

## Briefing for Commons Second Reading of the Environment Bill

February 2020

The Environment Bill is a vital piece of legislation. That the government has hailed it as a [landmark bill](#) and the prime minister regards it as the “huge star of our legislative programme” is a strong statement of political intent.

There are many welcome measures in the bill. There are others where technical improvements will help to set it on the right track, and others where significant amendment will be necessary.

But, considered as a whole, the bill does not achieve what has been promised: gold standard legislation, showing global leadership for responding to the environmental crisis, and a world-leading watchdog.

Support from all sides of the House will be required to ensure that the bill is improved, helping to halt the loss of nature, reverse decades of environmental decline and set our environment on a pathway to significant improvement.

Much of the bill applies only to England. The need for a co-ordinated, ambitious approach to environmental governance and improvement across the whole of the UK has never been more important.

For the bill to succeed, it will require a step change in the resourcing of local government, the Office for Environmental Protection (OEP) and frontline delivery agencies, such as Natural England and the Environment Agency, as well as increased expenditure on beneficial land management, and for this to be sustained into future spending reviews. The catastrophic losses highlighted by the [State of the Nature report](#) show the impact that lack of funding has had on the natural world.

Nature’s recovery will not be achieved on the cheap. But if this is funded and legislated for, the dividends for the environment, our health and wellbeing, the economy and future generations will be priceless by comparison.

### Summary of key concerns on the bill

It would be helpful if you would consider raising the following points in the debate:

- Overall, **links between the first and second half of the bill should be strengthened**, in particular the links between the target setting framework and the measures in the specific policy chapters, as well as the links between the target setting framework and other key delivery mechanisms, such as Environmental Land Management.
- While a framework to set legally binding targets is welcome, it must be significantly strengthened to be effective. **Improvements are needed to how targets are set and met**, with the scope of bodies tasked with meeting these targets broadened to ensure they have relevance across government from day one.
- For the OEP to be the world-leading watchdog the government has pledged to create, its independence and powers must be strengthened, including through **greater parliamentary oversight of OEP board appointments and the budget**. The Upper

Tribunal must be empowered to grant meaningful, dissuasive and effective remedies including, where appropriate, financial penalties.

- If the government is serious about its repeated verbal commitments to maintaining, and indeed enhancing, environmental standards, it **must include a straightforward and substantive commitment to non-regression of environmental law** in this flagship bill.
- The **clauses on environmental principles need wholesale reform** to strengthen their application.
- We welcome the extension of the governance provisions to Northern Ireland; however, improvements are needed. **Environmental Improvement Plans should be underpinned by targets** because without these, the governance system in Northern Ireland will be incomplete and less effective. The government should also clarify the interim governance arrangements for Northern Ireland so that there is no gap in oversight.
- The waste and resource efficiency measures are too focused on ‘end of life’ solutions to waste and recycling, with much **more emphasis needed to encourage the reduction of waste** in the first place. The proposed charge on single use plastic items must apply to all single use materials. The government should commit to bring forward these measures, including deposit return schemes, as soon as possible
- Instead of increasing ambition to protect our health, the bill risks weakening existing laws and being **a wasted opportunity to address air pollution**. To show real ambition, the bill must include a legally binding commitment to achieve World Health Organization guideline levels of particulate matter pollution by 2030 at the very latest.
- The bill includes **several measures which could seriously undermine the water environment**. Clause 81 should either be deleted or substantively reformed.
- The bill does **not properly provide for the recovery of the marine environment** and the government must clarify that key provisions, including on targets, will cover the sea as well as the land and air.
- The **biodiversity and nature clauses should be strengthened**. Local Nature Recovery Strategies will be ineffective unless there are stronger duties to use them in planning and spending decisions.
- **Biodiversity gain in development requires stronger safeguards** and a wider application to ensure that it is part of a national plan to restore nature, that it does not provide a loophole for inappropriate development and that newly created habitat is protected for the future.
- **The bill is silent on tackling the UK’s global footprint**. This must be addressed else the UK risks undermining its global leadership credentials ahead of key international summits.
- **The power to amend the main UK REACH text will need careful scrutiny** to avoid it being used to reduce the level of protection for the public and the environment from hazardous chemicals.

## Environmental targets (clauses 1 – 6)

The inclusion of a target setting framework is an essential and welcome part of the Environment Bill. The long term nature of environmental matters makes this particularly important. Halting and reversing the loss of nature and enhancing the environment cannot be achieved over the short time frame of a political cycle.

Putting targets into law gives them certainty and clarity that benefits everyone and drives long term investment in environmental improvements. However, targets alone will not drive improvement without a strong accountability framework for their achievement. As

[recent reports](#) have shown, there is no let up in the decline in nature. The need to take action has never been more urgent.

