

ENVIRONMENTAL POLICY FORUM

c/o Society for the Environment
EC1.1 Enterprise Centre, Coventry Technology Park, Coventry, CV1 2TT

Response to the EFRA and EAC Inquiry into Scrutiny of the Draft Environment (Principles and Governance) Bill

About the EPF

The Environmental Policy Forum (EPF) is a network of UK environmental professional bodies promoting environmental sustainability and resilience for the public benefit. The EPF's member bodies have a collective membership of around 70,000 environmental professionals, many of whom are individually chartered in environmental practice, science and engineering disciplines.

EPF response to call for evidence

Summary

1. For 45 years environmental policy has been driven by the EU. The Bill therefore comes at a critical time. We need the Bill to embed protections that are at least as strong as we enjoy as a member of the EU. As currently drafted, the governance and environmental principles fall well short of existing protections.
2. However, aiming simply to replace the status quo is not sufficient given the challenges of poor air and water quality, declining biodiversity and the plastics crisis. We also need a more forward-looking, ambitious environmental governance framework that gives businesses and civil society greater policy certainty and creates the conditions to restore and improve the UK's environment.
3. This framework is vital if we are to encourage the innovation and investment that is required to meet the Government's 25 year environment plan goals. It is also needed to help align long-term environmental and economic objectives and to ensure that infrastructure, development and ongoing

business activities are undertaken in a way that contribute to, rather than erode, our natural asset base.

4. We welcome the government's commitment to leave the environment in a better state. This reflects the economic and social consensus that a healthy, functioning and sustainable environment is fundamental to the health, resilience, growth and wealth of all communities across the UK. A new holistic and comprehensive environmental governance framework is needed to create the conditions whereby this can be achieved.
5. The Environment Bill is the opportunity to establish this framework and take a path where we increasingly incorporate environmental objectives into how the economy works with time for businesses to adapt. That path will help de-risk investment in housing, infrastructure and other industrial plant; give credible assurance of high environmental standards to EU and other trading partners; get best value from the collective investment in the environment across all sources; encourage early adoption of sustainable business models and, building on our strengths in sustainable innovation; give businesses advantage in the 4th industrial revolution and reduce the trade deficit.
6. The alternative path is one where we leave the environment as an afterthought, consistently acting late in the day in response to crises like plastic waste and urban air pollution. It is a path where development and environment are consistently in conflict, where the taxpayer continues to bear the often hidden costs of inaction, for example in terms of the burden to the NHS from air pollution, and where businesses consistently face policy uncertainty and where we take late action with high change costs.
7. The draft Bill and policy paper published by the Government on 19 December provide the starting points. However, to follow this path, the Bill would need the following additional elements:
 - i. Clear long-term objectives for achieving and maintaining a safe and healthy natural environment and good environmental quality, and effectively managing, using and improving the natural environment to meet society's needs
 - ii. A process for setting targets, milestones and metrics for meeting those objectives and for that process to be multi-stakeholder and genuinely participative

- iii. National Environmental Improvement Plans which set out how successive governments will achieve the long-term targets
 - iv. A genuinely independent body to advise Parliament on progress towards achieving objectives and targets and for monitoring and enforcing, where necessary, implementation of environmental law by public authorities
 - v. Proposals for ensuring at a local level a single place-based environmental improvement plan, which integrates all the current local environmental plans and initiatives into a coherent whole and provides clarity to communities and businesses on what needs to be protected and what needs to be enhanced.
 - vi. Policy that, as a whole, coherently and consistently encourages environmentally responsible practices for all types and sizes of business
8. These elements would provide a long-term framework for effective management and improvement of the environment and establish the mechanisms whereby businesses, NGOs and civil society, who have important roles in implementing on-the-ground improvements, will be a core part of co-developing the targets and milestones that need to be achieved.

Does the proposed constitution of the oversight body provide it with enough independence to scrutinise the Government?

9. EPF considers that the proposed constitution of the oversight body will not provide it with enough independence to scrutinise the Government, or to hold it to account and effectively enforce environmental law. There are a number of reasons why the proposals fall short of true independence, as follows:
- The Chair is appointed by the Secretary of State
 - Other members of the oversight body may also be appointed by the Secretary of State
 - The Chair appoints the Chief Executive Officer. These appointed members may then appoint other members
 - Funding is determined by the Secretary of State
10. To ensure that it is truly independent and sufficiently resourced to scrutinise the Government, EPF considers that the proposed Body should be resourced,

funded and overseen by Parliament instead of the Secretary of State. This is essential in terms of assuring the impartiality of the new body, and establishing trust with key stakeholders.

Does the proposed oversight body have the appropriate powers to take 'proportionate enforcement action'?

