

Report Stage of the EU (Withdrawal) Bill (EUWB)

Day 2, Monday 23 April 2018

Amendment 27: Maintenance of EU environmental principles and standards

Greener UK strongly supports amendment 27 tabled by Baroness Brown of Cambridge, which would require the government to deliver two key environmental objectives, to which it is apparently committed, but which in practice it is struggling to deliver for a number of inter-related reasons. We note that the amendment enjoys strong support across the House. The principles underpinning the amendment have been consistently supported by parliamentarians from all parties throughout the EUWB process.

Purpose of this amendment

The amendment would require the Secretary of State to publish proposals for primary legislation establishing a duty on public authorities to apply EU environmental principles in the exercise of relevant functions after exit day.

It would also require the Secretary of State to publish proposals for the establishment before exit day of an independent environmental watchdog and also a list of functions currently exercised by EU bodies that must be retained or replicated in UK law.

Why this amendment is needed

We have provided numerous detailed briefings to peers on the issue of environmental governance and principles. The purpose of this briefing is to set out the reasons why this amendment is still needed.

While the UK government has acknowledged the governance gap which will be created when the UK leaves the EU, it has failed to provide any concrete evidence on how it will address this. A consultation on the scope, powers and functions of a new environmental watchdog, has been promised on several occasions by Environment Secretary Rt Hon Michael Gove MP, but this is yet to materialise.

Worryingly, evidence of significant resistance to this proposal from some parts of government has emerged including through the oral evidence of three government departments to a joint inquiry on air quality. We understand that this resistance relates to matters which are far from trivial, including the functions, powers, funding and nature of the new watchdog, which are at risk of threatening the independence of the new body before it is even set up. Other government departments are also raising concerns about enshrining the environmental principles in law.¹

While we welcome the Environment Secretary's commitment to consult, consultations can often be delayed and, in some cases, do not materialise at all, nor are the outcomes following consultation guaranteed.

The need for urgent action

The date of exit is approaching rapidly and is now less than one year away. Uncertainty remains about whether there will be an implementation period as it is subject to negotiation with the EU, and, if so, how long it would be.

The implementation period is being repeatedly cited as a 'get out of jail' card which would provide vital breathing space in which to plan and implement the exit process. In our view, the prospect of an implementation period, while welcome, does not in any way diminish the urgency needed if the watchdog is to be in place by exit day.

This is because of a number of significant practical considerations which need to be addressed, including the need to secure parliamentary time for an environment bill, the time this will take to pass through parliament in an already very crowded business schedule and the time needed to set up the new body, appoint members and recruit staff. This would be significant for the establishment of any new public body, but will even more so for the new environmental watchdog because of the Environment Secretary's aspirations for it to be world leading and the need to ensure independence, durability and a robust operating model from the outset.

The continued absence of any firm commitment or timetable from the government on its plans for the legislation that would be needed to establish the new watchdog and enshrine the principles in law is casting a shadow on both its commitment and ability to deliver the proposals to which it says it aspires.

In reality, the longer the delay in starting the consultation process, the greater the chance of a gap in governance, accountability and access to justice.

While his intent is both clear and welcome, the Environment Secretary is unable to provide any certainty that the new watchdog will be in place by exit day or that the full suite of environmental principles will continue to be incorporated within UK law after exit day.

The need to incorporate the environmental principles within UK law

The EUWB does not adequately retain the three key roles of the environmental principles: in interpreting the law, in guiding future decision making, and as a basis for legal challenge in court.

Environmental principles are key to the interpretation of EU law and should, therefore, be key to the interpretation of retained EU law as it becomes domestic law. If the UK government's stated aim of ensuring legal continuity on day one of Brexit is to be achieved, the environmental principles need to be a part of domestic law on day one and the public should be able to rely on them, the courts should apply them and public bodies should follow them.

The incorporation of the environmental principles within the EUWB, supplemented by the introduction of a national policy statement, would enable the government to stay true to its pledge, expressed by Dominic Raab MP during Commons

Committee stage, to ensure that it does not diminish its commitment to the environmental principles and, moreover, that the principles are reinforced. ⁱⁱ

There was strong support during debates in the House of Commons for the environmental principles to be embedded in statute, not least for the UK to comply with its international obligations and because this was a more binding option than a national policy statement alone. We note that the Scottish government has also supported the need for the principles to be carried through into domestic law and that the Welsh government has committed to take the first proper legislative opportunity to enshrine the environmental principles into law. ^{iii, iv}

The UK government has put forward various arguments as to why it believes it is unnecessary to incorporate the environmental principles in the EUWB, including its view that they are already included in various international treaties and agreements. The sort of piecemeal retention of the environmental principles the government describes is exactly what we want to avoid. The courts should not have to trawl through the texts of international treaties and agreements in order to find out whether, and in what circumstances, the environmental principles will continue to apply after exit day.

Conclusion

Amendment 27 is therefore needed to secure the necessary commitments from government and we encourage peers to support it, including in any division which might be called. This is an occasion on which we believe Parliament needs to give the government a helping hand to deliver the commitments which it is seeking but struggling to deliver, and which enjoy wide support across civil society.

ⁱ A joint committee [report](#) on air pollution published on 15 March revealed that ministers from DFT, the Treasury and MHCLG are not particularly keen on a new environment watchdog: “25. We asked Ministers for their views on the proposed establishment of an Environmental Protection Agency which would hold the Government to account. The proposal did not appear welcome across the Departments. Parliamentary Under-Secretary of State for the Department for Transport Jesse Norman told us that “Parliament is the correct body to hold Government to account”. The then Exchequer Secretary to HM Treasury Andrew Jones likewise stated that “the best way to hold Government to account is through Parliament”. The then Minister for Local Government Marcus Jones did not answer directly, saying “I do not want to get into the debate over who should be the arbiter in these situations”.”

ⁱⁱ Hansard, Committee Day 2, 15 November, Col 501

ⁱⁱⁱ Hansard, Committee Day 2, 15 November 2017

^{iv} Roseanna Cunningham MSP, 6 November 2017, speech at EEB annual conference

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