As well as being legally binding, targets must also be enforceable and ambitious. Mechanisms that assure their delivery must be put in place immediately. The framework must not be used to weaken or undermine existing targets and new targets must at least match the level of ambition in existing targets, while supporting the ratcheting up of ambition in future iterations. To achieve this, the framework in the bill must be significantly bolstered in the following five areas:

- **The current framework for target setting does not guarantee adequate ambition or protect against needless regression.** In theory, the framework could be used to set narrow, unambitious targets. To prevent this, an objective should be added to the bill to guide both the content and the scope of the targets. Together, the targets should aim to achieve an environment that is recovering, healthy, diverse and resilient for the benefit of people and wildlife. This would help to ensure that a sufficient number of targets is set in each priority area, and that those targets have a sufficiently broad coverage of the policy matter at hand. Key measures of environmental success must not be overlooked. For example, biodiversity targets should include species abundance and diversity, species habitat extent and condition, and a measure of human caused extinctions. Waste and resource targets should cover residual waste, carbon and resource productivity, and eliminating plastic pollution. Air quality targets should cover the emission of, concentration of and exposure to all key harmful pollutants. Separate targets should explicitly cover both the marine and terrestrial environment within the priority areas.
- **Targets must be based on independent, expert, science led advice to ensure that they are robust and fit for purpose.** The bill currently fails to put in place a credible mechanism for incorporating expert advice into the setting of targets. This means it will be impossible for the UK to claim it is at the forefront of environmental problem solving. Clause 3(1) requires the Secretary of State to seek advice from persons they consider to be independent and to have relevant expertise. This gives ministers a blank cheque to decide how and from whom to source advice. Instead, the government should be required to obtain, with a strong expectation to follow, the advice of an independent, well-resourced, expert body and to undertake public consultation. This advice should include what targets should be set, the steps that should be taken to ensure they are met, and the remedial measures required if a target is missed. This would follow a similar model to the advisory role that the Committee on Climate Change provides. The Secretary of State must be required to publish a statement setting out how they have taken account of the independent advice. If the Secretary of State makes provision different from that recommended, they must also publish a statement setting out the reasons for that decision. This ‘comply or explain’ model should be firmly embedded within the legislation. At present, the framework is too implicit and overly relies on the imagination and goodwill of future ministers.
- **The time frame for the targets and their achievement needs to be improved.** While we welcome the focus on long term improvement that targets of at least 15 years will bring, the bill should also allow for shorter term targets to be set where appropriate. This could be achieved by ensuring that the target setting power can be exercised over a shorter time frame than 15 years for all priority areas, as is the case for particulate matter. The secondary legislation, in which targets will be housed, must be laid by October 2022. Targets should be set as soon as possible, with the 2022 date regarded as a final deadline and not a timetable.

- **The ‘significant improvement’ test must be clarified and strengthened.** While we support the intention behind the test, it is unclear how it will work. For example, the term “significant environmental improvement” is not defined and could be interpreted by an unambitious government as a significant improvement to an already degraded and degrading environment. Additionally, the test should be amended to specify that significant improvement should be achieved on land and at sea. As the test is to be applied to targets and other action collectively, it could mask slow progress or a lack of ambition in individual target areas. Furthermore, the test only applies to reviewing targets. At the very least, the test must be applied at the start of the target setting cycle to ensure that environmental improvement drives the whole process.
- **The bill must also put in place measures to make sure the targets are actually met.** Clause 4 places a duty on the Secretary of State to ensure that targets are met. This is very welcome. However, there is nothing to compel governments, including future ones, to start taking action now required to meet targets, or to take remedial action where targets are missed. The bill should require successive governments to bring forward specific time-bound measures, as part of the relevant Environmental Improvement Plan, to ensure policies are in place to deliver the targets and progress remains on track. To ensure action across government, other public bodies must also be placed under a duty to contribute to the achievement of the targets, and interim targets should be made legally binding.

The targetting regime should also be aligned with other parts of the bill, for example biodiversity gain in Part 6, and with delivery mechanisms such as the Environmental Land Management (ELM) scheme. Alongside this bill, the Agriculture Bill should create a matching long term ELM funding framework based on an assessment of environmental need and the contribution needed from the land management sector in meeting environmental targets.

As marine is not explicitly included as a matter for target setting on the face of the bill, the government is not currently required to set targets for the recovery of the marine environment. Indeed, the government could legally set a target for a single aspect of terrestrial biodiversity or freshwater and meet its legal obligations without setting any targets for the recovery of the marine environment. This should be resolved.

The government should, therefore, clarify that any targets developed for the water and biodiversity chapters will also include targets for the recovery of the marine environment, and include at least one target relating to the recovery of the marine environment (as well as for freshwater and biodiversity on land respectively). The requirements under chapters for biodiversity and water are also overwhelmingly terrestrial and should also reflect their application to the marine environment, where appropriate. For example, there are no new duties for marine regulators or proposed changes to marine legislation, compared to the significant changes affecting the management of “land”.

The bill does not include any reference to, or support for, the UK Marine Strategy Regulations 2010, or the duty to achieve Good Environmental Status (GES) of UK waters by 2020. As the UK failed on 11 of 15 indicators for GES in the latest UK Marine Strategy assessment, the government should clarify how it plans to use this bill to further support the achievement of this duty beyond 2020 and how it will apply to local and public authorities.

## Environmental principles (Clauses 16 to 18)

The bill enshrines five important environmental principles in law: integration, prevention, precaution, rectification and polluter pays. These must function as important guiding principles for the government as it develops new policies. The integration principle should require environmental protection requirements to be built into policy development, including at early stages, leading to more holistic policy making. The precautionary principle must require policy makers to assess environmental risk through a science based approach and to take appropriate action depending on the level of uncertainty. Rectification requires environmental damage to be addressed at source to avoid remedying its effects at a later date, while prevention requires action to avoid environmental damage before it occurs. Finally, the principle that the polluter must pay should ensure that policy makers factor pollution costs into their thinking. The current iteration of the bill does not provide an adequate route to ensuring the principles fully function to achieve these aims.

