

## Commons Consideration of Lords Amendments on the EU (Withdrawal) Bill (EUWB)

### Lords amendment 3

Greener UK strongly supports Lords amendment 3, tabled by Lord Krebs at Lords Third Reading, and supported by peers from all parties. The need for this amendment has been consistently supported by parliamentarians from all parties throughout the EUWB process.

### Amendment in lieu of Lords amendment 3 (Sir Oliver Letwin)

**We welcome all efforts to ensure that the government's ambition to leave our environment in a better state than we inherited it is realised. It is in this context that we continue to strongly support Lords amendment 3. However, were this to be removed from the EUWB, we would encourage MPs from all parties to vote for this amendment in lieu but to also continue to make the case for the matters identified below to be addressed.**

The following requirements within the amendment in lieu are helpful:

- A draft Bill must be published within six months of the EU (Withdrawal) Act being passed.
- The inclusion of the following elements within the draft Bill:
  - A minimum set of environmental principles listed in primary legislation
  - A duty on the Secretary of State to publish a policy statement on the interpretation and application of those principles
  - Provisions to establish a new body to take enforcement action when there may be a breach of environmental law, including through legal proceedings if necessary
  - The scope to add other potential provisions considered appropriate by the Secretary of State

However, the following parts of the amendment in lieu should be modified as we propose below. Without addressing these points, the amendment in lieu, whilst going further than the current [Defra consultation](#) on principles and governance, will be weaker than Lords Amendment 3 and risks leaving both our principles and governance mechanisms weaker on exit from the EU.

### The independence of the new body

The new green watchdog must be independent if it is to be effective in holding government to account. Lords amendment 3 required the draft bill to publish proposals for primary legislation to establish 'an independent body'. The amendment in lieu makes no reference to the independence of the body, which, in our view, must be rectified.

## Application of environmental principles

Section 1b of the amendment in lieu requires the forthcoming draft bill to include a duty on the Secretary of State to publish a statement of policy in relation to the application and interpretation of the environmental principles “in connection with the making and development of policies by Ministers of the Crown”.

We are concerned that this would greatly narrow the application of the principles. Not only is it limited to Ministers, but the policy statement would fail to cover all relevant actions of Ministers. The principles should apply to all relevant actions of all public authorities, not just the policy development of Ministers. Policy development is merely one activity in the complex and multifaceted operation that government actors must engage in to protect and enhance our environment.

Lords amendment 3 contains a clear, unambiguous duty on public authorities to apply the principles in the exercise of relevant functions, which would include interpretation of legislation, as well as the creation of legislation, and decisions pertaining to it.

## Duty in relation to environmental principles

The standard of duty proposed for environmental principles is too weak. The amendment in lieu proposes that government must only ‘have regard’ to the policy statement. Previous experience of this sort of duty has shown them to be weak and easily ignored, as the Select Committee on the Natural Environment and Rural Communities Act 2006 [recently concluded](#) in relation to the biodiversity duty, finding it was “weak, ineffective and lacks clear meaning” and that “the biodiversity duty suffers from weak wording and poor enforceability”.

We are also concerned that the words “in circumstances provided for by or under the Bill” leave the door open for the scope of the duty being unduly circumscribed.

Furthermore, we are concerned that the prescriptive nature of the proposed duty would potentially tie the hands of the consultation and preclude other wording from being considered that might arise from responses. There are a range of potential options, which are not mutually exclusive, including a duty to apply environmental principles (as per Lords amendment 3) and a duty to act in accordance with the principles policy statement.

## Jurisdictional scope

The amendment in lieu is too limited in its jurisdictional scope. It proposes that the remit of the watchdog and the environmental principles will apply only to central government. This is despite explicit recognition in the Defra consultation that “[a]ctual delivery of policy measures and laws, while partly undertaken by government itself, is more commonly performed by responsible authorities such as the Environment Agency, the Forestry Commission, the Marine Management Organisation, Natural England, local authorities and others”.

It would therefore be sensible for these authorities to be bound by duties with respect to the principles and to fall within the scope of the watchdog. Otherwise, important safeguards will be lost, and communities will be alienated from those responsible for looking after their local environments. Lords amendment 3 makes clear that the watchdog and the principles should apply to public authorities in general, rather than only to central government.

## Maintaining environmental protections and rights

Lords amendment 3 requires the Secretary of State to take steps designed to ensure that the UK's withdrawal from the EU does not result in the removal or diminution of any environmental rights and protections. The amendment in lieu makes no reference to how the government intends to provide such an assurance and **we would welcome MPs asking the Secretary of State what steps he intends to put in place to ensure that there is no erosion or diminution of protections.**

## Proportionality

The unqualified use of the term 'proportionate' in section 1d of the amendment in lieu potentially limits the range of actions that the new body will be entitled to take, which should be a matter for the new body to decide, rather than one to be prescribed by ministers on the face of the EUWB. A better approach would be to say "proportionate (as determined by the new public authority)" as it must be for the new independent body to determine its actions, or to replace 'proportionate' with 'appropriate'. We are also concerned that the words "in circumstances provided for by or under the Bill" leave the door open for the scope of the body to be unduly circumscribed.

## Consultation requirements

Lords amendment 3 requires the Secretary of State to consult with various parties, including the devolved administrations. No such requirement has been included in the amendment in lieu. **It would be helpful for MPs to ask the Secretary of State to confirm the consultative and pre-legislative requirements that he intends to put in place to ensure that stakeholders are fully involved in shaping proposals for the draft bill.** This is especially important for ensuring that the four governments work together to co-design new arrangements for environmental governance for the whole of the UK.

## Amendment in lieu of Lords amendment 3 (Mary Creagh)

We welcome the thrust of this amendment in lieu which would require the Secretary of State to publish proposals for a new public body with strong powers and functions to hold the government and public bodies to account.

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