

**Evidence to the Joint Enquiry by the Environment,
Food and Rural Affairs Committee and the
Environmental Audit Committee into the
Draft Environment (Principles and Governance) Bill**

Written evidence submitted by Environmental Protection UK

1. We are writing in response to the Environment, Food and Rural Affairs and Environmental Audit Committees' inquiry into the Draft Environment (Principles and Governance) Bill. The Air Quality Committee of Environmental Protection UK welcomes the opportunity to comment in this inquiry. We have answered the questions set by the Committee, and added extra comment as appropriate. These comments represent an overview of the Committee, but do not necessarily reflect the views and opinions of individual Environmental Protection UK members.
2. We hope you find this evidence useful. Please do not hesitate to contact us, if you would like to discuss it further, at secretariat@environmental-protection.org.uk.

About Environmental Protection UK

3. Environmental Protection UK is a national charity that provides expert policy analysis and advice on air quality, land quality, waste and noise and their effects on people and communities in terms of a wide range of issues including public health, planning, transport, energy and climate.
4. We offer clear and critical analysis of UK government and European Union policy proposals through a range of high-quality publications and expert-led events, as well as up-to-date regulatory information through our comprehensive guide to UK and EU environment legislation.
5. Environmental Protection UK works with UK national and devolved governments, local authorities, business, academics and the general public, and with other institutions and NGOs.

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

6. No, the body proposed in the bill is not sufficiently independent of government. It is appointed and funded by the Secretary of State for the Environment, Food and Rural Affairs. There should be more protection to ensure that it (or its members) is not restricted, defunded or abolished if it needs to challenge inadequate action, or take other politically unattractive measures. This should be supported with closer ties to Parliamentary committees, the devolved administrations and the public.

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

7. No. The legal powers of the Office of Environmental Protection are too weak, for example, they can only make recommendations following an investigation under clause 19(5), not

compel action. The OEP decision notices should be made legally binding. Further measures, such as fines or a 'special measures' process could also be useful.

8. The loss of the EU treaties, principles and the infraction fines for non-compliance with environmental laws, must be replaced with a consequence of similar strength.

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

9. The OEP should have the ability to investigate and require action from other government bodies, if they are not complying with environmental protection laws. We support ClientEarth's proposed purpose for the OEP: 'to act on behalf of people and nature to ensure compliance with environmental law by public bodies'.

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?

10. The principles must not be restricted to the Secretary of State's Policy Statement. They must apply directly to the discharge of the functions of all public bodies, including both policies and operations. The provisions also allow the OEP to take "proportionate" enforcement action including legal proceedings "where necessary". Law is undermined, if it doesn't have to be fully enforced.

Are there any conflicts with other legislators or legislation, for example the Scottish Continuity Bill?

11. The environmental principles (and their applicability to government and other public body functions) should be agreed into common frameworks for the devolved parliaments.
12. There also seems to be a lot of provisions relating to non-disclosure. It is important to ensure there isn't a potential conflict with the Environmental Information Regulations, and that people don't lose their rights to environmental information.

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

13. Not as it is currently proposed. It is too weak, the principles are not embedded in government and other public body work, and there are limited options for enforcement and ensuring compliance with environmental law.
14. The three exemptions, on armed forces and security, taxation and allocation of resources within government, and the general Secretary of State exemption, undermine the strength and reach of environment law in this country.
15. There is no need for wholesale exemptions. The MoD have worked within environmental law for many years, with no obvious damage to defence or security. The absolute restriction on fiscal instruments (and government allocation of resources) and the broad-brush exemption for anything specified in regulations by the SOS, is unnecessary and unhelpful. The OEP must have teeth in order to effectively ensure environmental protection. Any exemptions on specific elements can be considered when these specific elements are regulated on, without the need for a giant pre-emptive loophole.

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?