The clauses on environmental principles are largely unchanged from the [draft Environment \(Principles and Governance\) Bill](#), despite very clear evidence that emerged during pre-legislative scrutiny, including from [leading academics](#), on the need for these clauses to be strengthened. Despite listing the principles on its face, the bill constitutes a significant weakening of the current legal effect of the principles because there is no duty on government ministers to apply the principles, merely to have “due regard” to an, as yet, unpublished policy statement. We are concerned that the bill is, therefore, relegating these vitally important legal principles to little more than creatures of policy.

Environmental principles have been binding on all public authorities including in individual administrative decisions. This legal obligation on all public authorities to apply the principles, whenever relevant, will be undermined through the bill.

Clause 16 requires the Secretary of State to prepare a policy statement on environmental principles. Only ministers, not public authorities, must have “due regard” to this statement when making policy but the requirement does not apply to decision making and is subject to wide ranging exemptions in Clause 18(2) and (3). These seem to absolve HM Treasury, the Ministry of Defence and, indeed, those “spending...resources within government” from considering the principles at all.

The bill also states that the policy statement need only be applied “proportionately” when making policy. This may allow the government to trade off environmental principles against socioeconomic considerations, thus weakening environmental protections.

The provisions in the Environment Bill are weaker than those in the Planning Act 2008 regarding the role of parliament. There is a half-hearted attempt to provide for parliamentary scrutiny of the principles policy statement in Clause 17 but no formal role for parliament in approving the statement in the way that other policy statements, such as those on national energy policy, must be approved by a resolution of the House of Commons following a debate.

We note that the three Aarhus rights (public access to environmental information, public participation in environmental decision making and access to justice in relation to environmental matters) were removed from the list of principles that was set out in the draft bill. While we agree that these rights should not be included in a list of environmental principles, we think that the government should use the bill as an opportunity to restate

the importance of these rights and the need to ensure they are respected, protected and fulfilled.

### **Environmental protection: statements and reports (Clauses 19 and 20)**

Clause 19 requires ministers to publish a statement before the second reading of any bill, which contains environmental law provisions, to state that, in the minister's view, the bill will not have the effect of reducing the level of environmental protection provided by any existing environmental law. At first glance, this measure appears to be common sense and part of good administration. However, we are concerned that it may be mistaken for a legal commitment not to regress from current environmental standards, which it is not. We are also concerned that restricting this clause to bills only containing environmental law provisions risks excluding legislation and policy which could have significant environmental impacts.

Without a binding commitment to maintaining standards, there is no doubt that environmental law will come under sustained deregulatory pressure, including from those seeking to strike trade deals, for example with the US. A non-regression provision is a key part of modern environmental law, as contained in a recent update to French Law and the [draft IUCN Global Pact for the Environment](#).

**The bill must, therefore, be amended to include a binding commitment so that standards cannot be weakened or watered down in the future.**

An updated version of clause 19 could serve a useful purpose alongside this. But it should be modelled more closely on the Human Rights Act, on which it appears to be loosely based. That legislation involves a more rigorous process in which the Joint Committee on Human Rights scrutinises every government bill for its compatibility with human rights. A new Joint Committee on Environmental Standards could be established to undertake a similar role, or it could be undertaken by one of the existing environmental select committees. The minister's statement should be in the form of an oral statement to the House.

These structures are all the more important because the governance structure which sits behind statements of compatibility under the Human Rights Act (namely that fundamental rights are enforceable by the courts) does not obviously apply where primary legislation may lead to environmental protection under the bill.

Regression is unlikely to emanate very often from primary legislation. Instead, regressive changes will probably be tucked away in the small print of trade agreements, secondary legislation or detailed policies. The scope of this provision should, therefore, be extended to cover international treaties, secondary legislation, policy and guidance.

The government should also clarify why the statement is only to be published before second reading, given that the amending stages of bills, in which ministers or parliamentarians could propose changes that would have the effect of reducing the level of environmental protection, all come after second reading.

Clause 20 requires the Secretary of State to report biennially to parliament on those developments in environmental protection legislation from other jurisdictions which appear to the Secretary of State to be significant. We would welcome clarification from the government on what value it considers this would add to the new environmental

governance system, given that we would expect the government to be keeping track of such developments as a matter of good administration.

We are concerned that no government action is required under Clause 20, aside from publishing a report. The assessment of what is a significant development in international environmental protection should, as a minimum, entail public consultation and not be left entirely to the discretion of the Secretary of State.

We suggest that, instead, the Secretary of State should be tasked with commissioning and publishing an independent assessment of developments in international environmental protection legislation and be required to report to parliament on what action the government intends to take in response. This should be in the form of an oral statement to the House, as well as a written report. The changes we suggest above would help to increase transparency and accountability.

