



Draft Environment (Principles and Governance) Bill

Presented to Parliament by the Secretary of State for Environment, Food
and Rural Affairs by Command of Her Majesty

December 2018



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Foreword

Leaving the European Union is a once-in-a-lifetime opportunity for this country to help make our planet greener and cleaner, healthier and happier. We are seizing this chance to set a new direction for environmental protection and governance, in line with the government's ambition to leave our environment in a better state than we inherited it.

I believe that the need for action on the environment – not just to halt or slow its deterioration, but to protect and enhance it – has never been greater. In response we will be introducing a landmark Environment Bill, the first in over twenty years. With this legislation we will not merely be upholding our ambitions, but raising them – to ensure a better future for our natural world, its vulnerable habitats and for the wildlife we treasure.

The draft Environment Bill will establish a robust new system of green governance. This forms only part of the broader ambition of the final Bill, which will also contain specific measures to drive action on today's crucial environmental issues: cleaning up our air, restoring and enhancing nature, improving waste management and resource efficiency, and managing our precious water resources better. In looking after our natural capital, we will also look after human health and wellbeing, benefiting all parts of society.

As we leave the EU, all eyes are on us to prove that our standards will remain high – and I welcome the scrutiny. I understand that regardless of how some people voted in the referendum, Brexit has been a source of profound environmental concern to them.

This draft Bill should assuage those concerns. As the Prime Minister has made clear, our EU Exit will not see a weakening of environmental protections. Far from it. This draft Bill shows the strength of our commitment to a Green Brexit. We will not only maintain our current protections, but surpass them, taking new steps to ensure our environment is even better protected in future.

Our draft Environment (Principles and Governance) Bill sets us on a course to introduce a full Environment Bill in 2019. It defines our ambitious new green governance system, incorporating key clauses on environmental principles and governance that will be part of the wider Environment Bill.

Firstly, we will establish a world-leading, statutory and independent environment body: the Office for Environmental Protection (OEP). This body will scrutinise environmental policy and law, investigate complaints, and take action where necessary to make sure environmental law is properly implemented.

Secondly, we will establish a clear set of environmental principles, accompanied by a policy statement to make sure these principles are enshrined in the process of making and developing policies.

Finally, we will ensure that government is obliged to have a long-term plan for improving the environment; to publish indicators; and to measure and report on progress.

It has been a hallmark of this government, as we develop new legislation to protect our shared environment, to canvas the views and expertise of as many stakeholders and members of the public as possible.

From May to August this year we ran a consultation on "Environmental Principles and Governance after EU Exit." We received a monumental 176,746 responses – reflecting the strength of public interest in our new legislation.

We have drawn on many of these ambitious and aspirational responses for this draft Bill. The environment is shared among every nation: pollution, and the despoliation and degradation of habitats, are also universal problems.

We have ambitions to be the home of the boldest possible environmental policies, and to set an example of excellent and effective leadership at home and abroad. As we leave the EU, this new environmental law marks an unprecedented step forward – helping to safeguard our commitment to environmental protection for generations to come.

A handwritten signature in black ink that reads "Michael Gove". The signature is written in a cursive, slightly slanted style.

Michael Gove MP

Secretary of State for Environment, Food and Rural Affairs



Draft Environment (Principles and Governance) Bill

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Make provision about environmental principles and about plans for improving the natural environment; and to make provision for the Office for Environmental Protection.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Policy statement on environmental principles

1 Policy statement on environmental principles

- (1) The Secretary of State must prepare a statement in accordance with this Act (the “policy statement on environmental principles”).
- (2) The statement 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.
- (3) The statement may also explain how Ministers of the Crown, when interpreting and applying the environmental principles, are to take into account other considerations relevant to their policies.
- (4) The statement may —
 - (a) deal with the environmental principles separately or together;
 - (b) deal with policies separately or together.
- (5) The statement need not deal with policies if, or to the extent that, in the opinion of the Secretary of State —
 - (a) the environmental principles are not relevant to the policies, or
 - (b) applying the environmental principles to making, developing or revising the policies would have no significant environmental benefit.
- (6) The statement may not deal with policies relating to —
 - (a) the armed forces, defence or national security,

- (b) taxation, spending or the allocation of resources within government, or
- (c) any other matter specified in regulations made by the Secretary of State.

2 Meaning of “environmental principles”

In this Act “environmental principles” means the following principles –

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

3 Policy statement on environmental principles: process

- (1) The Secretary of State must prepare a draft of the policy statement on environmental principles.
- (2) The Secretary of State must consult such persons as the Secretary of State considers appropriate in relation to the draft statement.
- (3) The Secretary of State must lay the draft statement before Parliament.
- (4) If, before the end of the period of 21 sitting days beginning with the day after the day on which the draft statement is laid –
 - (a) either House of Parliament passes a resolution in respect of the draft, or
 - (b) a committee of either House, or a joint committee of both Houses, makes recommendations in respect of the draft,the Secretary of State must produce a response and lay it before Parliament.
- (5) The Secretary of State must lay before Parliament, and publish, the final statement, but not before –
 - (a) if subsection (4) applies, the day on which the Secretary of State lays the response required by that subsection, or
 - (b) otherwise, the end of the period of 21 sitting days beginning with the day after the day on which the draft statement is laid.
- (6) The Secretary of State may revise the policy statement on environmental principles at any time (and this section applies in relation to any revised statement).
- (7) “Sitting day” means a day on which both Houses of Parliament sit.

4 Policy statement on environmental principles: effect

- (1) A Minister of the Crown must have regard to the policy statement on environmental principles when making, developing or revising policies dealt with by the statement.
- (2) Nothing in this section requires a Minister to take (or refrain from taking) any action if taking (or not taking) the action –
 - (a) would have no significant environmental benefit, or
 - (b) would be in any other way disproportionate to the environmental benefit.

Environmental improvement plans

5 Improving the natural environment

Sections 6 to 10 make provision imposing duties on the Secretary of State for the purpose of seeking to improve the natural environment.

6 Environmental improvement plans

- (1) The Secretary of State must prepare an environmental improvement plan.
- (2) An “environmental improvement plan” is a plan for improving the natural environment in the period to which the plan relates.
- (3) That period must not be shorter than 15 years.
- (4) An environmental improvement plan must set out the steps Her Majesty’s Government intends to take to improve the natural environment in the period to which the plan relates.
- (5) It may also set out steps Her Majesty’s Government intends to take to improve people’s enjoyment of the natural environment in that period (and if it does so references in this Act to improving the natural environment, in relation to that plan, include improving people’s enjoyment of it).
- (6) The Secretary of State’s functions in relation to environmental improvement plans are not exercisable in relation to the natural environment in Wales.
- (7) The document entitled “A green future: our 25 year plan to improve the environment” published by Her Majesty’s Government on 11 January 2018 is to be treated as an environmental improvement plan prepared by the Secretary of State under this section.
- (8) References in this Act –
 - (a) to the first environmental improvement plan, are to that document;
 - (b) to the current environmental improvement plan, are to the environmental improvement plan for the time being in effect.

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).

8 Annual reports on environmental improvement plans

- (1) The Secretary of State must prepare annual reports on the implementation of the current environmental improvement plan.
- (2) An annual report must –
 - (a) describe what has been done, in the period to which the report relates, to implement the environmental improvement plan, and
 - (b) consider, having regard to any data obtained under section 7, whether the natural environment has, or particular aspects of it have, improved during that period.
- (3) The first annual report on the first environmental improvement plan may relate to any 12 month period that includes the day on which this section comes into force.
- (4) The first annual report on a subsequent environmental improvement plan must relate to the first 12 months of the period to which the plan relates.
- (5) Subsequent annual reports on an environmental improvement plan must relate to the 12 month period immediately following the 12 month period to which the previous annual report relates.
- (6) An annual report must be laid before Parliament as soon as reasonably practicable after the end of the period to which it relates.
- (7) The Secretary of State must publish annual reports laid before Parliament under this section.

9 Reviewing and revising environmental improvement plans

- (1) The Secretary of State must –
 - (a) review the current environmental improvement plan in accordance with this section, and
 - (b) if the Secretary of State considers it appropriate as a result of the review, revise the plan.
- (2) The period to which a revised plan relates must end at the same time as the period to which the current plan relates.
- (3) The first review of the first environmental improvement plan must be completed by 31 January 2023.
- (4) The first review of a subsequent environmental improvement plan must be completed before the end of the 5 year period beginning with the day on which the plan is published.

- (5) Subsequent reviews of an environmental improvement plan must be completed before the end of the 5 year period beginning with the day on which the previous review was completed.
- (6) In reviewing an environmental improvement plan, the Secretary of State must consider –
 - (a) what has been done to implement the plan in the period since it was published or (if it has been reviewed before) last reviewed,
 - (b) whether, having regard to data obtained under section 7 and reports made by the OEP under section 14, the natural environment has, or particular aspects of it have, improved during that period, and
 - (c) whether Her Majesty’s Government should take further or different steps to improve the natural environment (compared to those set out in the plan) in the remainder of the period to which the plan relates.
- (7) If as a result of a review the Secretary of State considers it appropriate to revise the plan, the Secretary of State must lay before Parliament –
 - (a) a revised environmental improvement plan, and
 - (b) a statement explaining the revisions and the reasons for them.
- (8) If as a result of a review the Secretary of State does not consider it appropriate to revise the plan, the Secretary of State must lay before Parliament a statement explaining that and the reasons for it.
- (9) The Secretary of State must publish the documents laid under subsection (7) or (8).
- (10) A review is completed when the Secretary of State has laid and published the documents mentioned in subsection (7) or (8).
- (11) References in this Act to an environmental improvement plan include a revised environmental improvement plan.

10 Renewing environmental improvement plans

- (1) Before the end of the period to which an environmental improvement plan (the “old plan”) relates, the Secretary of State must prepare a new environmental improvement plan (the “new plan”) for a new period.
- (2) The new period must begin no later than immediately after the end of the period to which the old plan relates.
- (3) In preparing the new plan the Secretary of State must consider –
 - (a) what has been done to implement the old plan,
 - (b) whether, having regard to data obtained under section 7 and reports made by the OEP under section 14, the natural environment has, or particular aspects of it have, improved since the beginning of the period to which the old plan relates,
 - (c) whether Her Majesty’s Government should take further or different steps to improve the natural environment (compared to those set out in the old plan) in the period to which the new environmental improvement plan relates.
- (4) At or before the end of the period to which the old plan relates the Secretary of State must lay before Parliament, and publish, the new plan.
- (5) The new plan replaces the old plan when –

- (a) it has been laid and published, and
- (b) the period to which it relates has begun.

The Office for Environmental Protection

11 The Office for Environmental Protection

- (1) A body corporate called the Office for Environmental Protection is established.
- (2) In this Act that body is referred to as “the OEP”.
- (3) The Schedule makes further provision about the OEP.

12 Exercise of the OEP’s functions

- (1) The OEP must have regard to the need to act –
 - (a) objectively,
 - (b) impartially,
 - (c) proportionately, and
 - (d) transparently.
- (2) The OEP must prepare a strategy that sets out how it intends to exercise its functions.
- (3) In particular, the strategy must –
 - (a) set out how the OEP will have regard to the need to act objectively, impartially, proportionately and transparently,
 - (b) set 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, and
 - (c) contain a complaints and enforcement policy that sets out –
 - (i) how the OEP intends to exercise its complaints and enforcement functions in a way that respects the integrity of other statutory regimes (including statutory provision for appeals), and
 - (ii) how the OEP intends to prioritise cases.
- (4) In considering its complaints and enforcement policy the OEP must have regard to the particular importance of prioritising cases that it considers have or may have national implications, and the importance of prioritising cases –
 - (a) that relate to ongoing or recurrent conduct,
 - (b) that relate to conduct that the OEP considers may cause (or has caused) significant damage to the natural environment or to human health, or
 - (c) that the OEP considers may raise a point of environmental law of general public importance.
- (5) The OEP’s “complaints and enforcement functions” are its functions under sections 18 to 29.

13 The OEP’s strategy: process

- (1) The OEP must –

- (a) arrange for the strategy prepared under section 12 to be laid before Parliament, and
 - (b) publish it.
- (2) The OEP may revise the strategy at any time (and subsection (1) applies to any revised strategy).
- (3) The OEP must review the strategy at least once in every review period.
- (4) “Review period” means –
 - (a) in relation to the first review, the period of 3 years beginning with the day on which the strategy was first published, and
 - (b) in relation to subsequent reviews, the period of 3 years beginning with the day on which the previous review was completed.
- (5) Before preparing, revising or reviewing the strategy, the OEP must consult such persons as it considers appropriate.

The OEP's scrutiny and advice functions

14 Monitoring and reporting on environmental improvement plans

- (1) The OEP must monitor progress in improving the natural environment in accordance with the current environmental improvement plan.
- (2) The OEP must prepare a progress report for each annual reporting period.
- (3) A progress report for an annual reporting period is a report on progress made in that period in improving the natural environment in accordance with the current environmental improvement plan.
- (4) An annual reporting period is a period for which the Secretary of State must prepare a report under section 8 (a “section 8 report”).
- (5) In reporting on progress made in an annual reporting period, the OEP must consider –
 - (a) the section 8 report for that period, and
 - (b) any other reports, documents or information it considers appropriate.
- (6) A progress report for an annual reporting period may include consideration of how progress could be improved.
- (7) The OEP must –
 - (a) arrange for its reports under this section to be laid before Parliament, and
 - (b) publish them.
- (8) A progress report for an annual reporting period must be laid no later than 6 months after the section 8 report for that period is laid before Parliament.
- (9) The Secretary of State must –
 - (a) respond to a report under this section, and
 - (b) lay before Parliament, and publish, a copy of the response.
- (10) The response –
 - (a) must be laid no later than 12 months after the report is laid, and
 - (b) may be included in a section 8 report.

15 Monitoring and reporting on environmental law

- (1) The OEP must monitor the implementation of environmental law.
- (2) The OEP may report on any matter concerned with the implementation of environmental law.
- (3) The OEP must—
 - (a) arrange for its reports under this section to be laid before Parliament, and
 - (b) publish them.
- (4) The Secretary of State must—
 - (a) respond to a report under this section, and
 - (b) lay before Parliament, and publish, a copy of the response.
- (5) The response to a report under this section must be laid no later than 3 months after the report is laid.

16 Advising on changes to environmental law etc

- (1) The OEP must give advice to a Minister of the Crown 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.
- (2) The Minister may specify matters which the OEP is to take into account in giving the required advice.
- (3) The OEP may give advice to a Minister of the Crown about any changes to environmental law proposed by a Minister of the Crown.
- (4) Advice under this section is to be given in writing to the Minister concerned.
- (5) The OEP must publish—
 - (a) its advice, and
 - (b) if the advice is given under subsection (1), a statement of the matter on which it was required to give advice and any matters specified under subsection (2).
- (6) The Minister concerned may, if the Minister thinks fit, lay before Parliament—
 - (a) the advice, and
 - (b) any response the Minister may make to the advice.

The OEP's enforcement functions

17 Failure of public authorities to comply with environmental law

- (1) Sections 18 to 29 make provision about functions of the OEP in relation to failures by public authorities to comply with environmental law.
- (2) For the purposes of those sections, reference to a public authority failing to comply with environmental law means the following conduct by that authority—
 - (a) unlawfully failing to take proper account of environmental law when exercising its functions;

- (b) unlawfully exercising, or failing to exercise, any function it has under environmental law.
- (3) In this Act “public authority” means a person carrying out any function of a public nature that is not a devolved function, but not any of the following persons –
 - (a) the OEP;
 - (b) a court or tribunal;
 - (c) either House of Parliament or a person exercising functions in connection with proceedings in Parliament;
 - (d) a devolved legislature, or a person exercising functions in connection with proceedings in a devolved legislature;
 - (e) the Scottish Ministers, the Welsh Ministers or a Northern Ireland department.

18 Complaints

- (1) A person may make a complaint to the OEP under this section if the person believes that a public authority has failed to comply with environmental law.
- (2) The OEP must prepare and publish a document which sets out the procedure by which complaints can be made.
- (3) A complaint under this section must be made in accordance with that procedure (as most recently published).
- (4) A complaint under this section may not be made by any person whose functions include functions of a public nature.
- (5) A complaint about a public authority may not be made under this section if –
 - (a) the authority operates a procedure for considering complaints (“an internal complaints procedure”) under which the complaint could be considered, and
 - (b) that procedure has not been exhausted.
- (6) A complaint under this section may not be made after the later of –
 - (a) the end of the 1 year period beginning with the day on which the alleged failure that is the subject of the complaint last occurred, and
 - (b) if the substance of the complaint was subject to an internal complaints procedure, the end of the 3 month period beginning with the day on which that procedure was exhausted.
- (7) The OEP may waive the time limit in subsection (6) if it considers that there are exceptional reasons for doing so.

19 Investigation of complaints

- (1) The OEP may carry out an investigation under this section if it receives a complaint made under section 18 that, in its view, indicates that –
 - (a) a public authority has failed to comply with environmental law, and
 - (b) the failure is serious.
- (2) An investigation under this section is an investigation into whether the public authority has failed to comply with environmental law.

