the scope of the exemptions and to reduce their generality of application. Clause 1(6)(c) should be revised to ensure that the Secretary of State cannot exclude further policy areas from the scope of the Policy Statement without public consultation and notifying the relevant parliamentary committees.* (Paragraph 43)

The Office for Environmental Protection (OEP)

10. We recognise that it is not possible for the UK to replicate the existing model of environmental governance as part of the European Union. However, the Government has made clear its commitment to the same outcomes. In setting up the new Office for Environmental Protection, it is therefore essential that every step is taken to ensure the Office for Environmental Protection is as independent from the Government as possible, to give the public confidence that the Government will be properly held to account on its duty to protect the environment. (Paragraph 46)
11. The independence of the Chair of the Office for Environmental Protection will be crucial to its ability to hold the Government to account. It is therefore inappropriate for the Chair and the other non-executive members of the board to be appointed solely by the Secretary of State. (Paragraph 50)
12. *The Government must revise the appointments process to ensure greater independence and transparency. We recommend that the process should be modelled on the equivalent process for the appointment of the Chair of the Budget Responsibility Council at the Office for Budgetary Responsibility. The Chair and all non-executive*

members of the board should be appointed by the Secretary of State only with the consent of the Environment, Food and Rural Affairs Select Committee. The Chair should be subject to a pre-appointment hearing prior to the Committee consenting to her appointment. Similarly, a non-executive member should not be dismissed from the Board of the OEP without the consent of the Environment, Food and Rural Affairs Select Committee. (Paragraph 51)

13. A history of sustained budget cuts to Defra's arm's length bodies does not fill us with confidence that the current funding provisions for the Office for Environmental Protection in the draft Bill are sufficient. Given the importance of the OEP's independence from Government it should have additional budgetary protections than is customary for Non-Departmental Public Bodies. (Paragraph 58)
14. *The Government should commit to providing a multi-annual budgetary framework for the Office for Environmental Protection in the Bill. This commitment would help to ensure the Office for Environmental Protection's independence from Government and is consistent with best practice as seen with the Office for Budgetary Responsibility. Rather than grant-in-aid, the Office for Environmental Protection should also have its own estimate which should be negotiated directly with HM Treasury, and voted on by Parliament in the yearly Supply and Appropriation (Main Estimates) Bill.* (Paragraph 59)
15. Under the current proposals we are not convinced that the Office for Environmental Protection will be sufficiently independent of Government or accountable to Parliament. The Office for Environmental Protection must not be seen to be just another arm's length public body attached to Defra, given its elevated watchdog status. We also do not consider that the Office for Environmental Protection will have anything close to the same level of independence as currently exercised by the European Commission. (Paragraph 67)
16. *To achieve equivalence with the existing arrangements as members of the European Union, the Bill should be redrafted to ensure greater independence for the Office for Environmental Protection. The Office for Environmental Protection must not be solely a body of Government. The Government should revisit the legal status of the Office for Environmental Protection to provide greater independence than a standard Non-Departmental Public Body allows. Lack of precedent should not be a barrier to establishing a constitutionally innovative model, especially given the Secretary of State's ambition for the watchdog to be "world leading".* (Paragraph 68)

The functions of the Office for Environmental Protection

17. The purpose of the Office for Environmental Protection is to replace the governance functions of the European Commission and hold public authorities to account. The Government should avoid unnecessary duplication with existing domestic regulators who already enforce compliance by private companies, NGOs or landowners. *The definition of "public authorities" in Clause 17(3) should be clarified, with a specific exclusion added for statutory undertakers.* (Paragraph 75)
18. The OEP should have the power to initiate investigations into a suspected breach of environmental law and should not have to wait for a complaint to have been lodged

to do so. It is important that members of the public are clear about the specific role of the OEP, and the types of complaints it is intended to deal with. *The Bill should be redrafted to ensure the OEP has the power to proactively carry out investigations into a serious failure to comply with environmental law on its own initiative, rather than just in response to a complaint. The discretionary and strategic nature of the OEP's enforcement provisions should be made clearer in the Bill to ensure that it does not become inundated with complaints relating to local matters. The word "serious" in relation to a breach of environmental law should be clarified on the face of the Bill.* (Paragraph 79)