**The simple truth remains that, if the government is serious about its repeated verbal commitments to maintaining, and indeed enhancing, environmental standards, then it will wish to see this legacy enshrined in law through a straightforward commitment to non-regression of environmental standards set out in black and white in this flagship bill.**

### **The role and independence of the Office for Environmental Protection (Clauses 21 to 24; Schedule 1)**

The bill proposes the creation of an independent statutory body, the Office for Environmental Protection (OEP), to monitor and report on environmental progress and targets, to monitor, report and advise on changes to environmental law and to take enforcement action on potential breaches of environmental law by public authorities. The establishment of this body is very welcome and will be vital to ensuring that implementation of environmental protections and access to environmental justice do not degrade as the UK puts in place a new environmental governance system. We also welcome the [government's ambition](#) for the OEP to be a world-leading watchdog.

However, the OEP will only be effective if it is sufficiently independent from government. The government has [accepted this](#) and there has been strong support in parliament for the principle of the OEP's independence, including in the previous [second reading debate](#) in October 2019. The [EFRA Committee concluded](#) that it is essential that "every step is taken to ensure the Office for Environmental Protection is as independent from the Government as possible, to give the public confidence that the Government will be properly held to account on its duty to protect the environment".

**While the government has made some improvements to the bill, several further changes are needed to ensure enduring independence for the OEP:**

#### **Independence of appointments**

The bill proposes that the OEP's non-executive members, including the chair, will each be appointed by the Secretary of State, confining the role of parliament to pre-appointment scrutiny through an EFRA Committee hearing with the Secretary of State's preferred candidate for OEP chair. The Secretary of State would remain responsible for the ultimate decision over appointments and dismissals of the chair and non-executive board members.

Both the Environmental Audit Committee and the EFRA Committee have called for a greater role for parliament in the appointments process. In oral evidence, the Secretary of State [told the EFRA Committee](#) that the model of the Office for Budget Responsibility, in which the appointment of the chair is made with the consent of the Treasury Select Committee, “has much to recommend it”. It is very disappointing, therefore, that the government has failed to improve the appointments process and appears to be relying on pre-appointment hearings to provide independence, which they do not. This leaves the OEP with weaker arrangements on appointments than any other comparable oversight body including the National Audit Office, Office for Budget Responsibility and the Information Commissioner.

**The bill should therefore be amended to provide for greater parliamentary oversight of appointments in which the chair is appointed, with the consent of the chairs of the Environmental Audit and EFRA Committees, and is then responsible for the appointment of board members.**

### **Independence of funding**

The government [has agreed](#) that to ensure its [financial independence](#), the OEP will be provided with a five year indicative budget which is formally ring fenced by HM Treasury within any given Spending Review period. This is comparable with how some other bodies are given long term financial certainty, such as the Office for Budget Responsibility, for which HM Treasury has made a [similar commitment](#).

**The government has said that it will make this commitment in parliament and we encourage the minister to do so at the earliest opportunity.** However, public and parliamentary pressure aside, there is nothing to stop a future government deciding not to renew this commitment, especially if the OEP has started to make life difficult for ministers or in any new period of austerity or funding cuts. **This welcome commitment should, therefore, be enshrined in the legislation**, for example in a similar manner to how the government has proposed to [provide long term funding certainty](#) for the NHS.

Additionally, **the OEP should be able to produce and present its own Estimate to Parliament.** This is the means through which government departments and certain parliamentary bodies gain parliamentary approval to access public money to fund their operations. Each of the National Audit Office, the Electoral Commission and the Independent Parliamentary Standards Authority currently submit independent Estimates. This would enable the OEP, rather than the Secretary of State, to determine what funding is needed to deliver its functions.

The government maintains that if the OEP were to have its own Estimate separate from Defra, there would be less ministerial accountability. It has also argued this would remove the flexibility for Defra to provide in-year financial support to the OEP, in response to changing circumstances. We do not believe this to be correct as supplementary estimates can be prepared and submitted to deal with in-year budgetary changes, [as is the case](#) for bodies such as the National Audit Office.

The government has instead proposed that the OEP should have a separate line in Defra’s Estimate. This would provide transparency in the sense that it would be easier to see in the Estimate exactly what has been spent on the OEP, but it provides no additional guarantees of independence.

The government has also proposed giving the OEP the option of providing the relevant select committee with an additional Estimates Memorandum alongside the Defra

Estimate, which it says would allow the OEP to set out details of any financial shortfall or issues. While this is technically correct, there would be no power for the select committee, or anyone else, to do anything about this beyond drawing attention to the OEP's concerns.

**We therefore suggest that the bill mirrors the provision in [Clause 23 of the Budget Responsibility and National Audit Act 2011](#) so that the OEP is provided with direct funding from parliament.**

### **Institutional safeguards**

Protecting the institutional independence of the OEP will be crucial to guarantee its independence over the longer term. There are three ways in which the bill should be strengthened to achieve this:

- **A strengthened duty on the Secretary of State to protect the OEP's independence.** Schedule 1 of the bill requires the Secretary of State, in exercising functions in respect of the OEP, to have regard to the need to protect its independence. This is welcome but should be strengthened by the removal of the words "have regard to".
- **Improved transparency, including the maintenance of a log of substantive contact with government.** The government has said that it will ensure that the relationship between the OEP and Defra is as transparent as possible. The OEP should be encouraged to maintain and publish a log of substantive contact with the public authorities that it oversees, in a similar manner to the [log of substantive contact](#) published by the Office for Budget Responsibility.
- **Clarification that the OEP will have complete discretion to carry out its functions.** The Comptroller and Auditor General has [complete discretion](#) in the carrying out of the functions of that office. The Office for Budget Responsibility has [complete discretion](#) in the performance of its duty to examine and report on the sustainability of the public finances. There seems no particular reason why a similar provision ought not to be included in the Environment Bill, providing the OEP with complete discretion in the carrying out of its scrutiny, advice and enforcement functions and in the development of its strategy.