- (3) The OEP must notify the public authority of the commencement of the investigation.
- (4) When the OEP has concluded the investigation it must prepare a report and provide it to the public authority.
- (5) The report must set out –
 - (a) whether the OEP considers that the public authority has failed to comply with environmental law;
 - (b) the reasons the OEP came to that conclusion;
 - (c) any recommendations the OEP may have (whether generally or for the public authority) in light of those conclusions.
- (6) The OEP may publish the report or parts of it.
- (7) If the public authority is not a Minister of the Crown, the OEP must also –
 - (a) notify the relevant Minister of the commencement of the investigation, and
 - (b) provide the relevant Minister with the report prepared under subsection (4).
- (8) In this Act “the relevant Minister”, in relation to a failure (or alleged failure) of a public authority to comply with environmental law, means the Minister of the Crown that the OEP considers appropriate having regard to the nature of the public authority and the nature of the failure.

20 Duty to keep complainants informed

- (1) Where a person makes a complaint to the OEP alleging that a public authority has failed to comply with environmental law, the OEP must keep the complainant informed about its handling of the complaint.
- (2) In particular, the OEP must notify the complainant –
 - (a) if it does not intend to consider the complaint because the complaint was not made in accordance with section 18;
 - (b) if it has concluded that it will not be commencing an investigation under section 19;
 - (c) if it carries out an investigation under section 19 –
 - (i) that it is carrying out the investigation, and
 - (ii) when the investigation is complete, that it has been completed.

21 Practical co-ordination of investigations

- (1) A memorandum of understanding must be prepared by each of –
 - (a) the Commission for Local Administration in England and the OEP, and
 - (b) the Parliamentary Commissioner for Administration and the OEP.
- (2) A memorandum of understanding must set out what practical arrangements the parties to the memorandum intend to make for the co-ordination of investigations by the parties into the same matter, or into different matters that are related.

22 Information notices

- (1) The OEP may give an information notice to a public authority if –

- (a) the OEP has reasonable grounds for suspecting that the public authority has failed to comply with environmental law, and
 - (b) it considers that the failure is serious.
- (2) An information notice is a notice which –
 - (a) describes an alleged failure of a public authority to comply with environmental law, and
 - (b) requests that the public authority provide such information relating to the allegation as may be specified in the notice by such date as may be specified in the notice.
- (3) The recipient of an information notice must –
 - (a) respond in writing to the notice, and
 - (b) so far as is reasonably practicable, provide the OEP with the information requested in the notice.
- (4) The recipient of an information notice must comply with subsection (3) by –
 - (a) the end of the 2 month period beginning with the day on which the notice was given, or
 - (b) such later date as may be specified in the notice.
- (5) The written response to an information notice must set out –
 - (a) the recipient’s response to the allegation described in the notice, and
 - (b) what steps (if any) the recipient intends to take in relation to the allegation.
- (6) The OEP may –
 - (a) withdraw an information notice;
 - (b) give more than one information notice in respect of the same alleged failure of a public authority to comply with environmental law.

23 Decision notices

- (1) The OEP may give a decision notice to a public authority if –
 - (a) the OEP is satisfied, on the balance of probabilities, that the public authority has failed to comply with environmental law, and
 - (b) it considers that the failure is serious.
- (2) A decision notice is a notice that –
 - (a) describes a failure of a public authority to comply with environmental law, and
 - (b) sets out the steps the OEP considers the public authority should take in relation to the failure (which may include steps designed to remedy, mitigate or prevent reoccurrence of the failure).
- (3) The recipient of a decision notice must respond in writing to that notice by –
 - (a) the end of the 2 month period beginning with the day on which the notice was given, or
 - (b) such later date as may be specified in the notice.
- (4) The written response to a decision notice must set out –
 - (a) whether the recipient agrees that the failure described in the notice occurred,
 - (b) whether the recipient intends to take the steps set out in the notice, and

- (c) what other steps (if any) the recipient intends to take in relation to the failure described in the notice.
- (5) The OEP—
 - (a) may not give a decision notice to a public authority unless it has first given at least one information notice relating to the failure of the authority to comply with environmental law that is described in the decision notice;
 - (b) may withdraw a decision notice.

24 Duty of the OEP to involve the relevant Minister and other public authorities

- (1) Where the recipient of an information notice or a decision notice is not a Minister of the Crown, the OEP must—
 - (a) provide the relevant Minister with—
 - (i) a copy of the notice and,
 - (ii) a copy of any correspondence between the OEP and the recipient of the notice that relates to the notice (apart from correspondence sent by virtue of paragraph (b)), and
 - (b) provide the recipient of the notice with a copy of any correspondence between the OEP and the relevant Minister that relates to the notice (apart from correspondence sent by virtue of paragraph (a)).
- (2) If the OEP gives an information notice or a decision notice to more than one public authority in respect of the same or similar conduct it may determine that those notices are linked notices in relation to each other.
- (3) The relevant Minister may request that the OEP determine that information notices or decision notices are linked notices and the OEP must have regard to that request.
- (4) The OEP must provide the recipient of an information notice or a decision notice with—
 - (a) a copy of any linked notice in relation to the notice the recipient received,
 - (b) a copy of any correspondence between the OEP and the recipient of the linked notice that relates to the linked notice (apart from correspondence sent by virtue of subsection (1)(b)), and
 - (c) where the recipient of the linked notice is not a Minister of the Crown, a copy of any correspondence between the OEP and the relevant Minister in relation to the linked notice that relates to that notice (apart from correspondence sent by virtue of subsection (1)(a)).
- (5) The obligation to provide a copy of any notice or correspondence under subsection (1) or (4) does not apply where the OEP considers that in the circumstances it would not be in the public interest to do so.
- (6) In this section reference to correspondence relating to an information notice or decision notice does not include correspondence in connection with any proceedings relating to a review application.

25 Enforcement

- (1) The OEP may make a review application in relation to conduct described in a decision notice given to a public authority as a failure of the authority to comply with environmental law.
- (2) The OEP may make a review application in relation to conduct of a public authority occurring after a decision notice was given to the authority that is similar, or is related, to conduct that was described in the notice as a failure of the authority to comply with environmental law.
- (3) In this Act, a “review application” means –
 - (a) in England and Wales or Northern Ireland, an application to the High Court for judicial review, or
 - (b) in Scotland, an application to the supervisory jurisdiction of the Court of Session.
- (4) Neither subsection (1) nor (2) overrides any requirement for permission of the court to be obtained before making a review application.
- (5) The OEP is to be treated as having a sufficient interest in the matter to which a review application under subsection (1) or (2) relates for the purposes of any proceedings in relation to the application.
- (6) Section 31(2A), (3C) and (3D) of the Senior Courts Act 1981 (High Court to refuse to grant leave or relief where the outcome for the applicant not substantially different) does not apply to a review application under subsection (1) or (2) in England and Wales.
- (7) A review application under subsection (1) must be made before the end of the 3 month period beginning with the day by which the public authority was required to respond to the decision notice (see section 23(3)) (and this time limit applies instead of any other time limit that would otherwise apply).
- (8) Section 31(6) of the Senior Courts Act 1981 (power of High Court to refuse leave or relief for undue delay) does not apply to a review application under subsection (1) in England and Wales if the application is made within the time limit in subsection (7).
- (9) A public authority that is the subject of a review application under subsection (1) or (2) must publish a statement after the conclusion of the proceedings relating to that application (including any appeal) that sets out the steps (if any) it intends to take in light of the outcome of those proceedings.

The OEP's enforcement functions: co-operation and information

26 Duty to co-operate

- (1) A person whose functions include functions of a public nature must co-operate with the OEP, and give it such reasonable assistance as it requests (including the provision of information), in connection with –
 - (a) any investigation under section 19;
 - (b) any information notice;
 - (c) any decision notice.
- (2) Subsection (1) does not apply to –
 - (a) a court or tribunal,

- (b) either House of Parliament or a person exercising functions in connection with proceedings in Parliament,
 - (c) a devolved legislature, or a person exercising functions in connection with proceedings in a devolved legislature,
 - (d) the Scottish Ministers, the Welsh Ministers or a Northern Ireland department, or
 - (e) a person whose only public functions are devolved functions.
- (3) A person whose public functions include devolved functions is only required to co-operate with the OEP by virtue of subsection (1) to the extent that co-operation is in relation to functions that are not devolved functions.

27 Scope of requirements to provide information to the OEP

- (1) No obligation of secrecy imposed by statute or otherwise prevents a person from providing information to the OEP in accordance with section 22(3)(b) or 26(1).
- (2) But nothing in those sections requires a person to provide the OEP with—
 - (a) information that the person would be entitled to refuse to provide in civil proceedings on grounds of legal professional privilege (or, in Scotland, confidentiality of communications), or
 - (b) information that the person would be entitled, or required by any rule of law, to refuse to provide in civil proceedings on grounds of public interest immunity.

28 Prohibitions on disclosure of information

- (1) The OEP may not disclose—
 - (a) any information obtained by virtue of section 22(3)(b) or 26(1), or
 - (b) any correspondence relating to an information notice or a decision notice from the recipient of that notice or (in the case of a notice given to a public authority that is not a Minister of the Crown) the relevant Minister.
- (2) Subsection (1) does not apply to any disclosure—
 - (a) made with the consent of the person who provided the information or correspondence;
 - (b) made for the purposes of an investigation under section 19;
 - (c) made for the purposes of any publication of a report (or part of it) on an investigation under that section;
 - (d) made for purposes connected to the exercise of the OEP's functions under sections 22 to 25 (enforcement).
- (3) A public authority may not disclose—
 - (a) any information notice or decision notice given to it or any correspondence from the OEP in relation to such a notice, or
 - (b) any information or correspondence received by it by virtue of section 24(1) or (4).
- (4) Subsection (3) does not apply to any disclosure—
 - (a) made—

- (i) in the case of a disclosure of correspondence between a public authority and the OEP, with the consent of that authority and the OEP, or
 - (ii) in any other case, with the consent of the OEP;
- (b) made for purposes connected with co-operating with any investigation under section 19;
- (c) made for purposes connected with responding to any information notice or decision notice;
- (d) made for purposes connected with any proceedings in relation to a review application under section 25(1) or (2).

29 Public statements

- (1) Where the OEP gives an information notice or a decision notice or makes a review application under section 25(1) or (2), it must publish a statement that –
 - (a) states that the OEP has taken that step,
 - (b) describes the failure (or alleged failure) of a public authority to comply with environmental law in relation to which that step was taken, and
 - (c) sets out such further information as the OEP considers appropriate.
- (2) Subsection (1) does not apply if the OEP considers that in the circumstances it would not be in the public interest to publish a statement.

Interpretation

30 Meaning of “natural environment”

In this Act the “natural environment” means –

- (a) wild animals, plants and other living organisms,
- (b) their habitats,
- (c) land, water and air (except buildings or other structures and water or air inside them),

and the natural systems, cycles and processes through which they interact.

31 Meaning of “environmental law”

- (1) In this Act “environmental law” means this Act, regulations made under it and any legislative provision, other than devolved legislative provision, that –
 - (a) is mainly concerned with an environmental matter, and
 - (b) is not concerned with an excluded matter.
- (2) Environmental matters are –
 - (a) protecting the natural environment from the effects of human activity;
 - (b) protecting people from the effects of human activity on the natural environment;
 - (c) maintaining, restoring or enhancing the natural environment;
 - (d) monitoring, assessing, considering, advising or reporting on anything in paragraphs (a) to (c).
- (3) Excluded matters are –

- (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;
 - (d) taxation, spending or the allocation of resources within government.
- (4) “Devolved legislative provision” means –
- (a) legislative provision contained in, or in an instrument made under, an Act of the Scottish Parliament, an Act or Measure of the National Assembly for Wales or Northern Ireland legislation, and
 - (b) legislative provision not within paragraph (a) which would be within the legislative competence of –
 - (i) the Scottish Parliament, if contained in an Act of that Parliament;
 - (ii) the National Assembly for Wales, if contained in an Act of that Assembly, or
 - (iii) the Northern Ireland Assembly, if contained in an Act of that Assembly made without the Secretary of State’s consent.
- (5) The Secretary of State may by regulations specify legislative provisions, other than devolved legislative provisions, which are, or are not, environmental law (either by describing them or by identifying them).
- (6) Before making regulations under subsection (5) the Secretary of State must consult –
- (a) the OEP, and
 - (b) any other persons the Secretary of State considers appropriate.

32 General interpretation

In this Act –

“current environmental improvement plan” has the meaning given by section 6(8);

“decision notice” means a notice given under section 23;

“devolved function” means –

- (a) a function exercisable in or as regards Wales that could be conferred by provision included in an Act of the National Assembly for Wales (see section 108A of the Government of Wales Act 2006);
- (b) a function exercisable in or as regards Scotland, the exercise of which would be within devolved competence (within the meaning of section 54 of the Scotland Act 1998);
- (c) a function exercisable in or as regards Northern Ireland that could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998);

“devolved legislature” means the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly;

“environmental improvement plan” has the meaning given by section 6 (and see also section 9(11));

“environmental principles” has the meaning given by section 2;

- “first environmental improvement plan” has the meaning given by section 6(8);
- “improving the natural environment”, in relation to an environmental improvement plan, is to be read in accordance with section 6(5);
- “information notice” means a notice given under section 22;
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;
- “OEP” has the meaning given by section 11;
- “policy” does not include an administrative decision taken in relation to a particular person or case (for example, a licensing decision or a decision about planning permission, regulatory enforcement or the grant of funding);
- “policy statement on environmental principles” has the meaning given by section 1;
- “public authority” has the meaning given by section 17(3);
- “relevant Minister” has the meaning given by section 19;
- “review application” has the meaning given by section 25.

Final provisions

33 Regulations

- (1) Regulations under this Act are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under this Act may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (3) This section does not apply to regulations under section 34(3).

34 Extent, commencement and short title

- (1) The following provisions extend to England and Wales only –
 - (a) sections 5 to 10 (environmental improvement plans);
 - (b) section 14 (OEP’s functions in relation to environmental improvement plans).
- (2) The other provisions of this Act extend to England and Wales, Scotland and Northern Ireland.
- (3) This Act comes into force on such day as the Secretary of State may by regulations made by statutory instrument appoint (and different days may be appointed for different purposes).
- (4) This Act may be cited as the Environment (Principles and Governance) Act 2019.

SCHEDULE

Section 11

THE OFFICE FOR ENVIRONMENTAL PROTECTION

Membership

- 1 (1) The OEP is to consist of –
 - (a) a Chair (who is to be a non-executive member),
 - (b) at least two, but not more than five, other non-executive members,
 - (c) a chief executive (who is to be the accounting officer), and
 - (d) at least one, but not more than three, other executive members.
- (2) The non-executive members are to be appointed by the Secretary of State.
- (3) The Secretary of State must consult the Chair before appointing any other non-executive member.
- (4) The Secretary of State must, in appointing the non-executive members, have regard to the desirability of the members (between them) having experience of –
 - (a) law (including international law) relating to the natural environment,
 - (b) environmental science,
 - (c) environmental policy, and
 - (d) investigatory and enforcement proceedings.
- (5) A person may not be appointed as a non-executive member if the person is an employee of the OEP.
- (6) The chief executive is to be appointed by the Chair.
- (7) The Chair must consult the Secretary of State before appointing a person as chief executive.
- (8) The other executive members are to be appointed by the OEP.
- (9) An executive member must be an employee of the OEP.
- (10) The Secretary of State and the OEP must ensure, so far as practicable, that the number of non-executive members is at all times greater than the number of executive members.

Terms of appointment

- 2 (1) A member of the OEP holds and vacates office in accordance with the terms of the member's appointment, subject to the provisions of this Schedule.
- (2) The Secretary of State must consult the Chair before deciding the terms on which the other non-executive members should be appointed.
- (3) A non-executive member must be appointed for a fixed term of no more than 5 years.

- (4) The previous appointment of a person as a non-executive member does not affect the person's eligibility for re-appointment.
- (5) A non-executive member –
 - (a) ceases to be a member of the OEP upon becoming its employee,
 - (b) may resign from office by giving notice to the Secretary of State, and
 - (c) may be removed from office by notice given by the Secretary of State on the grounds that the member –
 - (i) has without reasonable excuse failed to discharge the member's functions, or
 - (ii) is, in the opinion of the Secretary of State, unable or unfit to carry out the member's functions.

Remuneration of non-executive members

- 3 (1) The OEP must pay its non-executive members such remuneration and allowances as the Secretary of State may determine.
- (2) If a person ceases to be a non-executive member and the Secretary of State determines that the person should be compensated because of special circumstances, the OEP must pay compensation of such amount as the Secretary of State may determine.
- (3) The Secretary of State must consult the Chair of the OEP before making a determination under this paragraph.

Staffing and remuneration

- 4 (1) The OEP may –
 - (a) appoint employees on such terms as it determines, and
 - (b) make such other arrangements for the staffing of the OEP as it determines.
- (2) The OEP –
 - (a) may pay its employees such remuneration and allowances as it determines in accordance with its policies on remuneration and allowances, and
 - (b) must make such pensions arrangements for its non-executive members and employees as it considers appropriate.
- (3) The OEP must obtain the Secretary of State's approval for –
 - (a) its policies on remuneration and allowances, and
 - (b) its pension arrangements.

Powers

- 5 (1) The OEP may do anything (other than something mentioned in subparagraph (2)) it thinks appropriate for the purposes of, or in connection with, its functions.
- (2) The OEP may not –
 - (a) accept gifts of money, land or other property, or
 - (b) form, participate in forming, or invest in, a company, partnership, joint venture or other similar form of organisation.