19. The Office for Environmental Protection needs to have the right balance of investigatory and enforcement powers, with sufficient legal teeth to ensure that compliance with environmental law is achieved without a majority of cases ending up in the courts. We welcome the OEP's powers to issue information and decision notices but are concerned that at present these notices will not have sufficient legal force to compel action. (Paragraph 93)
20. The OEP's enforcement powers are entirely reliant on judicial review, which largely focusses on process and not the substance of a decision. We therefore do not consider that judicial review will be an appropriate or effective tool in all environmental cases. The OEP will need a more bespoke enforcement procedure to ensure wider compliance with environmental law. The Bill needs to incorporate other enforcement routes and appropriate tools to resolve environmental cases before they are taken to the High Court. (Paragraph 94)
21. *Given the weaknesses of the traditional judicial review process for dealing with environmental cases, an enhanced enforcement procedure should be established for the OEP. Clause 25 should be redrafted to ensure that there is a legislative requirement on the court to take account of the issued decision notice as part of the review process.* (Paragraph 95)
22. *The OEP should be empowered to issue emergency and interim measures in urgent cases and to intervene in other legal proceedings relating to its purposes. These additional powers are essential given the potentially irreversible nature of environmental harm.* (Paragraph 96)
23. *Defra should also continue to engage with legal experts on how best to incorporate the First Tier (Environmental) Tribunal into the enforcement process. An appropriate role for the Tribunal would be to confirm any decision notices issued by the OEP. The Tribunal could have a role in deciding whether there has been a breach of environmental law or whether the steps proposed to deal with the situation are adequate or reasonable.* (Paragraph 97)
24. Given the structural differences between the European Commission and the proposed OEP, we agree that it is inappropriate to simply try to replicate the Commission's current enforcement powers. While fines have proven to be a powerful tool for compliance within the context of the Commission, we do not believe they are a suitable mechanism within a domestic context as they could reduce already depleted public authority budgets. However, in the absence of fines, we believe there needs to be an appropriate enforcement alternative. The watchdog will need

sharper teeth than it is currently given. *In the absence of the power to fine, additional tools need to be given to the Office for Environmental Protection enforcement powers to ensure compliance with environmental law. Appropriate mechanisms to ensure greater personal accountability for failings will help to sharpen the watchdog's teeth.* (Paragraph 103)

25. The advisory and scrutiny functions of the Office for Environmental Protection are welcome but need to be clarified and revised. The OEP's primary function must be to hold the Government to account on its obligations to protect the environment. It is therefore important that its wider scrutiny and advisory functions do not compromise its ability to enforce, either by limiting its independence or by restricting its resources. *To avoid any tension between the OEP's two roles as an advisory body and a watchdog, Clause 16 should be redrafted so that the OEP only has to offer advice to Ministers at its own discretion.* (Paragraph 111)
26. The Office for Environmental Protection (OEP) should act as a high-level strategic body. It should advise on matters relating to environmental law and the implementation of the Environmental improvement plans. The OEP must not take over well-established monitoring functions undertaken by other specialist statutory bodies. *To avoid unnecessary and costly duplication of technical expertise the OEP must set out in its strategy how its wider scrutiny and advisory roles will relate to and impact upon the other statutory bodies within the ambit of Defra.* (Paragraph 112)
27. The definitions in the draft Bill are currently a source of confusion. We therefore welcome the Minister's commitment to review Clauses 30 and 31 and to rewrite the relevant explanatory notes. The definitions of natural environment and environmental law are of central importance as they will guide future Secretaries of State in their creation of Environmental Improvement Plans and frame the remit in which the new Office for Environmental Protection will operate. They must therefore cover all the necessary aspects of environmental law and the wider environment. (Paragraph 122)
28. *The definitions in Clauses 30 and 31 need to be expanded in scope and clarified in application and interpretation. We recommend that the Bill be redrafted to provide for a more holistic definition of the environment, with explicit reference made to the historic environment. Given the UK's departure from the wider framework of EU environmental law, international law should be included within the definition of environmental law, so that the OEP can factor international law into its enforcement and wider advisory functions. The Bill should also be redrafted to ensure that the OEP has the power to review all aspects of the Environmental Improvement Plans in its monitoring role.* (Paragraph 123)
29. There must not be a governance gap in law in relation to climate change when the UK leaves the European Union. Given the lack of enforcement provision for the Committee on Climate Change, the Office for Environmental Protection should play a role in enforcing the Government's targets and objectives relating to climate change. However, in undertaking this function, the OEP must not unnecessarily and negatively encroach upon the well-established advisory functions of the Committee on Climate Change. (Paragraph 129)