### **Interim chief executive (Schedule 1)**

We note that Paragraph 4 of Schedule 1 gives the Secretary of State the power to appoint an interim chief executive for the OEP. We do not object to this power in principle, as we recognise that an interim appointment may be necessary to facilitate the timely set-up of the OEP. However, we are concerned about the terms of the power, which is broadly cast and could allow ministers to effectively control the development of the OEP at such a crucial, formative time.

We strongly object to Paragraph 4(3) which amounts to a power of direction over the OEP. This is of concern because Paragraph 4(2) empowers the interim chief executive to "do other things in the name and on behalf of the OEP". The government is, therefore, effectively giving itself the ability to direct the interim chief executive on a wide range of matters. This is not appropriate for an independent body, nor commensurate with the government's commitment to independence and transparency. Paragraph 4(3) should be deleted.

We are also concerned that Paragraph 4(4) would allow a civil servant to be appointed as interim chief executive with no independent oversight or scrutiny of this appointment.

### **The OEP's enforcement function (Clauses 28 to 38)**

The OEP is not given a sufficiently wide remit to ensure adequate oversight of environmental law or to properly fulfil its potential.

It should have broad scope to act where it thinks it is most needed and it must be enabled to take a wide-ranging and strategic approach to environmental oversight and the enforcement of environmental law. The considerable range of matters that could affect environmental conditions means this is indispensable. However, the bill currently limits the OEP's scope in a number of ways.

Furthermore, many of the OEP's functions rely on the identification of a potential "failure to comply with environmental law" by a public authority. However, the definition of this term is concerning (Clause 28(2)). This is already a clear phrase with an obvious meaning, it does not require elucidation in legislation. This definition should be removed.

### **Investigations and notices (Clauses 30-37)**

Conducting investigations into specific and individual potential breaches of environmental law will be a very important element of the work of the OEP. However, there is room for further improvement to help the body see off problems before they occur.

We welcome the ability of the OEP to conduct investigations on its own initiative without having to rely on receipt of a complaint, which is provided for in Clause 30(2). However, the significance of the investigations is undermined by the narrowness of the OEP's powers to issue notices following on from these investigations. Neither "information notices" nor "decision notices" are binding, and it is not clear that these will be an effective way to remedy failures to comply with environmental law.

The functions of the OEP should also be extended to include a more pre-emptive focus. **It must be empowered to conduct broader inquiries into systemic issues** and make recommendations or issue guidance off the back of them, allowing the OEP to take a more strategic approach that could prevent issues arising in the first place.

### **Environmental review (Clause 35)**

We welcome the government's attempt to design a bespoke enforcement process for the OEP. Environmental review could represent a new and improved mechanism for the comprehensive review of compliance with environmental law.

**The Upper Tribunal must be able to consider technical facts and issues, with experts who are able to thoroughly review the substantive matter at hand. The bill should make this policy objective clear.**

Unfortunately, the proposed environmental review process is unsatisfactory for various reasons:

- There is a need to move away from traditional judicial reviews, which have proved unsatisfactory in dealing with environmental complaints. While the environmental review model appears to be an attempt to do just that, the way it is currently curtailed by reference back to judicial review principles means the substance of the review process is, in essence, judicial review in disguise.
- To address this, the Upper Tribunal should not be restricted to applying "judicial review principles" in environmental reviews. Clause 35(5) should be removed, and the bill should explicitly state that environmental reviews must properly consider contested matters of fact as part of a more thorough review process.

- There is also a problematic difference between the approach and powers of the OEP and those of the Upper Tribunal. The OEP will be able to reach different findings of fact to those of the public authority in question and make recommendations on that basis, but it is unclear whether (and if so how) the Tribunal will be able to back up those findings. In addition, the OEP may be limited in the recommendations it can make since, unlike the Tribunal, it may not be able to require a public body to reverse a decision. This creates a fundamental mismatch between the work of the two bodies.
- The remedies and sanctions available through the environmental review process are too weak. The Upper Tribunal must be empowered to grant meaningful, dissuasive and effective remedies including, where appropriate, financial penalties – just as the Court of Justice of the European Union is currently able to do. The constraints imposed on the Upper Tribunal in Clause 35(8) severely limit the ability of the Tribunal to grant meaningful remedies, undermining the entire enforcement process.
- Environmental reviews are only possible where an information and decision notice have been issued by the OEP to the relevant public authority. While there is scope for urgent judicial and statutory reviews, this should be built on. Environmental review and the Upper Tribunal have the potential to meaningfully improve environmental enforcement and, as such, environmental reviews should also be available in urgent situations and for serious issues.
- The important role that civil society has to play in ensuring compliance with environmental law must be recognised by giving civil society access to an improved environmental review mechanism. As a starting point, complainants should be able to commence environmental review proceedings and join proceedings as interested parties. The environmental review process will work best if it is open to all. As has been [recognised by the Supreme Court](#), for the judiciary to ensure that the government carries out its functions in accordance with the law, people must, in principle, have unimpeded access to it

### **The OEP and climate change**

**We [welcome the fact](#) that the OEP will have climate change within the remit of its enforcement functions**, as recommended by the [Environmental Audit Committee](#) and the [EFRA Committee](#) in their pre-legislative scrutiny reports. We agree that the OEP should work closely with the Committee on Climate Change to avoid overlap and duplication and ensure a joined-up approach to scrutinising and enforcing climate law.