Committees

- 6 (1) The OEP may establish committees.
- (2) A committee may include persons who are not members of the OEP (whether or not they are employees of the OEP).
- (3) A member of a committee who is neither a member nor an employee of the OEP is not entitled to vote at meetings of that committee.
- (4) The OEP may pay such allowances as it may determine to any person who –
 - (a) is a member of a committee, but
 - (b) is neither a member, nor an employee, of the OEP.

Delegation to members, committees and employees

- 7 (1) The OEP may delegate any of its functions (other than a function mentioned in sub-paragraph (4)) to –
 - (a) a member of the OEP,
 - (b) any of the OEP’s employees authorised for that purpose, or
 - (c) a committee of the OEP.
- (2) The OEP must prepare a document that sets out its policy on how its functions may be appropriately delegated (a “delegation policy”).
- (3) A function is delegated under this paragraph to the extent, and on the terms, that the OEP determines in accordance with its delegation policy.
- (4) The OEP may not delegate the following functions –
 - (a) approving the strategy under section 12(2) (or a revision of it);
 - (b) approving a report under section 14 or 15;
 - (c) approving written advice to a Minister of the Crown under section 16(1) or (3);
 - (d) deciding whether to give an information notice under section 22;
 - (e) deciding whether to give a decision notice under section 23;
 - (f) deciding whether to make a review application under section 25(1) or (2);
 - (g) approving a delegation policy under sub-paragraph (2);
 - (h) approving a report on the exercise of the OEP’s functions under paragraph 10(1) or a statement of accounts under paragraph 11(2).

Procedure

- 8 (1) The OEP may determine its own procedure, subject to sub-paragraph (2), and the procedure of its committees.
- (2) A meeting of the OEP is not quorate unless –
 - (a) there are at least three members present, and
 - (b) a majority of the members present are non-executive members.
- (3) The validity of any proceedings of the OEP are not affected by any vacancy among its members or by any defect in the appointment of such a member.

Funding

- 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.

Annual report

- 10 (1) As soon as reasonably practicable after the end of each financial year the OEP must prepare a report on the exercise of its functions during that financial year.
- (2) The OEP must—
- (a) arrange for the report to be laid before Parliament, and
 - (b) publish it.

Annual accounts

- 11 (1) The OEP must keep proper accounts and proper records in relation to them.
- (2) The OEP must prepare a statement of accounts in respect of each financial year in the form specified by the Secretary of State.
- (3) A statement of accounts must include an assessment by the OEP of whether it had been provided with sufficient sums by the Secretary of State in order to carry out its functions in the financial year to which the statement relates.
- (4) The OEP must send a copy of each statement of accounts to the Secretary of State and the Comptroller and Auditor General as soon as reasonably practicable after the end of the financial year to which it relates.
- (5) The Comptroller and Auditor General must—
- (a) examine, certify and report on the statement of accounts, and
 - (b) send a copy of the certified statement and the report to the Secretary of State and the OEP.
- (6) The OEP must arrange for the laying before Parliament of a copy of—
- (a) its certified statement of accounts, and
 - (b) the Comptroller and Auditor General’s report on its statement of accounts.

Meaning of “financial year”

- 12 In this Schedule “financial year” means—
- (a) the period beginning with the date on which the OEP is established and ending with 31 March following that date, and
 - (b) each successive period of 12 months.

Status

- 13 (1) The OEP is not to be regarded—
- (a) as a servant or agent of the Crown, or

- (b) as enjoying any status, immunity or privilege of the Crown.
- (2) The OEP’s property is not to be regarded as property of, or property held on behalf of, the Crown.
- (3) Service as a member, or as an employee, of the OEP is not service in the civil service of the State.

Disqualification from membership of legislatures

- 14 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975, at the appropriate place insert –
“The Office for Environmental Protection.”
- 15 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975, at the appropriate place insert –
“The Office for Environmental Protection.”

Public records

- 16 In Part 2 of the Table in paragraph 3 of Schedule 1 to the Public Records Act 1958 (definition of public records), at the appropriate place insert –
“The Office for Environmental Protection.”

Freedom of Information

- 17 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies), at the appropriate place insert –
“The Office for Environmental Protection.”

Investigation by the Parliamentary Commissioner

- 18 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments subject to investigation), at the appropriate place insert –
“The Office for Environmental Protection.”

Public sector equality duty

- 19 In Part 1 of Schedule 19 to the Equality Act 2010 (authorities subject to the public sector equality duty), under the heading “Environment, housing and development”, at the appropriate place insert –
“The Office for Environmental Protection.”

DRAFT ENVIRONMENT (PRINCIPLES AND GOVERNANCE) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the draft Environment (Principles and Governance) Bill as published in Draft on 19 December 2018 (Bill Cm9751).

- These Explanatory Notes have been prepared by the Department for Environment, Food and Rural Affairs in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

These Explanatory Notes relate to the draft Environment (Principles and Governance) Bill as published in Draft on 19 December 2018 (Bill Cm9751)

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These Explanatory Notes relate to the draft Environment (Principles and Governance) Bill as published in Draft on 19 December 2018 (Bill Cm9751)

Overview of the Bill

1. The Environment Bill will establish 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.
2. The consultation on “Environmental Principles and Governance after EU Exit”,¹ which ran from May to August 2018, initially explored options for introducing a standalone Environmental Principles and Governance Bill. However, following the responses received and further policy development, a decision was taken to introduce environmental principles and governance measures as part of a broader Environment Bill, as announced by the Prime Minister at a Liaison Committee hearing (18 July 2018). These Explanatory Notes address only the measures in the Environment Bill relating to environmental principles and governance, and placing the 25 Year Environment Plan on a statutory footing, which have been published as the draft (“Environment (Principles and Governance) Bill (“the draft Bill”). The remainder of the Environment Bill is expected to be introduced in the second Parliamentary session in 2019.
3. The publication of draft clauses on environmental principles and governance at this time fulfils a legal obligation set out in section 16 of **the European Union (Withdrawal) Act 2018, which received Royal Assent on 26 June 2018.**
4. The draft Environment (Principles and Governance) Bill includes provisions to:
 - ensure the publication of a policy statement on environmental principles setting out how environmental principles specified under 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 Government to account on environmental law and its Environmental Improvement Plan after the UK leaves the EU;
 - define the scrutiny, complaints and enforcement functions of the OEP and their scope;
 - define the nature of the OEP, including considerations of membership, remuneration, staffing, powers, reporting, funding, accounts and other issues;
 - require Government to have a plan for environmental improvement;
 - require Government to produce an annual report on the current environmental

¹ <https://consult.defra.gov.uk/eu/environmental-principles-and-governance/>

improvement plan. The 25 Year Environment Plan will be the first environmental improvement plan upon which the Government is required to report;

- require Government to publish a set of environmental metrics and measure progress in improving the environment.

Policy background

Exiting the European Union

5. On 1 January 1973, the UK joined the European Economic Community, which has since evolved to become today's European Union (EU). A large proportion of UK environmental law derives from the EU.
6. On 17 December 2015, the European Union Referendum Act 2015 received Royal Assent. The Act made provision for holding a referendum in the UK and Gibraltar on whether the UK should remain a member of the EU. The referendum was held on 23 June 2016 and a majority voted to leave the EU.
7. The European Union (Notification of Withdrawal) Act 2017 received Royal Assent on 16 March 2017. On 29 March 2017, the Prime Minister gave notification of withdrawal of the UK from the EU under Article 50(2) of the Treaty on European Union (TEU).
8. **The European Union (Withdrawal) Act 2018 received Royal Assent on 26 June 2018.** Section 16 of the Act relates to arrangements for environmental principles and governance following the UK's withdrawal from the EU. This requires that, six months after Royal Assent of that Act, the Secretary of State must publish draft legislation which sets out a list of environmental principles. The draft legislation must place a duty on the Secretary of State to publish a policy statement in relation to the application and interpretation of those principles which, when circumstances to be set out under the legislation apply, Ministers of the Crown must have regard to in making and developing policy.
9. Section 16 of the Act also requires that the draft legislation must define environmental law and 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 that environmental law.
10. The UK-EU Withdrawal Agreement that was endorsed by EU leaders on 25 November 2018 sets out the agreement between the Government and the European Union for the withdrawal of the UK from the EU. This is subject to agreement by the UK Parliament. A Political Declaration setting out the framework for the future economic partnership between the UK and the EU was also published.
11. As part of the Northern Ireland protocol (sometimes referred to as 'the backstop') in the Agreement, the UK and EU have agreed commitments to maintain fair and open competition within the single customs territory, in the unlikely event that the protocol need ever come into force. These include obligations related to the environment, including a non-regression clause.

These Explanatory Notes relate to the draft Environment (Principles and Governance) Bill as published in Draft on 19 December 2018 (Bill Cm9751)

The text sets out that, if the protocol is required, the UK and EU will not reduce their respective levels of environmental protection below those in place at the end of the implementation period.

12. The intended approach of the draft Environment Bill is in line with the provisions of the Withdrawal Agreement concerning environmental principles and the domestic monitoring, reporting, oversight and enforcement of environmental obligations by an independent body or bodies. 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. We will consider these provisions of the Withdrawal Agreement ahead of publishing the final Bill.

EU Environmental Governance

13. 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.²
14. The European Commission carries out its monitoring using information from UK submissions and reports, as well as from the Commission's own assessments and those of other EU bodies. This oversight by the Commission allows the Commission to assess overall progress in the implementation of EU environmental policy and law, and to identify potential areas for improvement.
15. Where necessary, the Commission also brings enforcement cases in the Court of Justice of the European Union (CJEU). The CJEU provides rulings on the interpretation of EU environmental law to ensure it is applied correctly by Member States.
16. The European Environment Agency (EEA), a statutory body of the EU, is tasked with providing sound, independent information on the environment to assist the European Commission in its governance. The EEA operates as a major information source for those involved in developing, adopting, implementing and evaluating environmental policy, as well as for the general public. It conducts assessments and publishes findings on a wide range of topics, including progress on the EU's environmental policy framework and objectives as set out in Environment Action Programmes.³
17. Environment Action Programmes are multiannual strategies which set environmental priorities for EU institutions and Member States. The Programmes are designed to take a long-term approach to policy development and new legislative proposals on the environment, providing

² The EU Treaties include the Treaty on European Union: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12016M/TXT>

and the Treaty on the Functioning of the European Union: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12016E/TXT>

³ Environment Action Programme to 2020: <http://ec.europa.eu/environment/action-programme/>

certainty to citizens and businesses.

Environmental Principles

18. Environmental principles are a set of principles which guide environmental policy-making and legislation, as well as the implementation of policy by administrators and its interpretation by courts. These principles encourage policymakers to consider an approach towards the environment which is likely to cause the least environmental harm. The UK currently has obligations to consider environmental principles through its membership of the EU as well as under individual international agreements.
19. Environmental principles are currently enshrined in EU law and act as a basis for all EU environmental policy-making. Articles 11 and 191 to 193 of the Treaty on the Functioning of the EU (TFEU)⁴ set a legal basis for the principles of precaution, prevention, rectification at source, and polluter pays in EU law. These principles are set out as general objectives for the EU, rather than having a direct, binding effect on the delivery of EU measures by the Member States. The EU is required to take account of, and ensure that its environment policy incorporates consideration of, these principles throughout the policy and law-making process. Environmental principles are also reflected in EU legislation. For example, the precautionary principle is included in the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation (1907/2006) and the Invasive Alien Species Regulation (1143/2014).
20. At an international level, environmental principles are reflected in international instruments such as Agenda 21,⁵ a non-binding action plan of the United Nations with regard to sustainable development, and the Convention on Biological Diversity.⁶ Environmental principles are applied in international environmental agreements to which the UK is a party, such as the OSPAR Convention on the protection of the marine environment⁷ and the Gothenburg Protocol on air pollution.⁸
21. Environmental principles are central to UK government policy, and domestic legislation already enshrines some environmental principles. For example, the Natural Environment and Rural Communities Act 2006 includes requirements on how Natural England should contribute to sustainable development.
22. However, environmental principles are not currently set down in one place at a national level, nor is their role in policy-making or delivery defined. This means that when we leave the EU, we

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12016E/TXT>

⁵ <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>

⁶ <https://www.cbd.int/convention/text/>

⁷ <https://www.ospar.org/convention/text>

⁸ http://www.unece.org/env/lrtap/multi_h1.html

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will no longer be under a legal requirement to ensure these environmental principles guide policy-making. This may lead to potential confusion as well as a higher risk of reducing standards on environmental decision-making, owing to the removal of the foundational environmental principles.

23. The Secretary of State for the Environment, Food and Rural Affairs therefore announced on 12 November 2017 our intention to create a new, comprehensive policy statement setting out the environmental principles which will guide our environmental policy-making and legislation, in a similar way to existing EU principles. The draft Bill will embed the environmental principles into domestic legislation and place a legal requirement on central Government departments to ‘have regard’ to the policy statement.

Environmental Improvement Plans

24. The concept of a 25 Year Environment Plan was first proposed by the Natural Capital Committee, an independent advisory committee that reports to the Economic Advisory Committee of Cabinet. The Conservative Party General Election Manifestos of 2015 and 2017 then included commitments to a plan, as the primary mechanism for delivering a wider commitment to be the first generation to leave the environment in a better state than we inherited it.
25. The [25 Year Environment Plan](#)⁹ was published on 11 January 2018, setting out a framework of ten strategic goals and pressures to support the achievement of an improved environment by 2043. It also contains over 230 actions that Government will take to help deliver progress towards these goals.
26. An Environmental Audit Committee report on the Government’s 25 Year Plan for the Environment (“the Plan”) was published on 18 July 2018. This report recommended that the Plan be put on a statutory basis. The draft Environment (Principles and Governance) Bill seeks to do this by introducing a duty on Government to prepare a plan for improving the natural environment, the first of which will be the current 25 Year Environment Plan.

Policy consultation

27. On 10 May 2018, the Secretary of State for Environment, Food and Rural Affairs launched a consultation entitled ‘Environmental Principles and Governance after EU Exit’ which sought views on environmental principles and accountability for the environment after EU Exit.¹⁰ This consultation was primarily driven by the changes in environmental governance and accountability that will occur once the UK leaves the EU. The Government’s proposals were subject to a twelve week public consultation, which ran from 10 May 2018 to 2 August 2018.
28. In total, over 175,000 responses to the consultation were received and analysed. The evidence

⁹ <https://www.gov.uk/government/publications/25-year-environment-plan>

¹⁰ <https://consult.defra.gov.uk/eu/environmental-principles-and-governance/>

received through the consultation, as well as evidence received through other sources and engagement with stakeholders, has informed policymaking on the draft Environment (Principles and Governance) Bill. This draft Bill will now constitute part of a broader Environment Bill, as announced by the Prime Minister on 18 July 2018, which will also include other measures on environmental protection and improvement.

Aim of the Bill

29. Leaving the EU means that UK environmental law and policy will no longer be subject to the oversight of the European Commission and other EU mechanisms and institutions, as recognised in section 16(1)(d) of the European Union (Withdrawal) Act 2018. The new Environment Bill will provide for domestic adoption of some EU environmental governance functions.

Environmental Principles

30. The European Union (Withdrawal) Act [2018](#) converts EU legislation into UK law on exit day. Where environmental principles are contained in specific pieces of EU legislation, these will therefore be converted into domestic law under the European Union (Withdrawal) Act [2018](#). Any question as to the interpretation of the retained EU law will be determined by UK courts in accordance with relevant pre-exit CJEU case law and general principles, subject to other exceptions and restrictions within that Act. For example, CJEU case law on chemicals, waste and habitats includes judgments on the application of the precautionary principle to those areas. These will be preserved by the European Union (Withdrawal) Act 2018.
31. The draft Bill will set out the environmental principles which will guide environmental decision and policy-making in domestic legislation. This will mean that after we leave the EU, Ministers of the Crown will consider the environmental principles in developing policy by having regard to a corresponding environmental principles policy statement published by the Secretary of State.

Environmental Governance

32. The draft Bill provides for the creation of a new body, the Office for Environmental Protection (OEP), to perform environmental enforcement, advisory and scrutiny functions. The OEP will provide a domestic replacement for the scrutiny function of the European Commission and the European Environment Agency, in that it will oversee the implementation of environmental law and the Government's Environmental Improvement Plan (EIP) through monitoring and provision of independent information to the Government.
33. The OEP will generally assess progress in the implementation of the EIP and environmental law, and identify how the strategic direction could be improved. Alongside this, national bodies such as the Environment Agency and Natural England will also monitor progress and advise on possible improvements in specific areas.
34. The draft Bill will require the OEP to provide independent, annual assessments of progress in improving the natural environment in accordance with the current EIP. In doing this, it must consider the Government's own annual report and any other information it considers relevant. As part of its report the OEP may include consideration of how progress could be improved.
35. The OEP will provide expertise which otherwise may not be available to Parliament in order to provide independent progress assessments.

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36. The OEP will also manage and investigate complaints about alleged contraventions of environmental law by public authorities. The draft Bill sets out who may make such complaints, what form they must take, and the time limits for making complaints. The OEP will also be able to take enforcement action where public authorities are suspected of being involved in a serious breach of environmental law.

Environmental Improvement Plans

37. The duties included in the draft Bill provide a statutory basis for the existing 25 Year Environment Plan and formalise commitments made in this Plan. These duties are intended to work together for the purpose of seeking to improve the natural environment. Specifically, the draft Bill requires that the Government prepares a strategic environmental improvement plan (currently the 25 Year Environment Plan) which is reviewed and updated at least every five years; that the Government publishes a statement on how the state of the environment will be monitored; and that progress towards environmental improvement is reported to Parliament annually.
38. Progress in implementing the environmental improvement plan and in seeking environmental improvement will be scrutinised by the OEP, which will produce annual reports to Parliament.