11. EPF considers that the proposed oversight body has been given a number of appropriate powers to take proportionate enforcement action including information and decision notices, and Judicial Review. However, there are still important gaps in the range of tools available.
12. For example:
 - decision notices are non-binding. The oversight body cannot compel the Government to act to address an issue; rather, the Government is only compelled to provide a written response
 - The oversight body has no powers to issue fines in the event of continued noncompliance. The power to issue fines is widely regarded as a powerful motivator for issues to be addressed. However, if such a system were to be replicated, revenue from fines would need to be ringfenced for specific purposes or managed as part of a UK-wide governance arrangement
13. Under the current proposals, it is likely that the oversight body will be forced to rely heavily on the blunt tool of judicial review. This may not always be the most proportionate, timely or effective course of action to take and consideration should be given to having recourse to the First Tier Tribunal to consider cases.

Are there any conflicts of interest or overlap with existing government bodies?

14. The relationship between the Committee on Climate Change (CCC) and the Office for Environmental Protection (OEP) needs careful consideration to ensure that there are no conflicts, or gaps, in the powers and duties of both bodies.
15. As currently constituted the CCC, which was established through the Climate Change Act 2008 as a purely advisory body, has no powers to hold public bodies to account for compliance with climate change laws. This remains a

key gap in post-Brexit environmental governance that is not proposed to be filled by the OEP.

16. As well as the enforcement gap, the two bodies will need to work closely together in areas where there are opportunities for greenhouse gas emissions reductions, such as resource efficiency and land management. There are also potential areas of overlap, as climate change adaptation encompasses many environmental policies that are a core part of both Defra and the proposed remit of the OEP.
17. While the proposals require that areas of policy overlap be avoided through the preparation of a clear strategy for the OEP, there are other options available to address overlap that might also close the enforcement gap noted above. For example, the Government could establish one body to provide advice on all aspects of environmental policy including climate change – perhaps by expanding the role and remit of the CCC, and a separate body to enforce all aspects of environmental policy including climate change – a role for the OEP. Other approaches should also be considered.

As drafted are the principles legally enforceable? What will need to be included in the National Policy Statement to interpret the application of the principles?

18. There are several factors that may limit the legal enforceability of the Principles. These factors relate to scope, obligations and interpretation.
19. There are limits to the scope of the principles. For example, they will not apply to taxation or public spending decisions. This could severely constrain their effectiveness and limit the integration of the economy with the environment. Furthermore, the Secretary of State has the option to exclude policies if they are considered to be “not relevant”, or if their application “would have no significant environmental benefit”. These loopholes are open to interpretation and potential abuse by future Secretaries of State.
20. The obligations placed on decision-makers are weak. Ministers only need “have regard for” the principles when making decisions. EPF recommends that a more appropriate and effective obligation would be for decision-makers to “act in accordance with” the Principles.

21. Finally, the use of a National Policy Statement, while sensible in many other respects, will serve to amplify the above deficiencies and will offer limited checks and balances on a future Secretary of State amending the policy statement to weaken the application of the Principles in real life.

Does the Bill meet the government's commitment to non-regression from EU environmental standards?

22. No. The government itself notes that "there are some environmental elements of the Withdrawal Agreement which our current proposals do not cover, namely those concerning the independent body's scope to enforce implementation of the "non-regression" clause."

Is there anything else missing that should be included to meet the enforcement, governance and other gaps in environmental protection left by leaving the European Union?

23. The Government states that the broader Environment Bill will include measures on air quality, nature recovery, waste and resource efficiency and water management. It is these areas, and more, that are currently missing and that will need to be filled to meet the governance gap.

24. EPF considers that the following are necessary minimum steps:

- Legally binding long-term objectives to maintain and restore the environment, supported by a process for setting numerical targets, milestones and metrics for key environmental outcomes such as biodiversity, freshwater quality and availability, air quality and soils;
- A requirement for the Government to produce a statutory Plan (such as the 25 Year Plan) and update it every five years, aimed at achieving the goals and targets, based on independent advice;
- A fully funded and resourced five-year programme of activity that will deliver actions to meet targets and milestones;
- Improved monitoring and reporting on the state of the environment using mapping and modelling that is more accessible and understandable to the public; and
- A co-developed common framework at UK level, where this is mutually necessary or beneficial

25. However, we believe that the ambition for an environmental governance framework must be set at a higher level than it is today; legislating to maintain the status quo will not provide the underpinning legal framework we need to achieve long-term environmental goals. We therefore welcome and support the Prime Minister's commitment for an ambitious Environment Act.
26. We consider that there are a few landmark policy proposals that also need to be in the Bill to make it truly transformative. These are as follows:
- Cross-Whitehall regulation, incentives and taxation designed to protect the environment and stimulate genuinely sustainable development and economic growth. The Environment Act must be supported by all Departments including Treasury, if it is to mainstream the environment into economic and social decision-making;
 - A single plan for the environment at local level with priorities for environmental protection and enhancement. Effective, place-based governance and resourcing will allow communities and local and regional bodies to work together to protect and enhance the environment at a meaningful scale – the list of environment-related plans and initiatives appended to this submission highlights the fragmented nature of current arrangements and provides an opportunity for consolidation into a coherent single plan at a local level;
 - An Environmental Net Gain obligation (including Biodiversity Net Gain) for all development. We can no longer afford the cumulative effects of permitting environmental loss from development. Instead, the Government should be requiring environmental gain across all new development projects; and
 - A broader duty of care for organisations that materially interact with the environment. We need to move away from the assumption that activities that are harmful to the environment but not currently against the law are considered as acceptable business practice. There are parallels from other policy areas such as Health and Safety that have successfully reversed the assumption that all actions that are not explicitly illegal are acceptable.