### **Restrictions on disclosure (Clause 40)**

**Transparency is a crucial element of proper environmental governance and access to justice. People must be kept abreast of the OEP's work to understand how it is contributing to the enforcement of environmental law. Some elements of the bill are encouraging in this respect. However, important improvements are required to ensure full transparency of OEP processes.**

The OEP and public authorities are prevented from disclosing certain materials including information and decision notices, and correspondence relating to such notices (Clauses 40(1) and (3)). This may threaten the independence of the OEP, given that ministers must receive a copy of any notices issued under Clause 37.

It is unclear why these specific provisions are needed. The OEP will be bound by [access to information legislation](#) which already has relevant carve outs, for instance where disclosure would adversely affect the course of justice or the ability of a public authority to conduct a criminal or disciplinary inquiry. A better approach – which is more likely to comply with the access to information requirements in the Aarhus Convention – would be

to remove Clause 39 or flip it around so that disclosure is required apart from in certain (exhaustive, specified) circumstances.

### Meaning of natural environment, environmental protection and environmental law (Clauses 41, 42 and 43)

Environmental law is defined in Clause 43 as any legislative provision which is mainly concerned with environmental protection. **The term “mainly concerned” is ambiguous with no clear legal meaning.** “Related to” is a clearer and more easily understood alternative. It acknowledges that law is often concerned with many matters, and that the environment is affected by many areas of law.

Dr David Wolfe QC, drew attention to this issue in his [written evidence](#) to the pre-legislative scrutiny of the draft bill.

“And, even then, there is no basis for a “mainly concerned with” test. If any provision of any Act or regulation is concerned with an environmental matter, then it is “environmental law”.”

**“Environmental protection” is too narrowly defined in Clause 42.** Key areas of law with potential environmental impacts may fall outside the scope including, for instance, many pieces of planning law, as explained in Paragraph 366 of the Explanatory Notes. This is concerning, as the planning system has the potential for significant effects on the environment. In addition, specific areas of law are carved out. Concerning exclusions include those relating to the disclosure of, and access to, environmental information as well as taxation, spending and the allocation of resources within government. These exclusions could hinder the OEP’s ability to assess whether compliance with environmental law is being adequately prioritised.

**The definition of the natural environment in Clause 41 risks excluding significant elements of the natural world.** The extent to which the marine environment is provided for in the bill is unclear. In addition to the need for the marine environment to be included within the scope of the target setting framework, Clause 41 should be amended to make it explicitly clear that the meaning of the natural environment includes the marine environment. Paragraph 61 of the Explanatory Notes indicates that the definition does extend to the marine environment, as well as the terrestrial and water environments, but **for legal clarity this should be stated on the face of the bill.** We also recognise the heritage sector’s concerns that the historic environment is not explicitly included in the definition of the natural environment in the bill, despite it featuring in the 25 Year Environment Plan.

**The bill does not include any focus on the UK’s global footprint and its reduction.** Whilst this is implicit, via the inclusion of Environmental Improvement Plans (of which the 25 Year Environment Plan is the first and includes a chapter on protecting and improving our global environment), this international component must be explicitly recognised in the bill. **The government should also establish a mandatory due diligence mechanism to reduce the UK’s global footprint.**

## **Environmental governance, Northern Ireland (Clauses 45 and 46, Schedules 2 and 3)**

We welcome the extension of provisions in the bill on Environmental Improvement Plans, environmental principles and the OEP to cover Northern Ireland. Our comments in relation to Part 1 of the bill also apply to the relevant clauses and schedules on Northern Ireland.

Given that Part 2 of the bill proposes a new environmental governance system for Northern Ireland, we would propose that Clauses 1–6 on environmental targets should also apply to Northern Ireland. The targets are inextricably linked to Environmental Improvement Plans and without these, the governance system in Northern Ireland will be incomplete and less effective.

We welcome the fact that, subject to these provisions being commenced, a dedicated Northern Ireland member would be appointed to the board of the OEP. However, we are concerned that the proposed process for appointing this member lacks involvement or oversight from the Northern Ireland Assembly.

The government should confirm that the work to establish the OEP takes full account of the resourcing, staffing and expertise needed for the body to operate effectively in Northern Ireland.

The government should also clarify the timescale for when the OEP is expected to become operational in Northern Ireland. As no interim environmental governance arrangements are proposed, the OEP must be operational by 1 January 2021 to avoid a gap in environmental governance.

Northern Ireland shares a land border and several cross-border sites with the Republic of Ireland. It would be helpful if the government could indicate what work is being undertaken on the relationship between the OEP and existing environmental governance structures within the Republic of Ireland.