Legal background

39. A large proportion of UK environmental law derives from the EU and its implementation is currently monitored and enforced by EU mechanisms and institutions, mainly the European Commission. This draft Bill will provide for a new, comprehensive policy statement setting out the environmental principles which will guide environmental policy-making and legislation, in a similar way to existing EU principles. The draft Bill will also provide for a domestic replacement for the scrutiny and enforcement function of the European Commission and the European Environment Agency.

Territorial extent and application

40. Clause 34 sets out the territorial extent of the clauses in the draft Bill. The extent of a Bill is the legal jurisdiction where it forms part of the law; application refers to where it has practical effect. Sections 5-10 and 14 of the draft Bill extend to England and Wales. The remainder of the Bill extends to England and Wales, Scotland and Northern Ireland.
41. The draft Bill will apply to England. Clauses 1 to 4 will apply to Wales, Scotland and Northern Ireland in respect of the functions of UK Ministers only. Clauses 5 to 10 and 14 will apply to England only. The remainder of the Bill will apply to Wales, Scotland and Northern Ireland in respect of environmental matters that are not devolved.
42. The new body could, subject to the ongoing framework discussions with the devolved administrations, exercise functions more widely across the UK.
43. There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned.
44. The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, and no legislative consent motion is being sought in relation to any provisions of the Bill. If there are amendments relating to the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.
45. See the table in Annex A for a summary of the position regarding territorial extent and application in the UK. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Clause 1: Policy statement on environmental principles

46. Clause 1 requires the Secretary of State to publish a policy statement on the environmental principles. This statement explains the meaning of the environmental principles and how these principles should be used.
47. Subsection (2) provides specific information on what the environmental principles policy statement must include. The policy statement will provide guidance on the interpretation and proportional application of the environmental principles in relation to the development of policies by Ministers of the Crown. The statement will set out how ministerial government departments should interpret and proportionally apply specific environmental principles when developing and implementing new policies, as well as updating existing policies. Proportional application could mean ensuring the principles are weighed up against other factors and that the action taken on the principles is comparable to the potential benefit or risk.
48. Subsection (3) sets out that the Secretary of State may explain in the statement how other considerations should be taken into account by Ministers of the Crown, when they are interpreting and applying environmental principles. For example, it may be necessary in a particular policy area to weigh up a specific environmental principle alongside other considerations such as social benefits.
49. Subsection (4) offers flexibility in developing the policy statement, allowing it to be drafted so as to (a) consider the principles either as a group or individually, which could mean taking a different approach to different principles; or (b) take the same approach to all policies or take a different approach to different policies. It will be for the Secretary of State to decide what approach the policy statement should take.
50. Subsection (5) clarifies that the policy statement need not apply to all policies. The statement need not apply to policies where environmental principles are not relevant or where applying the principle would have no significant environmental benefit. Examples of policies with relevance to the environmental principles may include primary or secondary environmental legislation or government decisions where there is an effect on the environment, such as waste policy, large transport, or housing decisions. Examples of policies without relevance to the environmental principles may include those with no notable effect on the environment, such as provision of welfare or a media policy decision.
51. Subsection (6) sets out which policies are excluded from the policy statement. This means that for any decisions in these policy areas, Ministers of the Crown should not apply the environmental principles policy statement. For example, policies that would be excluded include:
 - Armed Forces policies relating to the Royal Navy, the Royal Marines, the Army, and the Royal Air Force;
 - National security policies such as the 'Strategy and Strategic Defence and Security Review' (subsection 6 (a));
 - Legal provisions concerning taxation. The term 'taxation' in this context refers to

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taxes as legally defined, and therefore does not include other regulatory schemes which involve fees and charges levied to cover the cost of the regulatory regime itself, such as the plastic bag charge;

- Policies relating to public expenditure, such as departmental budgets (subsection 6 (b)).
52. Subsection 6(c) provides exclusions for any policies as set out in regulations which are made by the Secretary of State. These extra exclusions may be necessary to provide the Secretary of State with flexibility to ensure that inappropriate policy areas are not covered by environmental principles. For example, it may be inappropriate to consider the environmental principles in an area of policy that changes or is novel.

Clause 2: Meaning of “environmental principles”

53. Clause 2 defines a set of environmental principles. Environmental principles are a specific set of principles that have been used to guide and shape modern environmental law. They are reflected in international instruments and are also set out in the EU Treaties as the basis for EU environmental law.
54. The clause sets out a core list of environmental principles for the Secretary of State to develop into a policy statement on the environment. These environmental principles should serve as a foundation for the development of environmental policy and law.
55. Environmental principles are principles which will act as a foundation for environmental decision-making. There is no single agreed definition set of environmental principles, so the policy statement produced by the Secretary of State under clause 1 will include a fuller definition of each of the environmental principles included. These principles are drawn from a number of sources, including the Rio Convention (1992)¹¹ and certain mechanisms from the Aarhus Convention, a United Nations Economic Commission for Europe (UNECE) Treaty.
56. For the purpose of the draft Bill, the meaning of the individual environmental principles, as initially set out in the ‘Environmental Principles and Governance after EU Exit’ consultation document, is as follows:
- Precautionary principle: Where there are threats of serious irreversible environmental damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.
 - Prevention principle: Preventive action should be taken to avert environmental

¹¹ <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

damage.

- Rectification at source principle: Environmental damage should as a priority be rectified by targeting its original cause and taking preventive action at source.
- Polluter pays principle: The costs of pollution control and remediation should be borne by those who cause pollution rather than the community at large.
- Sustainable Development: Development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs.
- Integration principle: Environmental protection requirements must be integrated into the definition and implementation of policies and activities.
- Public Access to environmental information: Individuals should have appropriate access to information concerning the environment that is held by public authorities. This can include information on the state of the environment, but also on policies or measures taken or on the state of human health and safety, where this can be affected by the state of the environment.
- Public participation in environmental decision-making: Individuals should be able to participate in environmental decision-making processes.
- Access to justice: Individuals should be able to effectively access judicial and administrative proceedings, including providing redress and remedy for citizens.

57. These principles cannot be changed without primary legislation.

Clause 3: Policy statement on environmental principles: process

58. Clause 3 sets out that as part of the development of the environmental principles policy statement, the Secretary of State must publish a draft and consult appropriate parties. The Secretary of State must follow a specific process each time the policy statement is updated. Parties will be consulted as appropriate to provide the Secretary of State with views on the potential impact of the updated policy statement.
59. Subsection (2) requires that the Secretary of State must consult on the draft policy statement with those who are considered to be relevant.
60. Subsection (3) requires that a draft must be produced and laid before Parliament for their consideration. This must take place before the policy statement is finalised.
61. Subsection (4) sets out provisions for cases where Parliament chooses to respond to the draft policy statement, either by passing a resolution in respect of the draft policy statement, or recommending changes to the statement, within the period of 21 sitting days after the draft statement has been laid. The Secretary of State is required to lay a response to any resolution passed or recommendations made by Parliament.

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62. Subsection (5) requires the final published environmental policy statement to be presented to Parliament and published. The Secretary of State must not publish the final statement before laying a response, if required under subsection (4), or otherwise, before a period of 21 sitting days has passed since the draft statement is laid. This is intended to allow Parliament sufficient time to scrutinise the draft policy statement.
63. Subsection (6) clarifies that the policy statement may be revised at any time, but that the above requirements in this clause still apply and the same process must therefore be followed by the Secretary of State in order to revise the statement.
64. Subsection (7) clarifies the meaning of “sitting day” for the purposes of this clause.

Clause 4: Policy statement on environmental principles: effect

65. Subsection (1) clarifies that Ministers must have regard to the environmental principles policy statement when making, developing or revising policies dealt with by the statement. This means that in the development of policy, policy-makers must consider the environmental principles policy statement and follow the approach which is set out in the statement.
66. Subsection (2) sets out that the policy statement does not require Ministers to take or refrain from taking a particular course of action if this course of action (or not taking it) has no significant environmental benefit or the environmental benefit is minimal when compared to other factors. For example, there is no need for Ministers to consider the environmental principles policy statement in the development of pensions legislation, where there is not likely to be any significant environmental impact.

Clause 5: Improving the natural environment

67. Clause 5 explains that the subsequent clauses 6 to 10 are for the purpose of seeking to improve the natural environment. “Natural environment” is defined at clause 30.

Clause 6: Environmental improvement plans

68. Clause 6 introduces a duty on the Secretary of State to prepare a plan for improving the natural environment. It sets requirements for what the plan must do and must contain. The plan required by this duty is modelled on the Government’s 25 Year Environment Plan, which was published on 11 January 2018. This 25 Year Environment Plan will become the first Environmental Improvement Plan.
69. Subsections (1) and (2) introduce the requirement to have a plan for improving the natural environment and specifies that it must apply for a defined period of time. The Government’s current 25 Year Environment Plan is based on the concept of natural capital. Natural capital refers to the elements of nature that produce value to people, such as the stock of forests, water, land, minerals and oceans. The benefits of natural capital include the provision of clean air, wildlife, energy, wood, food, recreation and protection from hazards. The 25 Year Environment Plan applies from 2018 to 2043 and seeks to achieve an overall improvement in the environment during that period.
70. Subsection (3) specifies that the period of each environmental improvement plan must be at least 15 years. It is intended that environmental improvement plans should be long-term as some

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aspects of the natural environment change slowly and require continuity in how they are managed. The current 25 Year Environment Plan covers a period of 25 years but a future government may prefer to set a plan for a different period. Clause 9 introduces a duty on the Government to review and revise environmental improvement plans at least every 5 years. A period of 15 years allows for an environmental improvement plan to be introduced and reviewed/revised twice before its completion. This will allow its effectiveness to be assessed and meaningful corrective action to be taken if necessary.

71. Subsection (4) specifies that the environmental improvement plan should set out the steps the Government will take to improve the natural environment during the lifetime of the plan.
72. Subsection (5) allows the Secretary of State to include measures within environmental improvement plans to improve people's enjoyment of the natural environment. The natural capital approach, which underpins the existing 25 Year Environment Plan, seeks to improve the environmental decisions we all take by emphasising the value of the benefits the environment provides to people. However, the personal, cultural or emotional benefits that people get from the environment are subjective. These benefits can be increased by improving people's experience of the environment, which may in turn be achieved through better environmental information or education, as well as by improving the environment itself. If, as in the current 25 Year Environment Plan, future environmental improvement plans include measures for increasing people's enjoyment of the natural environment, these elements would also be subject to scrutiny from the OEP.
73. This clause and clauses 5, 7-10 and 14 extend to England and Wales (clause 34). Subsection (6) provides that functions in relation to environmental improvement plans are not exercisable in relation to the natural environment in Wales. The policy areas covered by environmental improvement plans therefore cover the natural environment in England as well as in the offshore area (to the extent that Her Majesty's Government has functions) and to Her Majesty's Government's international policy (including to the Overseas Territories where Her Majesty's Government has functions).
74. Subsection (7) explicitly states that the current 25 Year Environment Plan is to be treated as an environmental improvement plan and subsection (8) states that it will be referred to as the first environmental improvement plan and that references to the current plan refer to the plan that is in effect at the time.

Clause 7: Environmental monitoring

75. Clause 7 establishes a duty on the Secretary of State to obtain and publish metrics for the purpose of seeking environmental improvement. The metrics will measure outcomes achieved through the implementation of the measures set out in the plan and inform updates to the plan. Given clause 6(6), this clause applies only in relation to England.
76. Subsection (1) establishes a duty on the Secretary of State to ensure that appropriate monitoring data is obtained to assess whether the natural environment is improving. This may be data that is already collected for other purposes or data that is specifically collected to monitor the improvement in the environment.
77. Subsection (2) requires the Secretary of State to specify in a statement what kinds of data will be

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obtained and to lay this before Parliament and publish it. This statement will provide the details of how the environment is to be monitored to determine whether there has been an improvement in the environment in accordance with the environmental improvement plan.

78. Subsection (3) specifies that the first statement setting out how the data for monitoring will be obtained and how improvement in the environment will be assessed must be laid before Parliament within four months of this clause coming into force.
79. Subsection (4) allows for the Secretary of State to revise the statement on monitoring data at any time. This may be necessary if it becomes clear that additional data is needed or that current measures do not adequately assess environmental improvement. Such a revised statement must also be laid before Parliament and published.

Clause 8: Annual reports on Environmental Improvement Plans

80. Clause 8 establishes a duty on the Secretary of State to produce annual reports on the implementation of the environmental improvement plan and on whether the environment is improving. It explains when and how these reports should be published. Given clause 6(6), this clause applies only in relation to England.
81. Subsection (1) requires the Secretary of State prepare annual reports on the implementation of environmental improvement plans.
82. Subsection (2) requires that these reports must describe what has been done to implement the plan and consider whether the natural environment is improving during the period to which the report relates. Consideration of whether the environment has improved must have regard to information gathered under clause 7.
83. Subsection (3) states that the first annual report may cover any 12 month period that includes the day on which this section comes into force. Government has already committed to producing annual reports on the implementation of the 25 Year Environment Plan. At least one annual report is expected to be published before doing so becomes a statutory duty. The intention of this subsection is to allow the timing of the first statutory report to be aligned with the preceding non-statutory reports.
84. Subsection (4) states that following the replacement of the current environmental improvement plan, the first annual report should relate to the first 12 months of that plan.
85. Subsection (5) states that all other annual reports should relate to the 12 month period immediately following the previous reporting period. This ensures that there is a continuous timeline of annual reports relating to consecutive 12 month periods for the duration of each plan.
86. Subsection (6) requires the Secretary of State to lay each annual report before Parliament as soon as is practicable after the 12 month period to which it relates.
87. Subsection (7) requires the Secretary of State to publish annual reports which are laid before Parliament under subsection (6).

Clause 9: Reviewing and revising environmental improvement plans

88. Clause 9 provides for the review and revision of environmental improvement plans. It establishes a duty on the Secretary of State and timeline to complete a review and if appropriate revise the

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plan. It also specifies what must be considered in undertaking this review. Given clause 6(6), this clause applies only in relation to England.

89. Subsection (1) establishes a duty on the Secretary of State to review the plan and if the Secretary of State considers it appropriate then to produce a revised plan. It is expected that revisions will be required when each plan is reviewed, but this clause does allow the Secretary of State to decide that no revision is appropriate following a review of the plan.
90. Subsection (2) specifies that a revised plan will cover the remaining time period of the existing plan. The current environment improvement plan runs until 2043, any revisions to this plan will also be required to cover the period up to 2043. When a plan for a future time period is produced in line with clause 10 the time period will be specified in that plan and any revisions to it must retain the same end date.
91. Subsection (3) specifies that the first environmental improvement plan must be reviewed by the end of January 2023. This is just over 5 years from its publication. This is considered to be sufficient time for some progress to be made against the plan and the monitoring of the environment to assess improvement established and for early results to be obtained. This time also allows for weaknesses and gaps in the plan and policy changes to be identified which may require a revision to the plan.
92. Subsection (4) applies to future environmental improvement plans and ensures that they too are reviewed within 5 years of being published.
93. Subsection (5) provides that following the first review of an environmental improvement plan further reviews must be undertaken within every 5 year period for the duration of the plan.
94. Subsection (6) specifies what the Secretary of State must consider when reviewing an environmental improvement plan. These are: steps taken to deliver the plan, improvements in the environment and what else needs to be done to improve the environment in the time period of that plan.
95. The Secretary of State must have regard to the data obtained under clause 7 and reports from the Office for Environmental Protection when considering whether the environment has improved and is at liberty to consider other relevant information, reports or commentary in completing their review.
96. Subsection (7) requires that when the Secretary of State has completed a review and determined it appropriate to revise the plan, then this revised plan must be laid before Parliament along with a statement explaining what revisions have been made and why. This statement may be part of the same document as the revised plan or a separate document.
97. Subsection (8) requires that if the Secretary of State completes a review but does not consider it appropriate to revise the plan then the Secretary of State must lay before Parliament a statement to this effect and the reasons for this. Whilst the Secretary of State is required to complete a review within the 5 year timeline there is no duty to revise the plan if a revision is not appropriate. This allows for a revision to the plan to be delayed if the Secretary of State considers it appropriate, but such a decision must be justified to Parliament.
98. Subsection (9) requires the Secretary of State to publish any documents laid before Parliament

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following a review of an environmental improvement plan. These will be the revised plan and reasoning as in subsection (7) or the statement as to why no revision is considered appropriate as in subsection (8).

99. Subsection (10) specifies that a review is to be considered completed when documents have both been laid before Parliament and published. This is the completion date for the purpose of meeting the requirement to complete a review within 5 years of a plan being published or previous review. It also becomes the start date for the next 5 year time period for completing the subsequent review.

100. Subsection (11) clarifies that when the environmental improvement plan is revised in accordance with this clause then references to an environmental improvement plan in this Bill refer to the now revised environmental improvement plan.