Appendix

Non-exhaustive list of environmental spatial instruments - from Defra's 2015 Smarter Environmental Legislation project:

1. River Basin Management Plans
2. Catchment management plans
3. Catchment partnership plans
4. Nitrate Vulnerable Zones
5. National Flood and Coastal Erosion Risk Management Strategy
6. Flood Risk Management Plans
7. Catchment Flood Management Plans
8. Shoreline Management Plans
9. Strategic Flood Risk Assessments
10. Local Flood Risk Management Strategies
11. Surface Water Management Plans
12. Rivers, estuary and coastal investment strategies
13. Water Level Management Plans
14. Reservoir Flood Plans
15. National Character Areas
16. Nature Improvement Areas
17. Local Nature Partnership plans
18. Sites of Special Scientific Interest
19. Special Protection Areas
20. Special Areas of Conservation
21. Ramsar Sites
22. National Nature Reserves
23. Local Nature Reserves
24. Local Wildlife Sites
25. UNESCO biosphere reserves
26. Global Geoparks
27. Natural World Heritage Sites
28. Biodiversity Action Plans
29. Areas of Outstanding Natural Beauty
30. National Park plans
31. Local low emission zones

32. Air quality Management plans

33. Smoke Control areas

34. Forest Plans

35. Town and Village greens

Professor Will Pope
Chair, Environmental Policy Forum
Chair, Society for the Environment

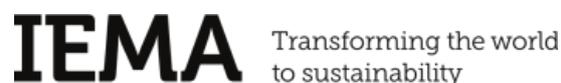
Sally Hayns
CEO, Chartered Institute of Ecology and
Environmental Management



Terry Fuller
CEO, Chartered Institution of Water and
Environmental Management



Martin Baxter
Chief Policy Advisor, IEMA



Adam Donnan
CEO, Institution of Environmental
Sciences



Dr Peter Spillett
President, Institute of Fisheries
Management



Pat Jennings
Head of Policy & Communications,
Chartered Institution of Wastes
Management



Dr Emma Wilcox
CEO, Society for the Environment



Notes

1. The Environmental Policy Forum (EPF) is a network of UK environmental professional bodies promoting environmental sustainability and resilience for the public benefit. The EPF's member bodies have a collective membership of around 70,000 environmental professionals, many of whom are individually chartered in environmental practice, science and engineering disciplines. www.socenv.org.uk/EPF
2. The Chartered Institute of Ecology and Environmental Management (CIEEM) is the leading professional membership body representing and supporting 5,000 ecologists and environmental managers in the UK, Ireland and abroad. Our Vision is of a society which values the natural environment and recognises the contribution of professional ecologists and environmental managers to its conservation. www.cieem.net
3. The Chartered Institution of Water and Environmental Management (CIWEM) is the leading independent Chartered professional body for water and environment professionals, promoting excellence within the sector. www.ciwem.org
4. The Institute of Environmental Management and Assessment (IEMA) is the membership body for more than 14,000 environment and sustainability professionals worldwide. We support individuals and organisations in setting and achieving globally recognised standards for sustainable practice, in turn driving the development and uptake of sustainability skills. We add value for our members by providing the knowledge, connections and recognition necessary to lead change within organisations at all levels. We are independent and international. We apply the combined expertise of our members to provide evidence and influence decision-making, working towards our vision of transforming the world to sustainability. www.iema.net
5. The Institution of Environmental Sciences (IES) is a membership organisation that represents professionals from fields as diverse as air quality, land contamination and education - wherever you find environmental work underpinned by science. A visionary organisation leading debate, dissemination and promotion of environmental science and sustainability, the IES promotes an evidence-based approach to decision and policy making. www.the-ies.org
6. The Institute of Fisheries Management (IFM) is an international organisation of people sharing a common interest in the modern management of recreational and commercial fisheries. www.ifm.org.uk
7. The Chartered Institution of Wastes Management (CIWM) is the leading professional body for the waste management sector representing around 6,000 individuals in the UK. Established in 1898, CIWM is a non-profit making organisation, dedicated to the promotion of professional competence amongst waste managers. CIWM seeks to raise standards for those working in and with the sector by producing best practice guidance, developing educational and training initiatives, and providing information on key waste-related issues. www.ciwm.co.uk
8. The Society for the Environment (SocEnv) is comprised of 25 Licenced Bodies, with over 500,000 members between them. It received a Royal Charter in 2004, which empowers it to regulate the Chartered Environmentalist (CEnv) and Registered Environmental Technician (REnvTech) registration in the UK. There are now over 7,000 environmental professionals currently registered who share a common vision of delivering sustainability through environmental professionalism. www.socenv.org.uk