## **Devolution**

The provisions relating to environmental principles and the OEP primarily relate to England only and, as outlined above, Northern Ireland. The role of the OEP also extends to reserved functions of UK ministers in Scotland and Wales. This approach appears to be consistent with the devolution settlements. However, it does raise some matters that require clarification. The government should be asked:

- To provide clarification, with examples, of the reserved functions of UK ministers that would be subject to oversight by the OEP.
- To indicate why the reserved functions of UK ministers in Northern Ireland are rightly subject to the environmental principles (Schedule 2, Paragraph 8(2)) but that this is not the case in regard to the reserved functions of UK ministers in Scotland and Wales (clauses 130(1) and 18(3)(c), taken together). Have ministers agreed that such functions would be addressed by any similar legislation passed by the Scottish parliament and National Assembly for Wales?
- In relation to the application of these principles, across the UK, can ministers outline their plans to ensure a coherent approach, and when stakeholders will be able to comment on those proposals?

## Waste and resource efficiency (Clauses 47 to 68)

The UK is currently using and wasting resources at unsustainable levels. We welcome that the bill proposes a number of measures to tackle this, including through the introduction of new producer responsibility schemes, deposit return schemes and resource efficiency product requirements.

**We welcome the fact that targets set through the bill will focus on waste reduction and resource efficiency, but overall, the measures in the bill itself are too focused on 'end of life' solutions to waste and recycling. Much more emphasis is needed on reduction and design for resource efficiency, including through reuse, at the design stage.** This will support the UK's carbon targets and delivery of the net zero by 2050 target. The proposed waste and resource efficiency powers are enabling powers and it is not yet clear how or when these will be used. While it makes sense to allow for a degree of flexibility, the government must take this opportunity to clearly set out its intentions and ambitious, tangible targets with set dates.

The government has [previously committed](#) to "match or where economically practicable exceed the ambition of the EU's Ecodesign standards". This bill provides a well-timed and convenient legislative vehicle to do just that.

We would like an assurance from the government that **it will seek to introduce legally binding targets on waste minimisation through the power in Clause 1**, matching or surpassing the reported ambition of the [EU's proposed target to halve waste and potentially resource consumption by 2030](#). Given that the implications of UK resource use extend far beyond our borders, targets on minimisation must also ensure a reduction of the UK's global material footprint. This is because the [vast majority](#) (81 per cent as of 2014) of resource extraction to meet final UK demand occurs abroad. In line with the waste hierarchy, radical waste minimisation should be achieved through significant reductions in use of resources in the first instance, followed by a major increase in reuse and resource productivity. The UK is on course to easily exceed the government's current target to double resource productivity by 2050, so we would like assurances that the new, legally binding targets will drive ambition in this area.

## Producer responsibility (Clauses 47 to 48 and Schedules 4 and 5)

Paragraphs 1(2)(a) and (b) of Schedule 4 indicate that regulations can be made to promote waste minimisation, reduction, reuse, redistribution, recovery or recycling of products or materials. This is welcome. However, we would encourage more of a focus on minimising resource use in the first place, and are concerned that Schedule 5 undermines this through its sole focus on disposal costs. Fundamentally, **extended producer responsibility must be a system that encourages full lifecycle improvements in products and packaging**. With regards to packaging, in particular, this includes a wholesale reduction in single use packaging and the development of reusable and refillable alternatives, using modulated fees to internalise the full life cycle costs of packaging, not just those that occur at the end of life.

## Charges for single use plastic items (Clause 52 and Schedule 9)

The fact that potential single use charges will only apply to plastic is a missed opportunity and could result in unintended consequences. Shifts from single use plastic cutlery, stirrers, straws, etc to single use alternatives made from paper, wood, etc, are already happening, even when such items are unnecessary or reusable options are easily accessible. This will undermine the UK's carbon targets and commitment to achieve net zero. The government's proposals mean that not only will this continue unchecked, it will, in fact, appear to be encouraged by government policy. It would be far better to tackle the single use culture in general, rather than just shifting the environmental burden away from plastic to other materials. Tackling the scourge of plastic pollution must remain a key government priority, but this goal must not be pursued in a policy vacuum as this risks bringing about changes that could, for instance, increase carbon and result in more waste generation. **This part of the bill must be amended if the government's ambitions on waste minimisation and reduction are to be achieved.** This would be consistent with the [EFRA committee's recommendation](#) following its inquiry on single use plastic packaging.

## Deposit schemes (Clause 51 and Schedule 8)

The government should clarify that it will introduce an 'all-in' deposit return scheme (DRS), broaden the scope of the DRS to include reuse and futureproof legislation to ensure opportunities to establish a DRS for other packaging formats in the future. These are the only methods which will achieve the environmental outcomes proposed in the [government's consultation](#). The government's own impact assessment also demonstrated an 'all-in' scheme would have a significantly larger net economic benefit than an 'on the go' scheme.

## Resource efficiency (Clauses 49 and 50, Schedule 6 and 7)

The bill grants a general power to the relevant national authority to set resource efficiency requirements for products. Paragraph 1(2)(a) of Schedule 7 excludes energy related products from this power. This is because the government states that the Secretary of State will already have powers to set resource efficiency standards for energy related products, courtesy of regulations made under section 8 of the European Union (Withdrawal) Act 2018. This will see existing powers held by the European Commission to set resource efficiency requirements for energy related products under the Ecodesign Directive transferred to the Secretary of State on exit day.