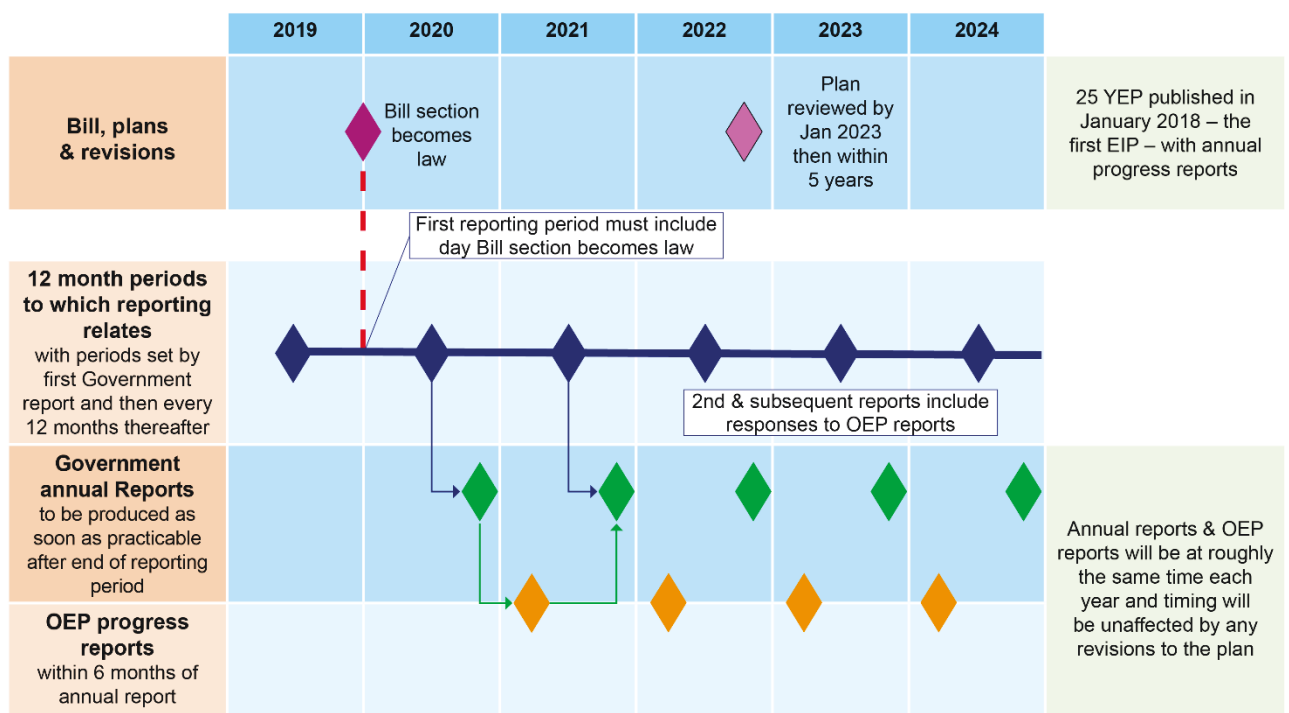


FIGURE 1 INDICATIVE TIMELINE FOR ANNUAL REPORTS AND REVIEWS OF ENVIRONMENTAL IMPROVEMENT PLANS (EIP)

Clause 10: Renewing environmental improvement plans

101. Clause 10 provides for the Secretary of State to replace the environmental improvement plan with a renewed version. Given clause 6(6), this clause applies only in relation to England.

102. Subsection (1) requires the Secretary of State to publish a new environmental improvement plan for a new period. This must be published before the point at which the current plan comes to an end. Subsection (2) requires the new plan to start no later than the end of a previous plan

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ensuring there is no gap between plans. These clauses allow for plans to be completely replaced, subject to the requirements of subsection (3). It is anticipated that future governments may choose to renew plans before they reach the end of their lifetime to enable them to include longer term actions.

103. Subsection (3) sets out what the Secretary of State must consider before the current environmental improvement plan can be renewed. Specifically, this includes:

- a) what has been done to implement the current plan;
- b) whether the environment or aspects of it have improved during the current plan;
- c) what further or different actions might be needed in the new plan.

104. These conditions are intended to make sure that renewed plans build on preceding plans, and that changes are evidence-based and serve the purpose of seeking to improve the natural environment. For subsection (3)(b) the Secretary of State must have regard to environmental monitoring data and reports made by the OEP. Clause 7 sets out the Secretary of State's obligation to obtain this data.

105. Subsection (4) requires the Secretary of State to lay before Parliament all environmental improvement plans other than the first environmental improvement plan (which will be scrutinised during passage of this Bill).

106. Subsection (5) specifies when the new plan begins. At its earliest this will be when the plan has been laid before Parliament and published but it can be later if the period to which the plan relates begins after this date. Subsection (2) requires that the new plan begins no later than the end of the previous plan.

Clause 11: The Office for Environmental Protection

107. Clause 11 provides for the establishment of a new body called the Office for Environmental Protection (OEP). More detail about this independent, Non-Departmental Public Body is given in the Schedule.

Clause 12: Exercise of the OEP's functions

108. Clause 12 sets out the duties and operational framework for the OEP, stating how it will carry out its functions and establishing its independence from government and other bodies. It intends to ensure the OEP takes a strategic and impartial approach to the delivery of its functions, and requires the OEP to set out how it will deliver this in a strategy that recognises where extensive governance already exists, for example in the planning system.

109. Subsection (1) requires that the OEP must have regard to the need to act in an objective, impartial, proportionate and transparent manner.

110. Under subsection (1), paragraphs (a) and (b) are intended to ensure the OEP is capable of holding government to account and that it is not inappropriately influenced. Paragraphs (c) and (d) provide that the OEP must have regard to the need to act proportionately and transparently; providing accountability in the body's exercise of its statutory powers and functions. Throughout this subsection the term "have regard to" is used because it is recognised that the OEP may need to use its judgement to determine when it is appropriate to apply these objectives. For example,

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although normally the OEP would publish a statement when it takes enforcement action in the interests of transparency, there may be cases where it is inappropriate to do so (see clause 29).

111. Under subsection (2), the OEP is required to prepare a strategy setting out its operational framework; the process for delivering this strategy is set out in clause 13. Subsection (3)(a) states that this strategy must describe how the OEP will have regard to the need to act in accordance with the objectives set out earlier in this clause. Paragraph (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. This intends to ensure that the OEP does not seek to replicate the advising role of the Committee on Climate Change under section 57 of the Climate Change Act 2008, or the reporting role of the Committee on Climate Change under section 59 of the Climate Change Act 2008.

112. Paragraph (c) of subsection (3) requires the OEP to include in its strategy a complaints and enforcement policy. Paragraph (c)(i) provides that this policy must set out how the OEP intends to exercise these functions in a way which respects the integrity of other relevant statutory regimes (including appeals processes), meaning where a decision is itself subject to the possibility of intervention by, or appeal to, another body. Decision-making functions, any complaints, investigation, enforcement or appeals functions, and the functions of a court in respect of legal challenges would be among the matters connected with such statutory regimes included by this provision. For example, some decisions made by the Environment Agency, or by a Planning Authority, may be subject to call-in by, or appeal to, the Secretary of State or the Planning Inspectorate. In normal circumstances it is expected that the OEP would allow the usual regulatory processes to take their course, where they could affect a matter concerning a possible failure to comply with environmental law, before taking enforcement action. This provision therefore requires that the OEP's strategy should set out how it intends to operate with a view to effective alignment, and avoidance of conflict or duplication, with such procedures, in cases where both they and the OEP's own procedures may be relevant. Paragraph (c)(ii) also requires that the OEP's complaints and enforcement policy set out how it will prioritise cases across its complaints, investigation and enforcement functions.

113. Subsection (4) sets out certain types of case which the OEP should seek to prioritise when developing and reviewing its complaints and enforcement policy. In particular, the OEP must prioritise those cases that it considers have, or may have national implications. The definition of national implications will be for the OEP to determine, but this provision is intended to steer the OEP to act in cases with broader, or more widespread significance, rather than those of primarily local concern. For example, an individual local planning or environmental permitting decision would not normally have national implications, whereas a matter with impacts or consequences which go beyond specific local areas or regions could have.

114. Other types of cases which the OEP must have regard to the need to prioritise are set out under paragraphs (a) – (c):

- a. those which concern persistent issues; that is, currently ongoing or recurring problems, or systemic failures,
- b. those concerning issues that are or could be of a significant nature in terms of their environmental impacts or effects on human health,

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- c. cases that deal with points of law of general public importance, such as addressing those which could otherwise set a potentially damaging precedent, or where there is potential for the OEP's intervention to clarify a point of widespread uncertainty.

Clause 13: The OEP's strategy: process

115. This clause sets out the process for publishing and revising the OEP's strategy which it must prepare under clause 12 to set out how it will carry out its functions.
116. Subsection (1) requires the strategy (and each subsequent revised strategy) to be laid before Parliament and published. A number of other public bodies have a similar statutory duty to prepare a strategic plan. This clause is intended to provide transparency and clarity to government, Parliament, and other stakeholders on the operational framework and strategic direction of the OEP, which it itself determines.
117. Subsection (2) allows the OEP to revise its strategy at any time. For example, it may need to reprioritise its work programme based on the types of complaint received during a particular period, or to address a newly emerging substantive issue that falls within its remit.
118. Subsection (3) ensures that the strategy remains a live document, and is kept up to date and relevant to the OEP's statutory remit, by requiring a review of the strategy at least once in every "review period". Subsection (4) specifies the review period as three years for the first strategy and for each subsequent strategy. The three-year review period is thought to be an appropriate amount of time to ensure that the production of the plan is not overly burdensome or distracting for the OEP in the delivery of its functions. It is also intended to avoid the strategy becoming out of date due to lack of review over a longer period, ensuring the strategy keeps up with the development of environmental law.
119. Subsection (5) provides that before producing, revising or reviewing the strategy, the OEP must consult relevant stakeholders as it considers appropriate. This could include Government, although ministers or other parties will not have powers to veto any part of the strategy.

Clause 14: Monitoring and reporting on environmental improvement plans

120. Clause 14 describes the monitoring and reporting functions of the OEP in relation to environmental improvement plans. Under this clause, the OEP will monitor and assess environmental statistics and reports on an ongoing basis to ensure that it has an effective knowledge base. This information will then be analysed alongside information published by the Government to assess progress made in improving the natural environment in accordance with the current environmental improvement plan.
121. Subsection (1) provides that the OEP must monitor progress in improving the natural environment in accordance with the government's environmental improvement plan (currently known as the 25 Year Environment Plan), as set out in clause 6.
122. Subsection (2) requires the OEP to produce a progress report for each annual reporting period. As set out in subsection (3), the reports will inform on progress made related to improving the natural environment that has occurred within the annual reporting period. This progress will be

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measured against the current environmental improvement plan. An annual reporting period is the period for which the Secretary of State must produce a report under clause 8, as set out in subsection (4).

123. When preparing a progress report, subsection (5) requires the new body to take into account the report made by the Secretary of State on progress against environmental objectives for that period, as set out in clause 8, as well as any other documents or information which the new body finds to be relevant. A progress report may also address how progress might be improved, in line with subsection (6).
124. Subsection (7) requires that the OEP's reports must be laid before Parliament and published. This reflects the OEP's independence from government when carrying out its reporting functions.
125. Subsection (8) specifies that the progress report must be laid before Parliament within 6 months of the relevant report under clause 8 being laid before Parliament.
126. Subsection (9) requires the Secretary of State to lay before Parliament and publish a response to a report issued by the OEP under this clause. The Secretary of State must lay a response within 12 months of the report being laid, in accordance with subsection (10), and may include this response in any subsequent report made by the Secretary of State under clause 8 and laid before Parliament on progress against the Government's objectives. This is intended to allow the Secretary of State to include the response to the OEP's progress report as part of the following year's annual report on the environmental improvement plan.

Clause 15: Monitoring and reporting on environmental law

127. Clause 15 describes how the OEP is to monitor and report on the implementation of environmental law. This function is similar to that of the Committee on Climate Change, which uses reports from academics and reputable organisations to monitor the implementation of the Climate Change Act 2008.
128. Subsection (1) requires the OEP to monitor the implementation of environmental law. Environmental law is defined in clause 31 of this Bill. An example of environmental law caught by this duty would be the Habitats Regulations.
129. Subsection (2) allows the body, as it deems appropriate, to produce a report on any matter concerned with the implementation of environmental law. This provision would, for example, allow the OEP to produce a report considering any failure to fully implement environmental legislation.
130. Subsection (3) requires that the OEP's reports must be laid before Parliament and published. This reflects the OEP's independence from government when carrying out its reporting functions.
131. Subsection (4) requires the Secretary of State to lay before Parliament and publish a response to a report issued by the OEP under this clause.
132. Subsection (5) provides that the Secretary of State must lay a response to a report produced under subsection (3) before Parliament within three months of that report being laid.

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Clause 16: Advising on changes to environmental law etc

133. Clause 16 sets out the circumstances in which the OEP is to give advice to Ministers of the Crown, and how this advice must be published and may be laid before Parliament.

134. Subsections (1), (2) and (4) enable the Minister to require the OEP to provide written advice on proposed changes to environmental law, or on any other matter relating to the natural environment. The natural environment is defined in this draft Bill in clause 30. For example, the OEP could be asked by the Government to give recommendations on proposals to make amendments to the Natural Environment and Rural Communities Act 2006, or on the implementation of aspects of the environmental improvement plan (currently, the 25 Year Environment Plan). Matters which the OEP must take into account in providing that advice may be specified by the Minister, as per subsection (2).

135. Subsections (3) and (4) entitle the OEP to give written advice to a Minister concerning any changes to environmental law a Minister proposes to make. Subsection (5) requires the OEP to publish its advice, along with any requirement from a Minister to provide such advice and any matters specified by the Minister which the OEP was to take into account.

136. Subsection (6) provides that the relevant Minister may, but is not required to, lay the advice and any response before Parliament.

Clause 17: Failure of public authorities to comply with environmental law

137. This clause sets out definitions for terms which are referred to throughout the clauses of the Bill that deal with complaints, investigations and enforcement. Subsection (1) states that clauses 18 to 29 provide for the functions of the OEP relating to failures by public authorities to comply with environmental law.

138. Failing to comply with environmental law is defined in subsection (2) as a situation where a public authority is found to have either:

- a. Not taken proper lawful account of environmental law when exercising its functions. For example, as set out in clause 4, a Minister of the Crown must have regard to the policy statement on environmental principles in making, developing and revising policies. Failure to have regard to the policy statement where required could therefore be viewed as a failure to take account of environmental law in this context; or
- b. Unlawfully exercised or failed to exercise functions it may have under environmental law. For example, various authorities are charged with establishing and implementing permitting regimes for different activities that can affect the environment. Failing to meet such requirements, or implementing them in a deficient way (for instance, by omitting certain prescribed activities or applying standards that are less rigorous than the law demands), could also constitute a failure to comply with environmental law.

139. No restrictions regarding the date of a failing are included in the definition in subsection (2). This

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means that, in the event the UK leaves the jurisdiction of the EU institutions before the OEP is fully established (for instance in a ‘no deal’ scenario), it would still be able to take action against failings which occurred after the UK’s date of exit but before it was fully established.

140. In subsection (3), a ‘public authority’ is defined as a person carrying out a function of a public nature, such as a government department, non-departmental public body, or local authority. Subsection (3) also sets out the bodies which are excluded from this definition, including, for the purposes of this Bill, the OEP itself. This exclusion is to avoid the OEP having to consider whether to exercise its statutory complaint and enforcement powers in relation to a complaint made against itself (This does not mean, however, that complaints about the OEP’s conduct could not be made to the body itself, and considered outside of its statutory functions, or indeed to the parliamentary ombudsman, as provided for in Schedule 1, paragraph 18. Among the other excluded bodies are the devolved legislatures and devolved authorities, given that the remit of the OEP will be limited to England in respect of matters that are devolved, while acting UK-wide in respect of reserved matters. Within the context of subsection (3), a ‘devolved authority’ is defined as a person carrying out a devolved function. This means that bodies in Northern Ireland, Scotland and Wales responsible for implementing environmental law will not be covered by the remit of the OEP in respect of devolved matters. If, however, they were responsible for implementing environmental law in respect of any reserved matters, they would fall under the definition of ‘public authority’ and therefore be within the remit of the OEP in respect of those reserved matters.

Clause 18: Complaints

141. This clause provides that the OEP may receive complaints regarding alleged contraventions of environmental law by public authorities. It sets out who may make such complaints, what form they must take, and time limits within which they should be received. The contraventions and public authorities about which complaints may be considered by the OEP are set out in clause 17, while “environmental law” is defined in clause 31. Figure 1 illustrates the process by which the OEP’s management of complaints is expected to operate, as set out in this clause and the next one (clause 19 – Investigation of complaints).

142. Subsection (1) allows for any legal or natural person to make a complaint to the OEP if they believe that a public authority has failed to comply with environmental law. However, other public bodies are excluded from complaining to the OEP under subsection (4), as this would amount to one arm of government complaining about another.

143. Subsection (2) sets out that the OEP must publish a document which sets out the procedure by which complaints can be made, and subsection (3) provides that complaints must be submitted in accordance with the most recent version of that procedure. This is to allow the OEP to specify the means by which it will accept complaints. This could be, for example, in writing, by telephone or through an online complaints portal. Complaints that are not submitted in accordance with the procedure do not have to be considered by the OEP (see clause 20).