16. We would like to see a legal duty on all public bodies to secure the effective enforcement of the environmental laws for which they are responsible. There have been too many examples in the past, where the legal levers were there, but not used.
17. The UN recently agreed that we all have the right to live in a healthy environment. We would like to see the Environment Bill set out our environmental rights, and the processes to deliver them and ensure we can require effective action when our rights are breached.

Additional Comment on Monitoring the Environment: The Crucial Importance of Reliable Data

18. Effective monitoring of the state of the environment and of progress in improving or maintaining environmental standards depends critically on the adequacy of the information and data that are used for this purpose.
19. Effective comparison of progress as between the UK and the EU depends equally critically on the maintenance of comparable and consistent information and data as between the UK and the EU. Without this it will be impossible for anyone to establish reliably whether the objective of keeping the UK in line with evolving European environmental standards is being achieved or not.
20. As currently drafted, Clause 7¹ leaves it entirely to the Secretary of State to determine what data should be used for monitoring the environment. There is no guarantee that the quality and reliability of the UK's environmental data base may not be eroded over time, perhaps through financial pressures or for other reasons; and no role appears to be envisaged for the new watchdog body or other parties to keep the Government up to the mark on this crucial matter. There is no provision for consultation about the information data base, no role apparently envisaged for the proposed new enforcement authority, no role for Parliament, and no reference to the importance of maintaining comparability and consistency with EU and other international data.
21. These are serious gaps which should be remedied.
22. In a recent memorandum (Annex A) Derek Osborn and Nigel Haigh have proposed that one excellent way of ensuring that appropriate monitoring data continues to be maintained in the UK would be for the UK to seek to remain a member of the European Environment Agency (EEA).

¹ "Clause 7. Environmental monitoring

(1) The Secretary of State must make arrangements for obtaining such data about the natural environment as the Secretary of State considers appropriate for the purpose of monitoring whether the natural environment is, or particular aspects of it are, improving in accordance with the current environmental improvement plan.

(2) The Secretary of State must lay before Parliament, and publish, a statement setting out the kinds of data to be obtained under subsection (1).

(3) The first statement must be laid before the end of the 4 month period beginning with the day on which this section comes into force.

(4) The Secretary of State may revise the statement at any time (and subsection (2) applies to any revised statement)."

23. The EEA has played a crucial role over the past 25 years in nurturing EIONET - a professional network of governmental and non-governmental scientists, statisticians and research bodies across Europe dedicated to standardising and improving methods of measuring and assessing the state of the environment and trends in a timely, consistent and reliable way. Continuing UK membership of the Agency would ensure that UK standards of monitoring would continue to be maintained and evolve in the same reliable and consistent way.
24. The UK would very probably be able to negotiate for continued membership of the EEA even after it had left the EU, and in EPUK's view this would be the best way of achieving continuing comparability of high quality information and standards.
25. Failing that EPUK believes that it would be desirable for the Government to commit itself in the proposed legislation to ensuring that UK environmental data and information is maintained to at least the same standards as are maintained by the EEA for the EU. Clause 7 should be amended accordingly
26. It would also be desirable to give the Office for Environmental Protection some powers in relation to the adequacy of the monitoring information, since this should be an important element of its watchdog function.
27. Clause 14 of the draft Bill gives the OEP extensive duties to comment upon the Government's successive progress reports. But it does not confer any specific power to comment upon the adequacy or inadequacy of the data used by the Government to assess progress. In EPUK's view it should be given a specific duty to keep under review and to report on the adequacy of the data and information relied upon by the Government to assess progress, and the need to ensure, inter alia, that that information is maintained in a way that enables inter-European and inter-national comparisons to be made.

