

The future relationship between the Office for Environmental Protection and the Committee on Climate Change

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Climate change mitigation is included within the remit of the Office for Environmental Protection (OEP) meaning it can monitor progress against emissions targets and take enforcement action where public authorities are not meeting legal climate-related duties. This raises questions about how to maintain the reputation and status of the Committee on Climate Change (CCC) and ensure it works effectively with the OEP and other public authorities. We believe there are clear and distinct roles for the two bodies that they could establish between themselves within the legal framework of the Environment Bill.

Background

The draft Environment Bill (December 2018) excluded law relating to most emissions of greenhouse gases from the definition of environmental law and, therefore, also from the remit of the OEP. At the time, this was supported by the Committee on Climate Change (CCC), which [argued that](#) involving the OEP in this area risked undermining and duplicating the existing governance framework established by the Climate Change Act 2008, including the role of parliament as the ultimate arbiter of climate change law. The CCC was also concerned that the nature of its advice might have to change in a new legal context.

Greener UK [supported](#) the inclusion of all climate change law, including the Climate Change Act, within the OEP's remit because the majority of short term emissions reductions are to be delivered by EU rules and because public challenge of climate law is limited through judicial review, and also to reflect the interlinkages between climate and other environmental concerns. It was also of the view that most of the issues identified by the CCC could be overcome by suitable institutional design and an appropriate memorandum of understanding. This matter was considered in some detail during pre-legislative scrutiny of the draft bill, with the Environmental Audit Committee [recommending](#) that the OEP should have climate change mitigation in its remit.

When the Environment Bill was laid before parliament in October 2019, the climate change exemption had been removed, which was welcomed by Greener UK and other stakeholders. The [January 2020 version](#) of the bill maintains this position.

Clause 22(5) requires the OEP to set out in its strategy how it will avoid overlap between its functions and those of the CCC. Paragraph 198 of the [explanatory notes](#) states that this could be through a memorandum of understanding (MOU). The OEP is also required to inform the CCC prior to issuing an enforcement notice related to any climate change legislation to ensure both bodies are informed of each other's activities and avoid any potential overlaps or conflicts.

Greener UK's view on the relationship between the OEP and the CCC

Greener UK welcomes the inclusion of climate change in the OEP's remit. However, the responsibilities of the OEP and CCC must be distinct and complementary. Both have an important role to play in addressing climate change; they must not duplicate effort or undermine each other. Below are five issues that need to be considered in establishing this relationship and our suggested solutions.

1. Maintaining a prominent and respected role for the CCC and its advice

At the highest level, the distinctive roles of the CCC and OEP should be maintained to ensure the CCC can continue to act as a trusted adviser to government and parliament and, for climate change mitigation, to be the primary judge of whether duties set out in the Climate Change Act are being discharged.

For the sake of clarity, any memorandum of understanding between the two organisations should indicate that the OEP will not conduct its own analysis of mitigation and that the CCC will not make any judgement over whether legal action is warranted. When it comes to adaptation, the OEP has a formal role in both advice and enforcement but should request advice from the CCC on climate adaptation.

To allow the CCC to speak more freely in its advisory role, the OEP should agree to request evidence from the CCC and other relevant organisations when considering any enforcement action on climate-related matters, and not just before issuing an information or decision notice. This will give the CCC the chance to provide tailored evidence and help to address the geographical issues set out in point 2 below. However, the CCC should not be under any pressure to respond should it choose not to, nor should it be required to make its thoughts public.

In the case of other legislation with a climate angle, such as the transposed EU energy efficiency and waste framework directives, the OEP and CCC should agree whether the above split is appropriate. However, there could be fewer of these kinds of legally binding targets once the UK leaves the EU, and more emphasis on the UK's Climate Change Act.

2. Differing geographic scopes

The OEP will only cover England and, subject to the commencement of Part 2 of the bill, Northern Ireland; whereas the CCC, like the Climate Change Act itself, covers the whole of the UK. This provides further reason for a clear separation of their roles as set out above. We would urge the Scottish and Welsh governments to establish parallel arrangements for enforcement of climate-related responsibilities within their jurisdictions; for example, by including climate change within the remit of any environmental governance bodies they establish. More detail is required on how the OEP's climate role might apply in Northern Ireland.

The OEP should keep its focus on the adequacy of climate change policies delivered in England and, potentially, Northern Ireland. In judging this, it may be valuable to request comments from the CCC at a relatively early stage in the process.

3. Timing of OEP action

There are various points at which the OEP could theoretically challenge the government on inadequate mitigation action, including when an emissions reduction

plan is late, when it becomes clear a carbon budget will be missed or once it has been missed. Our view is that there is a legal case and an urgent need for the OEP to act pre-emptively and bring enforcement action when it is clear a carbon budget is going to be missed, rather than after it has been missed. For example, the UK is not on track to meet the fourth carbon budget (2023-2027) so action is required before the end of this period. The Climate Change Act requires the government to put in place policies that allow future carbon budgets to be met. If it is clear that these are going to be missed, it is [clearly failing in its duty](#). It is critical that both the OEP and CCC work together to encourage the government to act in a timely fashion.

4. Access to information.

The OEP will have the power to demand government analysis that the CCC and other stakeholders might not have access to. It should use this power when assessing government progress and should aim, whenever possible, to make this information publicly available.

5. Formalising the relationship between OEP and CCC

While the intention to require co-operation between the OEP and CCC is welcome, we propose that a degree of flexibility is left in how this is achieved and that it is appropriate for the two bodies to work out the details in practice, rather than for these to be prescribed in legislation. We recommend that the Environment Bill simply requires co-operation and information sharing so that both organisations can operate effectively. There should also be stakeholder consultation on the relevant Framework Documents and any memorandum of understanding, given the considerable public interest in future climate governance.

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