144. Subsection (5) requires that the complainant must have exhausted all internal complaints procedures of the allegedly offending body before the OEP may consider a case. A wide range of bodies including the Environment Agency, Natural England and the Planning Inspectorate, for

instance, operate complaints procedures which will apply to their functions concerned with the implementation of environmental law. This provision is intended to give the public authority in question the opportunity to consider and seek to resolve the matter through such procedures before it can be addressed by the OEP if necessary. For example, in the case of a complaint to be considered by the OEP about the Environment Agency's licensing decisions, the complainant should first have attempted to resolve the matter through the Agency's own complaints processes.

145. Subsection (6) sets out that, in order for the OEP to consider a complaint, it must have been submitted no later than one year after the last occurrence of the alleged breach of environmental law, or three months after the conclusion of any internal complaints procedures, whichever is later. This is intended to allow a reasonable time period for people to bring complaints, without this amounting to an open-ended ability to complain long after the event in question. However, subsection (7) provides that in exceptional circumstances the OEP may consider a complaint made outside of this time limit.

146. The provision in subsection (7) means that the OEP will not be precluded from investigating serious matters simply on the basis of a complaint being late. The OEP may wish to use this provision in a case where, for example, a public authority is required to publish certain information or consult the public in the course of or before making a decision. If this process happens in the normal way and a person is dissatisfied with the subsequent decision it would normally be appropriate to apply the time limit provided for in subsection (6). However, if it is alleged that the relevant information was not published, or consultation not undertaken as required, then parties who would otherwise have sought to contribute to the environmental decision being taken may have been unaware of it. If these parties were to become aware of the decision by other means and then wish to submit a complaint about it, in such a case it could be appropriate for the OEP to accept and investigate their complaint, even if more than a year had passed since the decision in question was taken. There may be other such examples where it would be appropriate for the OEP to exercise this discretion.

147. The time limits specified in subsection (6) set out the periods after which complaints will not normally be accepted by the OEP, but do not affect its ability to take enforcement action (which may be prompted by triggers other than a complaint) under clauses 22, 23 and 25.

148. It should be noted that no provision is made to grant the OEP the power to impose charges. As such, the complaints system will be free of charge to all complainants.

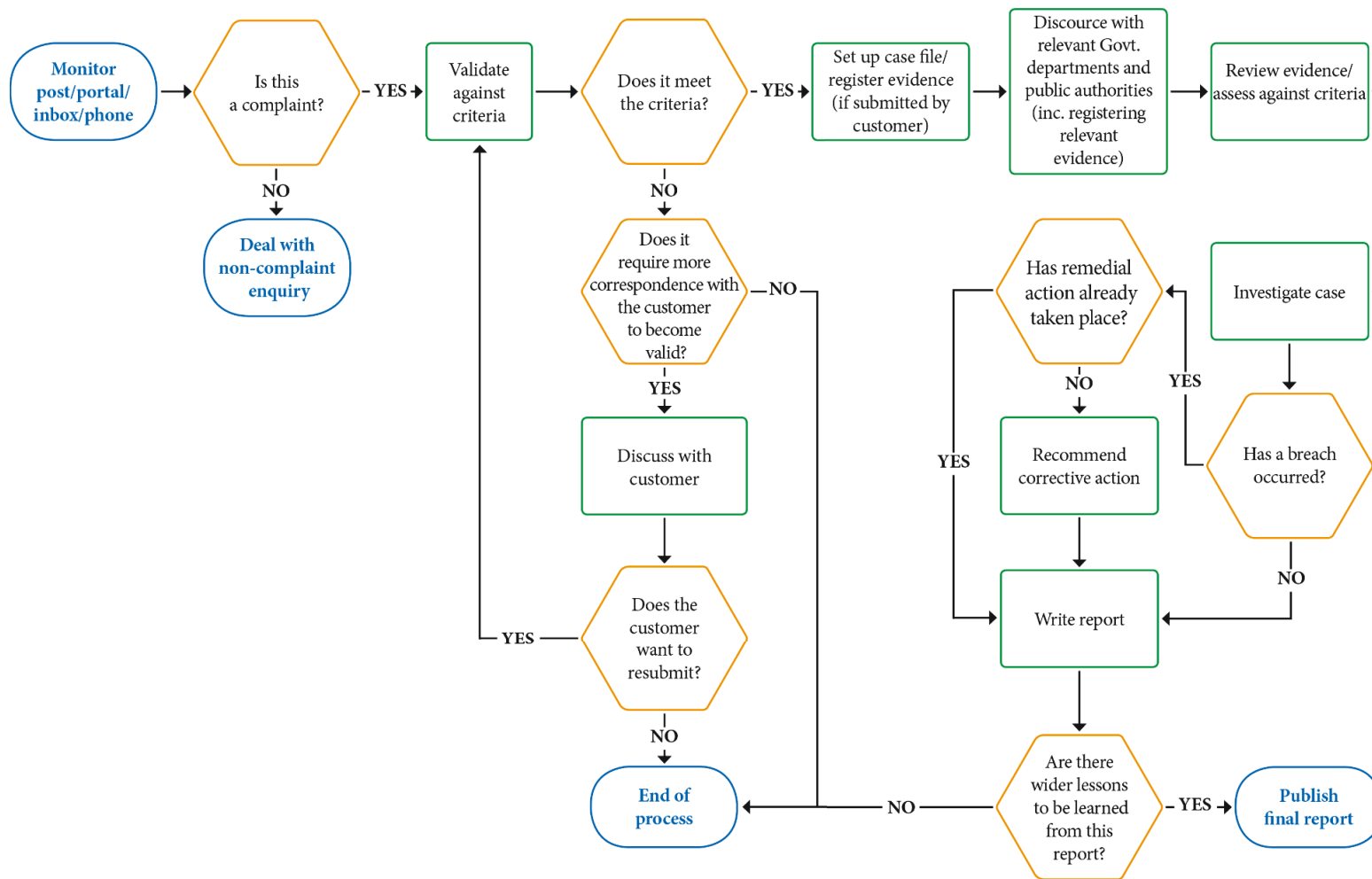


FIGURE 2 ILLUSTRATION OF COMPLAINTS PROCESS

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Clause 19: Investigation of complaints

149. This clause deals with the investigation of complaints.

150. Subsection (1) of this clause provides that the OEP may undertake an investigation on the basis of a complaint if it considers that the complaint indicates that a public authority has committed a serious failure to comply with environmental law. This provision allows the OEP to exercise discretion in the investigation of complaints, prioritising cases with the most serious potential environmental implications.

151. Subsection (2) sets out the purpose of the investigation, which should focus on establishing whether the alleged breach has taken place.

152. Under subsection (3) and (7), at the start of an investigation the OEP is required to notify the relevant public authority about whom the complaint has been submitted. Subsection (7) also states that, if that authority is not a Minister, the OEP must additionally notify the “relevant Minister”. Subsection (8) outlines that this should be the Minister of the Crown that the OEP considers appropriate having regard to the nature of the public authority and the nature of the failure (i.e. the Minister whose department is responsible for the policy area). For example, in the case of a complaint highlighting a potential infringement relating to environmental permitting, a Minister for the Department of Environment, Food and Rural Affairs should be informed. If a complaint related to Environmental Impact Assessment, a policy area owned by the Ministry for Housing, Communities and Local Government, a Minister from this department should be informed. The intention of these subsections is to ensure that central government departments remain informed of complaints related to their subject areas, and therefore able to contribute, even if the complaints are not directly about these departments or their Ministers. This definition also applies to the relevant subsections in clauses 24 and 28.

153. Similarly, when an investigation is concluded, requires that the OEP provide a report to the relevant public authority subsection (4), copied to the relevant Minister under subsection (7). The OEP may publish the report in full or in part under subsection (6).

154. The required contents of this report are set out in subsection (5). A report must include information on whether the OEP considers that a public authority has failed to comply with the law, the reasons it came to these conclusions, and any recommendations the OEP may have for the relevant Minister, the public authority in question and any other authorities.

155. The OEP has discretion over whether or not to publish the report in view of the possibility that some investigations may conclude there is nothing of value to put in the public domain, while other investigations may turn upon matters of significant confidentiality or sensitivity. The OEP will therefore be able to choose what to report in the public interest.

Clause 20: Duty to keep complainants informed

156. This clause deals with the procedure for the OEP to inform complainants about whether an investigation following a complaint will be carried out and the progress of the investigation. This clause requires that:

- a. The OEP must inform the complainant if the complaint will not be considered for

further investigation on the basis that it was not made in accordance with clause 18. For example, the complaint may not be about a valid matter or may not have been submitted in accordance with the specified procedure. This is covered in subsection (2)(a) of the clause.

- b. Where a complaint has been made in accordance with clause 18, the OEP must inform the complainant about whether or not an investigation into that complaint will be carried out – this is covered in subsections (2)(b) and (c)(i) of the clause. This reflects the intention, described in clause 19, that the OEP should be able to exercise discretion in choosing which complaints to investigate, prioritising cases with the most serious or strategically significant potential environmental implications.
- c. The complainant must also be notified when the investigation into a complaint has been concluded, as per subsection (2)(c)(ii).

Clause 21: Practical co-ordination of investigations

157. This clause deals with how the OEP should coordinate its activities with other bodies that have an investigative remit, such as the Local Government and Social Care Ombudsman and the Parliamentary and Health Service Ombudsman. The jurisdictions of the ombudsmen allow them to investigate alleged maladministration or service failure, including cases where an authority has failed to comply with the law, properly consider its statutory powers or duties, or adhere to statutory guidelines. As such, there may be occasions where a complaint could be relevant to both the OEP and another body. To avoid confusion in the management of such cases, and to ensure clarity for complainants, the bodies themselves, and other interested parties, this clause requires the OEP and these bodies to jointly prepare a memorandum of understanding regarding the coordination of investigations.

158. Subsection (1) requires that the OEP and the other bodies listed under this subsection prepare this memorandum. Subsection (2) sets out that the memorandum must contain details of how the OEP and the body in question will coordinate their work in the event that both decide to conduct an investigation into the same, or related, matters.

159. The bodies listed under subsection (1) are the Commission for Local Administration in England (otherwise known as the Local Government and Social Care Ombudsman), and the Parliamentary Commissioner for Administration (which together with the Health Service Commissioner for England comprises the Parliamentary and Health Service Ombudsman).

160. This approach does not remove the potential for duplication or overlap by ‘carving out’ areas from the remit of any of the relevant bodies, as each should have the independence to commence and undertake investigations in line with statutory requirements and as they consider appropriate. Rather, it requires that the bodies must work together, and sets out the mechanism by which this should be coordinated, to ensure clarity for all parties, and ensure investigations are conducted efficiently and effectively.

Clauses 22-25: Enforcement

161. These clauses describe the intended enforcement function and process of the OEP. Figure 3 illustrates this process as a simple timeline.

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162. Given the normal two month response periods (refer to clauses 22 and 23) for notices, the pre-litigation process would take at least 4 months. Since the OEP will need time to investigate a matter and consider responses to its notices, 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 (refer to clause 25). This could therefore be within a year of the matter in question coming to the OEP's attention, although the precise duration will vary from one case to the next.

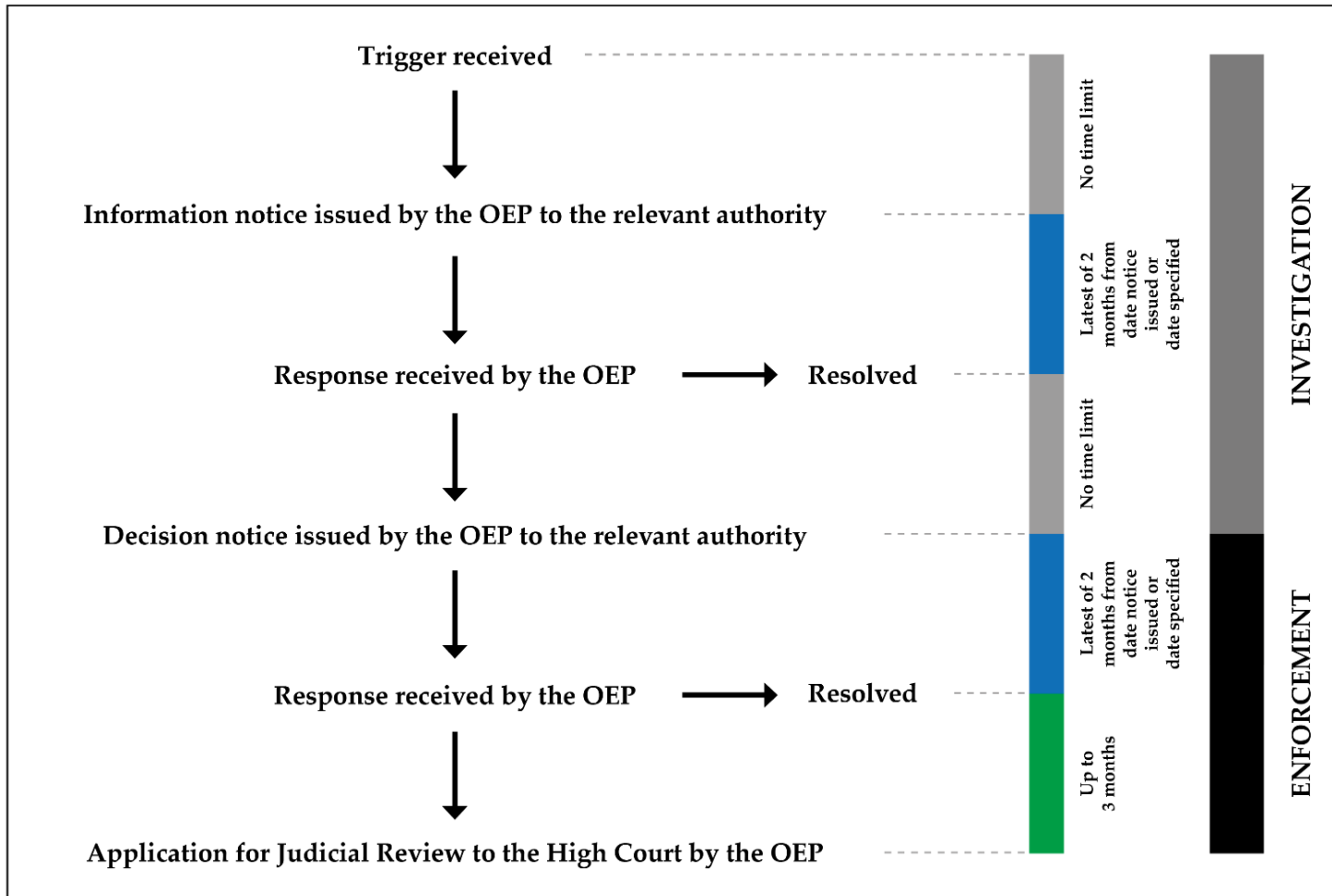
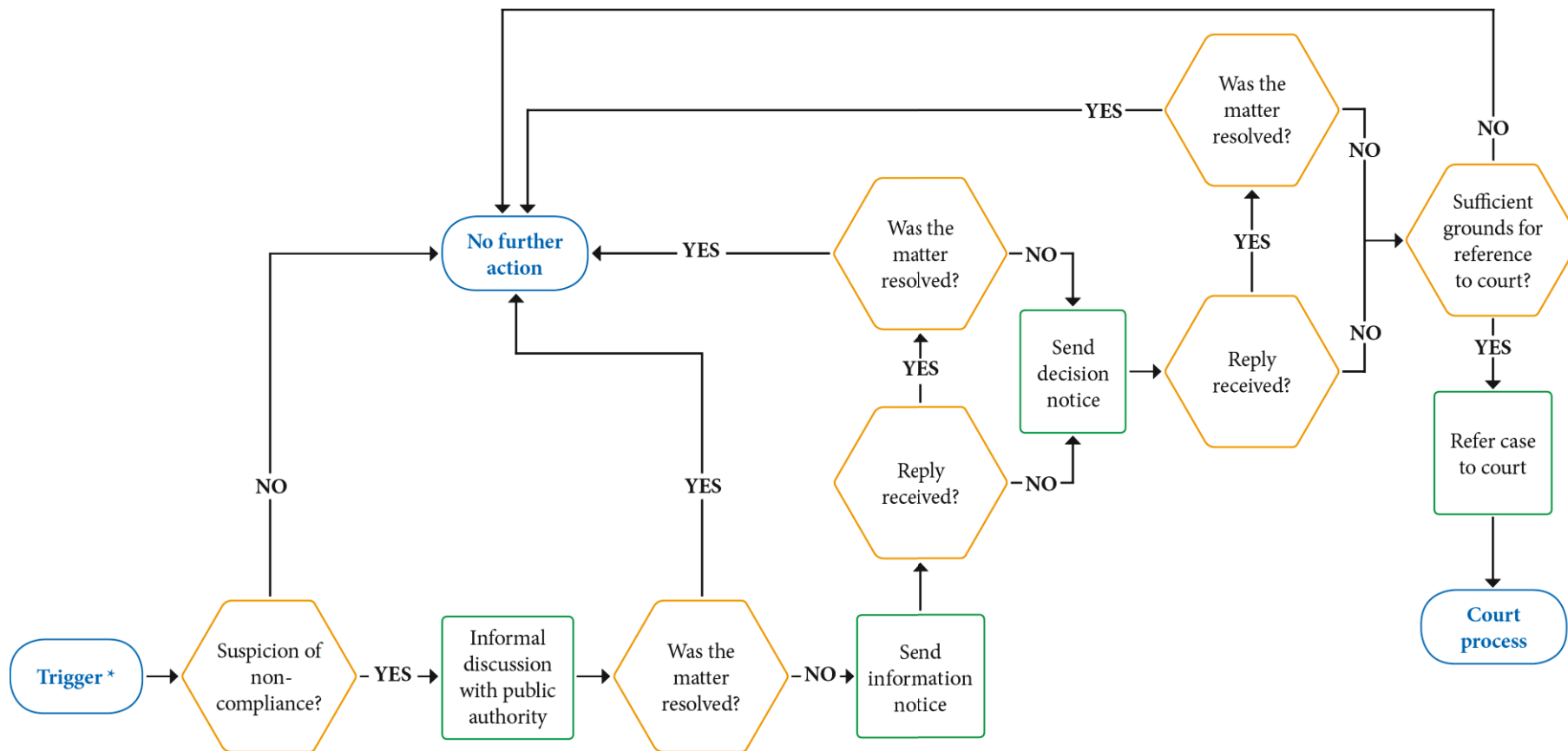


FIGURE 3 ENFORCEMENT PROCESS TIMELINE

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Clause 22: Information notices

163. This clause provides that the OEP can take enforcement action in the form of written information notices in cases where it suspects a public authority may have been involved in a serious breach of environmental law. This action may follow the investigation of a complaint, but the OEP can also take enforcement action if it has some other reason to suspect there has been a serious breach (for example, based on information presented in a report on the implementation of a law, or arising from a parliamentary inquiry or other source).
164. This clause, alongside those that follow it (particularly clauses 23 and 25) reflect the intended enforcement function and process of the OEP. Figure 2 attached illustrates the process that is expected to operate in the OEP's management of enforcement activities through these clauses.
165. Under subsection (1), the OEP may issue an "information notice" if it has reasonable grounds for suspecting that a public authority is failing to comply with environmental law, and it considers that the failure is serious. The OEP therefore may not serve an information notice in relation to trivial matters, or serve a speculative information notice if it does not have a reasonable basis to believe an authority is failing to comply with environmental law.
166. Information notices are a means by which the OEP can formally request information from the relevant Minister or authority concerned in relation to a suspected failure. Subsection (2) states that an information notice is to describe the alleged failure and the information that the OEP requests in relation to it. Subsection (3) requires the relevant public authority to respond in writing to an information notice within a fixed time period as specified in subsection (4), and subsection (5) sets out what information should be included in such responses.
167. Under subsection (6), the OEP may withdraw an information notice or issue multiple information notices in relation to the same suspected infringement.



