

## SOCIETY FOR THE ENVIRONMENT RESPONSE TO EFRA/EAC SCRUTINY OF THE DRAFT ENVIRONMENT (PRINCIPLES AND GOVERNANCE) BILL INQUIRY

### Summary

1. This is a crucial moment for the future of the UK's environmental standards, with our departure date from the European Union looming and the significant role the EU has in shaping our Environmental Laws and Policy. We are pleased therefore to see the Government outline an ambitious Bill, setting out environmental protection as a long-term priority for Government. This builds on the Government's commitment within the Twenty-Five Year Environment Plan, to leave the environment in a better state than we found it.
2. Nevertheless, we have several concerns which prevent us from fully welcoming the Bill, and which we fear will result in a weakening of environmental standards post-Brexit. These concerns include:
  - a) The independence of the new Environmental Watchdog, the Office for Environmental Protection (OEP), established to replace the investigation and enforcement powers of the European Commission and the Court of Justice of the European Union (CJEU)
  - b) The enforcement powers of the OEP and its ability to hold government to account
  - c) A lack of legally binding targets or duties of government to ensure compliance with the Environmental Principles set out in the Bill

We set out these concerns in greater detail in our responses to the inquiry questions.

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

3. The role of the Office for Environmental Protection (OEP) is to investigate and act on cases of non-compliance with Environmental Law and assess whether Government is meeting their Environmental Improvement Plans.
4. We are concerned that the OEP will not be truly independent from Government, as their resources and non-executive appointments will be decided by the Environment Secretary. This includes the power of the Environment Secretary to set the OEP's funding and appoint the Chair and Chief Executive Officer.
5. The OEP's closeness to Government raises questions about its impartiality, which could lead to an absence of trust and confidence in the OEP. This violates Article two of the Withdrawal Agreement, which states the need for effective enforcement.
6. Consequently, we call for the OEP to move closer to Parliament, with Parliament responsible for setting the OEP's funding and capacities.

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

7. The enforcement capacities of the OEP, as the new Environmental Watchdog, are crucial to maintaining environmental standards. The OEP's capacities need to replace the powers of the European Commission and CJEU, who have taken action against the UK government on cases relating to water and air quality.
8. The OEP has proposed powers to deliver information and decision notices and call for a Judicial Review in cases of serious non-compliance. However, these powers have significant limitations.
9. As the Bill currently stands, Decision notices delivered by the OEP will not be legally binding. While a written response from Government will be required, the notice won't force Government to act.

10. As a legal option, Judicial Review has considerable limitations, including the often long and complex nature of the case process. We would like to see the OEP have the power to also take cases to the First Tier Tribunal.
11. The OEP doesn't currently have the power to impose fines for non-compliance, which is a significant limitation considering the usefulness of fines in prompting action.

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

12. As the Bill stands, there is potential overlap between the OEP and the Committee on Climate Change (CCC). Despite the stated intention to avoid overlap by ensuring a clear strategy for the OEP, the remit of both Defra and the OEP cover policies relating to climate change adaptation.
13. Under the draft Bill the OEP doesn't have enforcement powers over climate change policy. The current role played by the European Commission in enforcing compliance with EU climate change targets, combined with the CCC's lack of enforcement power, leaves a significant gap in governance going forward. This raises concerns about holding Government and public bodies to account post-Brexit.
14. These concerns mean that alternatives should be considered. One appealing option would be to give the OEP responsibility to enforce the advice of the CCC. This would not only fill the governance gap on enforcement of climate change law and policy, but also ensure a close relationship between the CCC and OEP without causing an overlap in functions and responsibilities.

## 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?

15. As the Bill stands, there are considerable limitations on the legal enforcement of the Environmental Principles. The legislation states only that Ministers must "have regard for"

the Environmental Principles; no legal obligation is currently present. To rectify this omission, we recommend that there be an obligation for Ministers to “act in accordance with” the Principles.

16. The lack of legal framework also leaves the Environment Minister with the ability to dismiss policies, for reasons such as they deem them “not relevant”. We consider this to be an excessive Ministerial power.
17. We doubt whether provision of guidance on the application of Principles within the National Policy Statement would rectify this situation; Ministers would still have excessive powers as they would still be able to edit the Statement as they wish.

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

18. No, there is no attempt by the Bill to meet this commitment. As noted by Government: “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.”
19. The omission of this commitment is a concern. Indeed, given the stark environmental challenges we face, what is urgently required is a commitment to build on EU environmental standards. Even a commitment to non-regression would therefore be insufficient.

## 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?

20. The Bill neglects to cover the role of local authorities. There is no mention of a requirement to develop Action Plans to ensure these Environmental Principles are met at a local level. In addition, there needs to be a framework outlining how local authorities can best work

together. This is a significant omission as partnerships are crucial to ensure that serious environmental challenges can be faced.

21. There is a need to place greater legal obligations on Government as well as Companies and Organisations that affect the environment through their actions. This will ensure accountability, as will the creation of specific and measurable long-term targets and adequate monitoring, measurement and reporting of progress towards said targets. The accessibility of this information is crucial in holding government to account.
22. The Environment should be fully integrated into mainstream Government policy. For this to occur the Bill must have full buy-in from all Government Departments, including the Treasury.
23. An integral part of delivering on the Government's commitment to ensuring we leave the environment in a better state than we found it, Biodiversity and Environmental Net Gain should be a requirement for all new development projects.

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