30. The Government should make clear via memorandums of understanding published alongside the Bill, how the Committee on Climate Change intends to co-operate with the Office for Environmental Protection. As the Climate Change Committee has no enforcement role, Clause 31 of the Bill should be redrafted to include Climate Change within the enforcement remit of the OEP. A duty should be placed on the OEP to consult the Committee on Climate Change before conducting any enforcement action in this area. (Paragraph 130)
31. Although environmental policy is a devolved matter, it is essential that the UK Government and the Devolved Administrations work together to protect the environment after the UK leaves the European Union. National boundaries are irrelevant in the context of environmental challenges such as air pollution or climate change. Common frameworks for governance after the UK's exit from the European Union should be underpinned by common standards and principles to avoid gaps in the implementation of environmental policy across the UK. (Paragraph 138)
32. *We would welcome the extension of the Office for Environmental Protection to become a UK wide body but recognise that this decision sits within the power of the Devolved Administrations. The Bill should be redrafted so that, subject to the creation of separate bodies in the Devolved Administrations, the UK Government can establish the necessary mechanisms for cooperation and the sharing of data. Given the rushed timescales for the creation of the OEP, the Government should commit to a future review of the provisions for environmental governance across the UK within five years.* (Paragraph 139)

Formal minutes

Tuesday 23 April 2019

Members present:

Neil Parish, in the Chair

Alan Brown Dr Caroline Johnson

John Grogan David Simpson

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

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 139 read and agreed to.

Summary agreed to.

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

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

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till tomorrow at 9.15 a.m.]

Witnesses

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

Wednesday 30 January 2019

Professor Maria Lee, Professor of Law and co-director of the Centre for Law and the Environment, UCL, **Daniel Greenberg**, Council for Domestic Legislation, Office of Speaker's Council, **David Wolfe QC**, Matrix Chambers, and **William Wilson**, Barrister and Director, Wyese Consulting LTD

[Q1–70](#)

Wednesday 6 February 2019

Nigel Haigh, Honorary Fellow and former Director, Institute for European Environmental Policy (IEEP), **Edward Lockhart-Mummery**, Project Convenor, Broadway Initiative, **Professor Colin Reid**, Professor of Environmental Law, University of Dundee, and **Dr Viviane Gravey**, Lecturer, Queen's University, Belfast

[Q71–141](#)

Wednesday 13 February 2019

Ruth Chambers, Senior Parliamentary Associate, Greener UK, **Debbie Tripley**, Director of Environmental Policy and Advocacy, World Wide Fund for Nature, **Dr Tom West**, Law and Policy Advisor, Client Earth, and **Ali Plummer**, Senior Policy Officer, RSPB

[Q142–183](#)

Wednesday 27 February 2019

Andrew Bryce, ABESAC Consultancy and Co-Chair UKELA Brexit Task Force, and **Professor Richard Macrory QC**, Emeritus Professor of Environmental Law, UCL

[Q184–236](#)

Wednesday 6 March 2019

Emma Howard Boyd, Chair, Environment Agency, **Chris Stark**, Chief Executive, the Committee on Climate Change, and **Alan Law**, Deputy Chief Executive, Natural England

[Q237–278](#)

Rt Hon Michael Gove MP, Secretary of State for the Environment, Food and Rural Affairs, **Dr Thérèse Coffey MP**, Parliamentary Under Secretary of State for the Environment, and **Davide Minotti**, Deputy Director for the Environment Bill and Governance, Department for Environment, Food and Rural Affairs

[Q279–348](#)

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 Anderson & Dr Rupert Read, Mr Victor ([DEB0036](#))
- 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 Bryce, Andrew ([DEB0089](#))
- 11 Campaign for Freedom of Information ([DEB0099](#))
- 12 Chartered Institute for Archaeologists and Council for British Archaeology ([DEB0053](#))
- 13 Chartered Institution of Water and Environmental Management ([DEB0010](#))
- 14 Chemical Industries Association ([DEB0022](#))
- 15 CIBSE (Chartered Institution of Building Services Engineers) ([DEB0034](#))
- 16 Clean Highways ([DEB0015](#))
- 17 ClientEarth ([DEB0039](#))
- 18 ClientEarth ([DEB0088](#))
- 19 Coffey, Dr Thérèse ([DEB0100](#))
- 20 Committee on Climate Change ([DEB0066](#))
- 21 Confor - promoting forestry and wood ([DEB0017](#))
- 22 Countryside Alliance ([DEB0061](#))
- 23 CPRE ([DEB0058](#))
- 24 The Department of Environment, Food and Rural Affairs ([DEB0096](#))
- 25 Diocese of London ([DEB0016](#))
- 26 Dr Ludivine Petetin & Dr Mary Dobbs ([DEB0068](#))
- 27 Ecosulis Ltd ([DEB0064](#))
- 28 Energy UK ([DEB0047](#))
- 29 Environment Agency ([DEB0080](#))
- 30 Environment Agency ([DEB0098](#))
- 31 Environmental Industries Commission ([DEB0075](#))
- 32 Environmental Policy Forum ([DEB0055](#))
- 33 Environmental Protection UK ([DEB0062](#))