* e.g. A complaint to the OEP, a whistle-blower, an implementation report on environmental legislation from a public authority, etc.

FIGURE 4 ILLUSTRATION OF ENFORCEMENT PROCESS

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Clause 23: Decision notices

168. This clause provides that the OEP can take enforcement action by issuing a written decision notice where it has found that a public authority has failed to comply with environmental law and where the OEP consider the failure to be serious.
169. The OEP may issue a “decision notice” under subsection (1) if it is satisfied, on the balance of probabilities, that the public authority has failed to comply with environmental law, and it considers that the failure is serious. The test of the “balance of probabilities” means that the OEP must consider that there is more than a 50% chance that a public authority has failed to comply with environmental law. So if, for example, the matter in question relates to a contested issue of interpretation, the OEP may only serve a decision notice if it believes that there is at least a 51% chance that its interpretation is correct. This corresponds with the standard of proof that applies in civil law cases, as opposed to the stricter standard of proof of “beyond reasonable doubt” in criminal law.
170. As defined in subsection (2), decision notices are a means by which the OEP can take action against the public authority failing to comply with environmental law, by setting out suggested remedial steps for the public authority to take.
171. The public authority that receives a decision notice is not compelled to carry out the steps detailed in the notice. Under subsection (3) the public authority is required to respond to a decision notice either 2 months after the notice was given, or by a date as may be specified in the notice, whichever is later. The written response from the public authority should include whether the public authority agrees that there has been a failure to comply with the law, and if the steps set out in the notice will be followed, as specified in subsection (4). This subsection also requires the public authority to specify any other steps that will be taken in relation to the alleged failure described in the notice.
172. Subsection (5) provides that the OEP may withdraw a decision notice after it has been issued (paragraph (b)), and also requires that the OEP must have previously issued at least one information notice relating to the alleged failure of the public authority to comply with environmental law before a decision notice is issued (paragraph (a)).

Clause 24: Duty of the OEP to involve the relevant Minister and other public authorities

173. This clause deals with how the OEP should operate in situations where the subject of an information or decision notice is not a Minister of the Crown, and where notices may be served to more than one public authority regarding the same case or related cases.
174. Where the recipient of an information or decision notice is not a Minister of the Crown, subsection (1) requires the OEP to send a copy of the notice to the relevant minister, as well as any correspondence between the OEP and the public authority concerned. This is to ensure that the Government remains informed about the matter and is able to contribute if appropriate. This subsection also requires that the OEP must provide the recipient of a notice with a copy of correspondence it has with the relevant Minister which concerns the notice.
175. Subsections (2) to (4) deal with the scenario where the OEP considers that a notice should be issued to more than one public authority concerning the same or similar breaches of environmental law. In such a scenario the OEP would issue information or decision notices in parallel to both (or all) parties, and determine that these are ‘linked notices’ under subsection (2). Public authorities may make joint or separate responses to linked notices.
176. The OEP may wish to issue linked notices in various circumstances, including for example:

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- a. If a serious breach of air pollution limit values occurred in a Local Air Quality Management Area, the OEP may wish to commence enforcement proceedings (via notices) against both the Local Authority in question, which has obligations under Part IV of the Environment Act 1995 to put in place an action plan to deliver pollution reduction measures, and the Secretary of State for Environment, Food and Rural Affairs, who has a duty under the Air Quality (Standards) Regulations 2010 to ensure compliance with limit values.
- b. If a cross-boundary incident occurred where two or more local authorities failed to properly carry out their obligations under environmental law, the OEP may wish to issue linked notices to all of the authorities in question. For instance, if during the course of a major, cross-boundary development project it was found that two or more local authorities had neglected their responsibilities under Part IIA of the Environmental Protection Act 1990, to identify contaminated land and serve remediation notices where appropriate, leading to improper development of the site with potential implications for human health and the environment, the OEP may wish to take action against both/all authorities in parallel using linked notices.

177. Subsection (3) provides that the relevant Minister may also request that the OEP designates information or decision notices as linked in such cases, and the OEP must have regard to such a request. This does not mean that the OEP is obliged to comply with the Minister's request, but it must be able to demonstrate it has appropriately considered it.

178. Subsection (4) sets out that copies of any linked notices and any relevant correspondence between the OEP and the recipient of such notices, or the relevant Minister notified in the case, must be provided to notice recipients.

179. Subsection (5) provides that the obligations set out under subsection (1) and (4) (to provide copies of notices or correspondence) will not apply where the OEP considers that to do so would not be in the public interest. For instance, where correspondence regarding a notice may contain evidence of a sensitive or confidential nature, it may not be in the public interest to share this with other parties.

180. Subsection (6) sets out that correspondence relating to review application proceedings is excluded from the provisions of this clause.

Clause 25: Enforcement

181. This clause provides for the OEP to bring legal proceedings against a public authority, regarding a breach of environmental law. Subsection (1) sets out that the breach in question must have been described in a decision notice issued to the public authority in question.

182. Under subsection (2) the OEP is able to make a review application regarding further misconduct of the public authority which takes place after the OEP has issued its decision notice. This is on the grounds that the conduct in question is similar to that described in a previous decision notice as a failure to comply with environmental law. This is to address the possibility that a public authority could respond to a first decision notice by accepting a non-compliance and committing to remedial action over a period of several months – by which time the time limit for the OEP to act under subsection (7) would have passed – but could then fail to take the steps needed to address the failing. In this scenario, subsection (2) provides that the OEP may apply to the courts for a review after the time period in subsection (7) has passed and without having to serve another decision notice.

183. Subsection (3) establishes what is meant by a “review application” in this Bill. It sets out that in

England, Wales and Northern Ireland this refers to an application to the High Court for judicial review. In Scotland, it refers to an application to the supervisory jurisdiction of the Court of Session, the relevant legal procedure in Scotland.

184. Subsection (5) gives the OEP standing in relation to all applications made under the clause. This means it does not need to demonstrate to the court's satisfaction that it has "sufficient interest" to bring a review application on a case-by-case basis.
185. Subsection (6) disapplies section 31(2A), (3C) and (3D) of the Senior Courts Act 1981 in relation to review applications in England and Wales, which limit the granting of permission for judicial review, or relief "if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred". This is because, under a literal reading of that phrase, it might be thought that any claim by the OEP would meet that test. It is highly likely that the outcome for the OEP would not have been different if the public authority had behaved differently. This is because while the clause is providing that the OEP has an interest in the conduct complained of, that interest is not of a personal nature.
186. Subsection (7) provides that an application for review must be made within 3 months of the day that was specified for the public authority to respond to the decision notice (see clause 23 subsection (3)). It also specifies that this time limit overrules any other time limit which would otherwise apply (for instance, the Civil Procedure Rules' time limit for making a claim for judicial review). Subsection (8) switches off section 31(6) of the Senior Courts Act 1981 in relation to judicial review applications made under subsection (1) in England and Wales. That provision is about the court refusing to grant leave or relief where there has been an undue delay in making the application. Practically, the OEP may be making claims after the conduct complained of had started or occurred. Subsection (8) is therefore to avoid the Court needing to consider whether this delay is "undue".
187. Subsection (9) requires a public authority which has been the subject of review application proceedings brought by the OEP under clause 25 to publish a statement when these proceedings are concluded. This statement should describe any steps the authority intends to take based on the outcome of these proceedings. For example, if the Court were to agree with the conclusions outlined by the OEP in its decision notice, this statement could include details of how the public authority intends to ensure the recommended steps to rectify the failing in question are taken, or details of how it will ensure future breaches will be avoided. This statement should be published after the final disposal of proceedings, meaning after judgment has been delivered on the final issue in the case, including any subsequent appeal proceedings. Therefore, a public authority would not be expected to publish a statement after initial proceedings have concluded if it intended to, or had already initiated appeal proceedings against this judgment.

Clause 26: Duty to co-operate

188. This clause sets out the duty that public authorities are under in cooperating with the OEP to provide information in relation to any investigation as set out in clause 19, any information notice as set out in clause 22, and any decision notice as set out in clause 23.
189. Subsection (2) provides the circumstances where the duty to cooperate does not apply. It serves to exclude courts, Parliament, devolved legislatures and authorities, with the exception of devolved authorities in respect of reserved functions, as set out in subsection (3). This therefore mirrors the coverage of reserved functions by the new body as outlined above in relation to clause 17. This means that if a devolved authority were responsible for implementing a function for the whole of the UK, and the OEP's investigation was concerned with that function, the duty of cooperation

would apply to the devolved authority in relation to that reserved matter.

Clause 27: Scope of requirements to provide information to the OEP

190. Subsection (1) of this clause sets out that no obligation of secrecy, either statutory or otherwise, should prevent a public authority from assisting the OEP through the provision of information as provided for under clause 22(3) regarding responding to information notices, or under clause 26, which imposes a duty to cooperate on all public authorities.
191. For example, provisions under section 41 of the Freedom of Information Act 2000 categorise certain information, if obtained in confidence, as “exempt” from disclosure in response to Freedom of Information requests. However, such provisions would be overruled by this clause, meaning that government or public authorities could not use them to avoid providing information which the OEP might reasonably require for an investigation.
192. Subsection (2) qualifies the provision in subsection (1), by providing that nothing in these clauses would require a public authority to provide any information which they would be entitled or required to withhold in legal proceedings on the grounds of either legal professional privilege (or, in Scotland, confidentiality of communications) or public interest immunity.

Clause 28: Prohibitions on disclosure of information

193. This clause deals with the circumstances in which the OEP can and cannot disclose information regarding an investigation.
194. Subsection (1)(a) sets out that the OEP cannot disclose information where it has been provided by a public authority as a response to an information request (as provided for in clause 22 subsection (3)(b)), or a person operating in a public manner providing assistance to the OEP (as required under clause 26 subsection (1), which establishes a ‘duty to cooperate’ for public authorities). Under paragraph (b) of this subsection, the OEP may also not disclose any correspondence from the recipients of information or decision notices relating to these notices (including the responses required under clause 22 subsection (3) for information notices, or 23 subsection (3) for decision notices). Where the recipient of a notice is not a Minister of the Crown, the OEP also may not disclose any related correspondence from ministers notified under clause 24 subsection (1).
195. Circumstances where this does not apply, and the OEP is able to disclose the information, are covered under subsection (2). These include instances where consent has been given, or where it may be necessary to disclose information for the purposes of investigating a complaint, fulfilling the OEP’s reporting obligations in relation to complaints, or taking enforcement action as provided for by clauses 22-25.
196. Under subsection (3), public authorities in receipt of information and decision notices may not disclose the details of them, or any related correspondence from the OEP. The consequence of these provisions is to provide that all information connected with enforcement functions is confidential, regardless of where it originates. This is currently the case, in practice, with EU infraction proceedings.
197. Subsection (4) sets out the circumstances where the restriction in subsection (3) does not apply. These include instances when all relevant parties (meaning the OEP and any other public authority involved in the correspondence) have given consent for the disclosure, or where it may be necessary for the purposes of collaborating with an OEP complaint investigation, responding to information or decision notices, or in relation to proceedings for an application for review, as set out in clause 25.

Clause 29: Public statements

198. This clause deals with requirements on the OEP to publish statements when it takes enforcement action.
199. Subsection (1) provides that the OEP must publish a statement, for example in the form of a press release, whenever it serves an information or decision notice or refers a case to court. Subsection (1) sets out the information that this statement must contain.
200. Subsection (2) provides that the OEP does not need to publish a statement if it considers that it would not be in the public interest to do so. For example, the new body might judge it to be not in the public interest to publish a statement about its enforcement activities that would prejudice the protection of personal or confidential data.

Clauses 30-31: Meaning of “natural environment” and “environmental law”

201. There is no universal definition of “the environment”. Although a diverse array of definitions exist, each has been designed to describe the environment in a particular context, or from a specific perspective. A clear definition, however, is needed to determine the scope of the OEP. These clauses define “environmental law” and the “natural environment” for the purpose of determining the range of legislation which falls within the legal competence of the OEP, and with respect to which the OEP can exercise its scrutiny, advice, complaints and enforcement functions.
202. Any legislation, or part of that legislation, which meets these conditions is included in the definition. This means that even if most of an Act or set of regulations does not meet these conditions, any specific provisions in the Act or regulations which do meet the conditions should be considered as “environmental law”.

Clause 30: Meaning of “natural environment”

203. In setting out the matters which are primarily the subject of environmental law, clause 31 uses the term “natural environment”. This is defined in this clause. The definition includes living elements of the environment, such as plants, wildlife, other organisms (paragraph (a)), their habitats (paragraph (b)), and non-living elements, such as air, water and land (paragraph (c)).
204. Paragraph (c) also provides that the built environment, and the water and air inside buildings, is excluded from the definition of the “natural environment”. This means that issues relating to indoor air quality or an indoor aquarium, for example, would not be considered to concern the natural environment.
205. The clause also sets out that systems, cycles and processes through which the elements listed above interact are also part of this definition of the “natural environment”. This therefore includes ecosystems, and hydrological and geomorphological processes.
206. This definition covers the offshore as well as the terrestrial environment. Moreover, the expression “water” will include seawater, freshwater and other forms of water, while “air” will include the atmosphere (including, for example, the ozone layer) and “land” will include soil.

Clause 31: Meaning of “environmental law”

207. This clause deals specifically with the definition of “environmental law”, and therefore the extent of the OEP’s legislative competence for the exercise of its functions that depend upon this definition.

208.Subsection (1) defines “environmental law” as any legislative provision other than devolved legislative provisions (which are defined in subsection (4)), which meets the dual requirements of being mainly concerned with one of the matters described in subsection (2), and not being explicitly excluded under subsection (3). Subsection (1) uses the terms “legislative provisions” in this regard, which means domestic legislation, and can cover specific sections or subsections of an Act, Regulations or other forms of legislation. As such, this subsection also establishes that the OEP will not have a function of assessing compliance with, or otherwise involving itself in matters concerning international environmental law. Rather, its remit will be limited to domestic legislative provisions that fall under the definition of environmental law, including those put in place to implement international commitments.

209.Subsection (1) also specifies that this Bill, and regulations made under it, fall within the definition of “environmental law”. It should be noted that this includes the requirements under clause 1 for the Secretary of State to prepare a statement of environmental principles, and under clause 4 for Ministers of the Crown to have regard to that policy statement when making, developing or revising policies with which it deals. The OEP would therefore be able to act to enforce provisions under these clauses where necessary. Clause 2, however, simply defines what is meant by “environmental principles” for the purposes of this Bill, in the form of a list. As such, it does not impose any requirements on the Secretary of State or Ministers of the Crown which could be subject to enforcement action.

210.When reading the matters set out under subsection (2), reference should be made to the definition of the “natural environment” in clause 30.

211.Based on the combined provisions of subsections (1), (2) and (3), most parts of legislation concerning the following matters, for example, would normally be considered to constitute environmental law:

- air quality (although not indoor air quality);
- water resources and quality;
- marine, coastal or nature conservation;
- waste management;
- pollution;
- contaminated land.