ANNEX A. UK Membership of the European Environment Agency

Memorandum by Derek Osborn CB and Nigel Haigh OBE, former members of the Management Board of the European Environment Agency

- A1. The European Environment Agency (“the Agency”) was established by the European Union in the 1990s.
- A2. Since that time the Agency has been responsible for the compilation, analysis and assessment of clear, timely, comparable and relevant information about all the key environmental issues of our time. This regular flow of increasingly reliable information on the state of the environment, on trends and on the impact of policy measures has helped to keep a spotlight on the key issues. It has been able to demonstrate where progress is being made, and where further efforts are still needed. It can flag up issues that may affect Europe as a whole, or pinpoint problems in individual countries.
- A3. Under its founding Regulation² all the countries of the EU (including the UK) automatically became members of the Agency when it was set up in the 1990s. But the Agency has always been able and willing to welcome neighbouring non-EU countries into full membership³. Currently there are five members of the Agency in this category - Norway, Iceland, Switzerland, Turkey and Liechtenstein. There are also six co-operating countries in the West Balkans which are fully integrated into EIONET. Since the environment knows no political boundaries the Agency and EIONET have always sought to assemble information for the whole of the geographical continent of Europe rather than confining themselves to the artificial (in environmental terms) boundary of the European Union.
- A4. On leaving the EU the UK’s automatic membership of the Agency and participation in EIONET would cease. But it would be quite open to the UK to try to negotiate a suitable arrangement to immediately re-join the EEA as a full non-EU member in the same way as the 5 other neighbours of the EU have done.
- A5. Up to now the UK and UK scientists and statisticians working in the field of environmental information have always played a full role in the work of the Agency and in EIONET, working in collaboration with their counterparts in the other countries throughout Europe. Preliminary soundings suggest that at working level the Agency itself and its other members would be glad to have the UK continue in membership and as a partner in EIONET, whatever the outcome of the wider BREXIT negotiations.
- A6. Loss of this working level connection would tend to weaken and fragment the information base on both sides of the Channel. It is extremely important to try to maintain this deep scientific collaboration in the future.
- A7. It should be possible for the UK to seek to continue to be a member of the Agency and to participate in EIONET without prejudice to any of the separate political debates about BREXIT and the appropriate trading regime to be established between the EU and the UK in future. Membership of the Agency is nothing to do with trade. It is about maintaining and improving a common knowledge base for effective policy-making on the environment, based on the timely collection of relevant data in a regular, consistent and trustworthy way.

² Council Reg 1210/90. After several small changes this is now codified in Reg 401/2009.

³ Reg 401/2009. Article 19.

- A8. The Agency has no law-making or coercive powers, and its work does not give rise to litigation or anything requiring reference to the European Court of Justice. It is essentially a co-operative venture between scientists and data experts in all European countries to maintain the best and most reliable information base about the environment for their mutual benefit.
- A9. On the scientific side the UK needs to be able to continue to collaborate with the Europe-wide scientific research community linked to the Agency and to participate in the framing of knowledge that is frequently an important element of new policy development. It needs to continue to participate in the standardisation work and the harmonisation of measurement and assessment methods that is essential to obtaining reliable and consistent information about the environment in the most efficient and cost-effective way.
- A10. When dealing with some of the major transboundary issues such as climate change, air pollution, pollution of the sea, protection of migratory species etc it is often essential to bring together information from several countries to gain a proper understanding of the issues and the possible solutions. The UK will continue to need to co-operate with its European neighbours on such matters and will still need a common knowledge and information base to support such work.
- A11. The UK Government has already indicated that it hopes to be able to continue to play a leading part in the Copernicus programme run by the European Space Agency which will use remote satellite observations systems to gather more detailed information about the European (and global) environment than ever before.
- A12. For all these reasons continuing UK participation in the work of the European Environment Agency and EIONET is highly desirable and would seem a readily negotiable objective even in a BREXIT context.
- A13. The UK would of course have to make a contribution to the Agency's budget if it continues in Membership. At present the Agency is mainly supported by a budget proposed by the Commission and approved by the European Parliament. The non -EU members negotiate their own individual contributions separately. In principle there seems no reason why the UK should not be able to negotiate a post-Brexit contribution similar in amount to the proportionate share which it is already making to the Agency via its contribution to the total Commission budget.