- 34 Environmental Services Association ([DEB0038](#))
- 35 European Subsea Cables Association ([DEB0049](#))
- 36 Greener UK ([DEB0027](#))
- 37 Greener UK ([DEB0086](#))
- 38 Greener UK ([DEB0087](#))
- 39 Greener UK ([DEB0091](#))
- 40 Haigh, Mr Nigel ([DEB0019](#))
- 41 The Heritage Alliance ([DEB0014](#))
- 42 IEMA - Institute of Environmental Management and Assessment ([DEB0028](#))
- 43 Institute for Government ([DEB0030](#))
- 44 July, Mr Mark ([DEB0031](#))
- 45 Law Society of Scotland ([DEB0072](#))
- 46 Lee, Professor Maria ([DEB0006](#))
- 47 Lee, Professor Maria ([DEB0076](#))
- 48 LGSCO and PHSO ([DEB0024](#))
- 49 London Councils ([DEB0078](#))
- 50 Macrory, Emeritus Professor of Environmental Law Richard ([DEB0094](#))
- 51 Macrory, Emeritus Professor of Environmental Law Richard ([DEB0003](#))
- 52 Marine Conservation Society ([DEB0074](#))
- 53 Mayor of London ([DEB0025](#))
- 54 Mineral Products Association ([DEB0021](#))
- 55 National Farmers' Union ([DEB0067](#))
- 56 National Oceanography Centre ([DEB0005](#))
- 57 National Trust ([DEB0018](#))
- 58 The National Trust ([DEB0083](#))
- 59 Natural England ([DEB0023](#))
- 60 Natural England ([DEB0093](#))
- 61 Nature Friendly Farming Network ([DEB0056](#))
- 62 Nature Matters NI ([DEB0040](#))
- 63 Newcastle Law School ([DEB0020](#))
- 64 NUS ([DEB0032](#))
- 65 Oil & Gas UK ([DEB0011](#))
- 66 Oxford Bioregion Forum ([DEB0013](#))
- 67 Prospect ([DEB0046](#))
- 68 Queen's University Belfast ([DEB0097](#))
- 69 Reid, Professor Colin ([DEB0007](#))
- 70 RESCUE ([DEB0051](#))
- 71 Royal Town Planning Institute ([DEB0050](#))

- 72 RSPB ([DEB0045](#))
- 73 Scotford, Professor Eloise ([DEB0065](#))
- 74 Scotford, Professor Eloise ([DEB0095](#))
- 75 Scottish Environment LINK ([DEB0070](#))
- 76 Seabed User and Developer Group ([DEB0012](#))
- 77 Society for the Environment ([DEB0052](#))
- 78 Southern Water ([DEB0079](#))
- 79 Surfers Against Sewage ([DEB0044](#))
- 80 The Sustainable Soils Alliance ([DEB0082](#))
- 81 Thames Water ([DEB0026](#))
- 82 UK Sustainable Investment and Finance Association ([DEB0073](#))
- 83 UKELA ([DEB0048](#))
- 84 Unicef UK ([DEB0059](#))
- 85 United Utilities ([DEB0043](#))
- 86 Water UK ([DEB0085](#))
- 87 Wells, Laurence ([DEB0002](#))
- 88 Wesson, Miss Rebecca ([DEB0069](#))
- 89 Wildlife and Countryside Link ([DEB0035](#))
- 90 The Wildlife Trusts ([DEB0029](#))
- 91 Wilson, William ([DEB0077](#))
- 92 Wolfe, Dr David ([DEB0081](#))
- 93 The Woodland Trust ([DEB0054](#))
- 94 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](#))
- 95 WWF ([DEB0063](#))
- 96 WYESIDE CONSULTING LTD ([DEB0001](#))

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