212.Conversely, legislation concerning the following matters, for example, would not normally constitute environmental law as defined here, and therefore the majority of legislation within these areas would be outside the scope of the OEP:

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

213.Despite these parameters, however, there will be some exceptions. For instance, within legislation on matters to protect the environment, there will be administrative elements that will not necessarily be considered environmental law. Conversely, among the subjects listed above that will normally be excluded, there will be some specific legislative provisions that fall within the definition of subsections (1) and (2) and therefore do form part of environmental law for the purposes of the OEP.

214.Subsection (3) sets out matters which are explicitly excluded from the definition of environmental law:

(a) Emissions of greenhouse gases (within the meaning of the term “greenhouse gases” in section 92 of the Climate Change Act 2008), apart from the subject matter of the Fluorinated Greenhouse Gases Regulations 2018. This means that 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. This is to avoid overlap of the subject matter with that covered by the Committee on Climate Change.

(b) Disclosure of or access to information: These matters are excluded under paragraph (a) in order to avoid overlap between the remit of the OEP and that of the Information Commissioner’s Office, which oversees and where necessary takes action to enforce public authorities’ compliance with the Environmental Information Regulations.

(c) The armed forces, defence or national security.

(d) Legal provisions concerning taxation. The term ‘taxation’ in this context refers to taxes in a legal sense, and therefore does not include other regulatory schemes which involve fees and charges for purposes other than taxation, such as the plastic bag charge or the imposition of fees to cover the cost of a regulatory regime. Such schemes are not automatically excluded from the Bill’s definition of “environmental law”.

Paragraph (d) also excludes provisions concerning spending or the allocation of resources within government from the definition of “environmental law”. As such, all finance acts are explicitly excluded.

215.For the purposes of this Bill, under subsection (1), “devolved legislative provisions” are excluded from the definition of “environmental law”, and therefore the remit of the OEP. These provisions are defined in subsection (4) as any provision which is contained in or created by legislation of the three devolved Assemblies and Parliaments, or which otherwise falls within their legislative competence.

216.Subsection (5) provides that the Secretary of State may use secondary legislation to make adjustments to the legislative provisions included in, and excluded from, this definition. Updates

in this way may be necessary in the light of experience, and could be made either by describing types of legislation in a similar way to the definitions in this clause, or by identifying specific provisions. As set out in clause 33, any such adjustment would be made through a statutory instrument subject to the affirmative resolution procedure. This means it must be laid before and approved by a resolution of each House of Parliament. Subsection (6) requires that the Secretary of State must consult the OEP before using this power to adjust this definition.

Clause 32: General interpretation

217. This clause defines various terms and phrases referred to in other clauses.

218. In particular, “policy” does not include an administrative decision taken in relation to a particular person or case, such as a licensing decision or a decision about planning permission, regulatory enforcement or the grant of funding.

219. “Minister of the Crown” is defined in section 8(1) of the Ministers of the Crown Act 1975, as a holder of the office in Her Majesty’s Government in the United Kingdom, and includes the Treasury, the Board of Trade and the Defence Council.

Clause 33: Regulations

220. This clause provides that regulations under the Bill are to be made by statutory instrument, and specifies the parliamentary procedure which applies.

221. Subsection (2) provides that regulations under the Bill are subject to the affirmative resolution procedure, that is, subject to approval by a resolution by each House of Parliament.

222. Subsection (3) ensures that this clause does not apply to regulations under clause 34(3). These are commencement regulations which are not subject to any parliamentary procedure.

Clause 34: Extent, commencement and short title

223. Subsection (1) sets out that clauses 5-10 and 14 extend to England and Wales only.

224. Subsection (2) sets out that the other provisions of this Act extend to England and Wales, Scotland and Northern Ireland (see Annex A for further information on territorial extent and application).

225. Subsection (3) is a standard provision which explains when the provisions of the Bill will come into force (i.e. begin to have an effect). This provides for the Secretary of State to make regulations by statutory instrument in order to nominate a date for the Act to come into force, allowing for the possibility that different days are nominated for different sections of the Act.

226. Subsection (4) sets out the way in which this Act may be cited.

Schedule: The Office for Environmental Protection

227. This Schedule sets out further information on the composition of the OEP, established as a Non-Departmental Public Body (NDPB), and prescribes how it is to operate. The provisions in this schedule reflect the need for adequate ministerial oversight; the body’s operational independence from government; and the need for transparency and accountability in the body’s exercise of its statutory powers and functions.

Membership

228. Paragraph 1 covers the membership of the Board that governs the OEP. The provisions in this

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paragraph aim to ensure a balance between ministerial accountability and independence in making appointments to the body, and between non-executive and executive involvement in the governance of the body.

229. Sub-paragraph (1) provides that the new body will consist of: a non-executive Chair and between two and five other non-executive members; and a Chief Executive (who is to be the Accounting Officer of the body and therefore responsible for accounting for the body's use of public funds) and between one and three other executive members. Vesting the powers of the OEP in a Board, rather than a single office holder, is intended to ensure robust and considered decision-making. The make-up of the Board will ensure a balance of non-executive and executive members. Setting the maximum size of the Board at ten members enables the body to have a strategic focus while ensuring that the required expertise can be fully represented across the Board. Government will review the practical arrangements related to this clause to ensure that the first appointment to the board can be made in an appropriate and timely manner.

230. Sub-paragraph (2) provides that non-executive members are to be appointed by the Secretary of State. This is customary for NDPBs and reflects the need for adequate ministerial oversight. This appointments process will be in accordance with Governance Code for Public Appointments¹². The Code will ensure that members are appointed through a fair and open process. The regulation of appointments against the requirements of this Code is carried out by the Commissioner for Public Appointments.

231. Sub-paragraph (3) places a duty on the Secretary of State to consult the Chair before appointing the other non-executive members.

232. Sub-paragraph (4) places a duty on the Secretary of State to have regard to the full range of expertise required by the board of the OEP in appointing the non-executive members. This will help ensure that the Secretary of State appoints only those who have the expertise required to deliver the statutory functions.

233. Sub-paragraph (5) clarifies that non-executive members may not also be employees of the OEP.

234. Sub-paragraphs (6) and (7) provide for the Chief Executive to be appointed by the Chair, following consultation with the Secretary of State, since the Chief Executive is to be the Accounting Officer of the OEP.

235. Sub-paragraphs (8) and (9) provide for the OEP to appoint the other executive members, who must be employees of the OEP. The body will be expected to follow the guidance for good practice for corporate governance for public bodies.

236. Sub-paragraph (10) requires the Secretary of State and the OEP to ensure, so far as practicable, that the number of non-executive members is at all times greater than the number of executive members.

Terms of appointment

237. Paragraph 2 explains the basis on which non-executive members can be appointed to, and removed from, a fixed term of office of up to 5 years at the OEP. Again, appointments will be

¹² See: <https://www.gov.uk/government/publications/governance-code-for-public-appointments>

made in accordance with the Governance Code for Public Appointments.

Remuneration of non-executive members

238.Paragraph 3 places a duty on the OEP to pay its non-executive members any remuneration, allowances and compensation as determined by the Secretary of State in consultation with the Chair. This will be in accordance with the Corporate Governance Code for Central Departments 2017¹³ which requires non-executive members of public bodies to comply with the guidance for approval of senior pay issued by HM Treasury¹⁴. This reflects the fact that non-executive members are public appointments by the Secretary of State (sub-paragraphs 1 (2) and 1 (3)), and helps to maintain the relative independence of the non-executive members within the OEP, as the OEP does not make decisions on their remuneration arrangements.

Staffing and remuneration of employees

239.Paragraph 4 gives the OEP the power to appoint and make other arrangements for staff as it determines; and to pay its staff remuneration and allowances in accordance with policies approved by the Secretary of State. This will also be done in accordance with the public sector pay and terms guidance¹⁵. The OEP is required to make pensions arrangements for its non-executive members and staff, subject to approval by the Secretary of State.

Powers

240.Paragraph 5 gives the OEP the power to do anything it thinks appropriate for carrying out its functions without interference or approval from ministers, except those activities outlined in sub-paragraph (2), which it may not carry out at all. This provides the OEP with sufficient independence from government when carrying out its functions.

Committees

241.Paragraph 6 gives the OEP the power to establish committees. These may include people who are neither members nor employees. Such committee members may be paid but may not have a vote on the committee. This will allow the body to gain access to additional specialised expertise to support any of the functions or strategic direction of the body.

Delegation to members, committees and employees

242.Paragraph 7 gives the OEP the power to delegate any of its functions (other than the exceptions in sub-paragraph (4)) to a member, employee or committee, in accordance with a delegation policy that it will determine. This provides the body with adequate independence to delegate functions without interference from ministers and ensures that decisions can be taken at the most appropriate level.

Procedure

¹³ See: <https://www.gov.uk/government/publications/corporate-governance-code-for-central-government-departments-2017>

¹⁴ See: <https://www.gov.uk/government/publications/senior-civil-service-pay-and-reward>

¹⁵ See: <https://www.gov.uk/government/publications/public-sector-pay-and-terms-guidance-note/guidance-note-public-sector-pay-and-terms>

243.Paragraph 8 gives the OEP the power to determine its own procedures (other than the meeting quorum set out in sub-paragraph (2)), as part of ensuring its operational independence from government. Sub-paragraph (3) provides that proceedings will not be made invalid by a vacancy in the membership or the incorrect appointment of any member. This ensures that processes and decision-making are not disrupted by situations that may not be within the OEP's control.

Funding

244.Paragraph 9 places a duty on the Secretary of State to fund the OEP sufficiently to perform its functions, and gives the Secretary of State the power to provide further financial assistance to the body. 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 the Department for Environment, Food and Rural Affairs to ensure adequate transparency.

Annual Report

245.Paragraph 10 places a duty on the OEP to prepare an annual report as soon as possible at the end of each financial year; to arrange for the report to be laid before Parliament; and to publish it. This provides transparency on the performance of the body against its key statutory functions and its strategic plan, helping to ensure accountability for the exercise of its powers and its use of public funds.

Annual Accounts

246.Paragraph 11 is intended to ensure independent oversight, transparency and ministerial accountability for use of public funds.

247.Sub-paragraphs (1) to (3) place a duty on the OEP (and the Chief Executive as Accounting Officer) to keep proper accounting records and prepare an annual statement of accounts. The latter includes an assessment of whether the OEP received sufficient funds to carry out its statutory functions in the relevant financial year. This provision is intended to provide further transparency around the funding of the OEP and ensure it is funded sufficiently to carry out its functions.

248.Sub-paragraphs (4) to (6) place a duty on the OEP to send these accounts as soon as reasonably practicable after the end of the relevant financial year to the Secretary of State and the Comptroller and Auditor General. The Comptroller and Auditor General is required to certify and report on the accounts, and send the certified statement and report to the Secretary of State and the OEP. The OEP must then arrange to lay these documents before Parliament.

Meaning of "financial year"

249.Paragraph 12 defines "financial year" as the year ending 31 March.

Status

250.Paragraph 13 clarifies that the OEP is not part of the Crown. This is customary for NDPBs, and is intended to ensure that the body can act independently of government and is capable of properly enforcing against government. The body will be staffed by public servants rather than civil servants.

Remaining paragraphs

251.The remaining paragraphs of Schedule 1 also amend various pieces of existing legislation so as to apply their provisions to the OEP, including (amongst others) the Freedom of Information Act 2000 and the Equality Act 2010.

Commencement

252.The clauses in the Bill will come into force on a day which is appointed by the Secretary of State in

regulations. The regulations may say that they come into force at different times.

Financial implications of the Bill

253. Clause 11 will have immediate financial implications, as it provides for the creation of a new statutory environmental body, the OEP. This will be funded through grant-in-aid and provided for as part of Defra's overall Estimate, paid for out of the Consolidated Fund. The final amount and timing of financial implications are yet to be confirmed: the body will need to be sufficiently funded to fulfil its statutory functions successfully and hold the government to account on the environment.

254. The creation of the new body will entail various costs, including but not limited to:

- One-off setup costs, including for public appointments, staff recruitment, and enabling IT systems
- Governance costs, including remuneration and expenses for non-executive members
- Direct staffing and other operating costs for its enforcement, complaints and scrutiny functions
- Corporate and 'back office' costs including finance, premises, communications, HR and IT.

255. We anticipate that the body will have the effect of reducing expenditure incurred on judicial reviews, as breaches of environmental law will be flagged and the body will initially serve advisory notices based on these breaches. This means that Government and public bodies will be able to take corrective action before court action is undertaken.

Parliamentary approval for financial costs or for charges imposed

256. A money resolution will be required to cover the proposed government funding of the new OEP.

257. The Bill does not impose charges and a ways and means resolution is not required.

Compatibility with the European Convention on Human Rights

258. The Government considers that the draft Environment (Principles and Governance) Bill is compatible with the European Convention on Human Rights ("ECHR").

Related documents

259. The following documents are relevant to the Environment Bill and can be read at the stated locations:

- Consultation on environmental principles and accountability for the environment

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after EU Exit: <https://consult.defra.gov.uk/eu/environmental-principles-and-governance/>

- 25 Year Environment Plan:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693158/25-year-environment-plan.pdf

Annex A - Territorial extent and application in the United Kingdom

260. Clauses 5-10 (Environmental improvement plans) and 14 (Monitoring and reporting on environmental improvement plans) of the draft Environment (Principles and Governance) Bill extend to England and Wales only and apply to England. There are no minor or consequential effects of these clauses outside England. Provision corresponding to these clauses would be within the competence of the devolved legislatures. The remaining clauses of the Bill form part of the law of England and Wales, Scotland and Northern Ireland, as set out in clause 34.¹⁶ They apply to England, and to the United Kingdom in respect of matters that are not devolved.

261. The information provided is the view of the UK government.

Provision	Extends to E & W and applies to England ?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed ?
1 Clauses 1-4 (Policy statement on environmental principles)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
2 Clauses 5-10 (Environmental improvement plans)	Yes	No	No	No	Yes	Yes	Yes	No
3 Clauses 11-13 (The Office for Environmental Protection)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
4 Clause 14 (Monitoring and reporting on environmental improvement plans)	Yes	No	No	No	Yes	Yes	Yes	No
5 Clauses 15-16 (The OEP's other scrutiny)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

¹⁶ References in Annex A to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to E & W and applies to England ?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed ?
and advice functions)								
6 Clauses 17-25 (The OEP's enforcement functions)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
7 Clauses 26-29 (The OEP's enforcement functions: co-operation and information)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
8 Clauses 30-32 (Interpretation)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
9 Clauses 33-34 (Final provisions)	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

Subject matter and legislative competence of devolved legislatures

262. The subject matter of clauses 5-10 and 14 is within the devolved legislative competence of the Northern Ireland Assembly, the Scottish Parliament and the National Assembly for Wales. The primary purpose of the clauses relates to the environment, which is within the devolved legislative competence of each of the three devolved legislatures, being not within Schedule 5 to the Scotland Act 1998 and not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); not within Schedules 2 or 3 to the Northern Ireland Act 1998 and not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act); not a reserved matter listed within Schedule 7A to the Government of Wales Act 2006 and not within an exception listed therein, and not otherwise outside the legislative competence of the National Assembly for Wales (see section 108A of that Act). In Wales, the Well-being of Future Generations (Wales) Act 2015 imposes duties in relation to “sustainable development” and “well-being goals” which have the effect of imposing duties on Welsh public bodies with respect to the environment, together with reporting and monitoring provisions. Section 6 of the Environment (Wales) Act 2016; section 1, Nature Conservation (Scotland) Act 2004; and section 1, Wildlife and Natural Environment Act (Northern Ireland) 2011 all impose duties on public bodies in respect of the improvement of the environment and biodiversity.

Annex B – Glossary¹⁷

Chapter: A grouping of clauses under a subheading within a Part of a bill.

Clause: The basic unit of a bill, divided into subsections, then paragraphs, then sub-paragraphs. Once the Bill becomes an Act, a clause becomes a section.

Commencement: The coming into effect of legislation. In the absence of a commencement provision, the Act comes into force from the beginning of the day on which Royal Assent was given (at midnight).

Long title: The passage at the start of a bill that begins “a Bill to...” and then lists its purposes. This defines the scope of the Bill and as such, the content of the bill must be covered by the long title.

Money resolution: A Money resolution must be agreed by the House of Commons if a new Government Bill proposes spending public money on something that hasn't previously been authorised by an Act of Parliament. Money resolutions, like Ways and Means resolutions, are normally put to the House for agreement immediately after the Bill has passed its Second Reading in the Commons.

Part: A grouping of clauses under a heading in the body of a bill. Also a subdivision of a schedule.

Regulation: secondary legislation made through SIs.

Schedule: Bills may have a number of Schedules that appear after the main clauses in the text. They are often used to spell out in more detail how the provisions of the bill are to work in practice. Schedules can still be amended by parliamentarians.

Section: When the bill becomes an Act, “clauses” become “sections” but the names of the other subdivisions stay the same.

Territorial application: Territorial application refers to the territory where a Bill (or provisions of a bill) has a practical effect.

Territorial extent: The extent of a Bill refers to the legal jurisdiction of which a bill, or provisions of a bill, will become a part. There are three legal jurisdictions in the UK: (1) England and Wales, (2) Scotland and (3) Northern Ireland. The extent of a Bill or provision can be different from its application.



¹⁷ Definitions are sourced from both www.parliament.uk and the Guide to making legislation on www.gov.uk.

DRAFT ENVIRONMENT (PRINCIPLES AND GOVERNANCE) BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the draft Environment (Principles and Governance) Bill as published in Draft on 19 December 2018 (Bill Cm9751).

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