Without a clear and overarching commitment to non-regression, there is no mechanism to prevent regression when it comes to current ecodesign standards for energy using products. Neither is there a process to ensure the UK will keep pace with, or exceed, existing standards. In line with ambitions outlined in documents, including the Clean Growth Strategy and the Resources and Waste Strategy, **we would like assurances in law that the UK will at least meet, and preferably exceed, the EU's future ecodesign targets**, using a similarly broad spectrum of powers as outlined for non-energy using products in the bill.

**We encourage the government to give urgent consideration to this potential discrepancy on standard setting before the line by line scrutiny of the bill commences.**

A just transition to a zero carbon and sustainable society requires workers' rights and other social issues to be considered within environmental requirements, particularly on resource and waste issues. The inseparability of these issues is increasingly being evidenced, for example issues surrounding human rights violations in the mining of resources needed for [low carbon technologies](#) and [health concerns](#) associated with exporting plastic waste to countries without infrastructure to responsibly manage these.

We, therefore, urge **due consideration of social dimensions such as human rights, public health and fair working conditions** to be included alongside consideration of a product's impact on the natural environment throughout its lifecycle.

### **Transfrontier shipments of waste (Clause 59)**

We welcome the [government's recognition](#) that a rich country like the UK should "stop the export of waste, including polluting plastic waste, to developing countries".

However, we find the use of the word "polluting" odd in this context and note that international commitments mean that it is already illegal for the UK to send "polluting" waste to non-OECD countries. The international [Basel Convention](#), to which the UK is an independent signatory, obliges the UK to prohibit the export of waste to developing countries "if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner". This convention [will be strengthened](#) in 2021, when most plastic will become subject to even stricter hazardous waste controls. Unfortunately, the UK has failed to live up to its international obligations, with a [poorly resourced](#) Environment Agency in England clearly unable to stop illegal practices. **We call for an urgent review of the regulatory process and proper resourcing of regulatory bodies to ensure illegal and contaminated containers do not leave our shores.**

**We also call for urgent clarity on how the government intends to implement further bans or restrictions to stop the export of materials that damage environments and people abroad, to both non-OECD countries and even those in the OECD group that also lack adequate facilities, including Turkey. We seek assurances that the government will not simply tackle this problem by causing more materials to be sent to landfill or incineration in this country, and advocate a moratorium on new incineration capacity.**

### **Air quality (Clauses 2, 69 to 74)**

Instead of increasing ambition to protect our health, the bill risks weakening existing laws and being a wasted opportunity for clean air. Not only does it open the door to the loosening of existing legally binding air pollution limits, but any future air quality targets set under the bill will be subject to a substantially weaker framework than that afforded by existing law.

It is positive that the bill recognises the need for a new binding target for fine particulate matter (PM2.5) pollution. However, there is nothing to suggest what standard or date that target will contain. The bill provides no assurance that new targets will improve upon the legally binding pollution limits already in law and does not protect those existing limits from being weakened in the future. **A government that is serious about protecting people's health must make a legally binding commitment to meet [World Health Organization guideline levels](#) of PM2.5 by 2030 at the very latest on the face of the bill.**

Environmental Improvement Plans provide a weaker and less robust mechanism for delivering binding air quality targets than that afforded to existing pollution limits. The plans leave too much to the discretion of ministers and fail to recognise that the protection of human health should be paramount when delivering measures to clean up the air. **The bill should commit the government to publishing and implementing plans that set out time-bound, impact-assessed measures to reduce air pollution, in line with binding targets, alongside measures to protect groups more vulnerable to the effects of air pollution.**

Although the bill provides some welcome new powers for local authorities, it risks passing the burden of responsibility to them while failing to require action across central government or committing additional funding or resources to drive effective local action. **The bill must include a 'clean air duty' to ensure all levels of government and public bodies are contributing to achieving binding targets through their decision making.** (For further details, see the additional briefing from the Healthy Air Campaign.)

Ammonia emissions from agriculture make [a significant contribution](#) to the formation of secondary PM in urban air pollution. The government should confirm that a more ambitious reduction of ammonia emissions will be considered as part of the process to set the PM2.5 air quality target under Clause 2. It would also be helpful for government to clarify how action on ammonia emissions will be integrated into the developing approach to farming support outlined in the Agriculture Bill.

The [Clean Air Strategy](#) includes a welcome commitment to a target for reducing nitrogen deposition on England's protected priority sensitive habitats by 2030 and to review what the longer term targets should be. The government should confirm that this will be taken forward as part of the exercising of its target setting power under Clause 1, so that this target becomes legally binding.

## **Water (Clauses 75–89)**

The bill includes several measures which could seriously undermine the protection, and urgently required improvement, of the water environment.

Clause 81 is a wide ranging power to amend the regulations that implement the Water Framework Directive. These include vital rules about how water quality is measured and the different chemicals and pollutants that must be considered. There may be some justification for a power to make technical updates to regulations, but this should not be a licence to weaken important targets via secondary legislation. **Consequently, our view is that Clause 81 must be deleted or amended to ensure that targets and standards cannot be weakened without thorough public consultation and scientific advice.**

England is already far behind its target of achieving Good Ecological Status in all waters by 2027. The government should not be using the Environment Bill to give itself powers to amend difficult targets or the way they are measured.

The bill must tackle water consumption. It must lead to a target for rapid and sustainable reduction in water consumption, both household and non-household. Anything less will be a significant missed opportunity, as the next legislative vehicle to deliver this may be several years away.

We seek confirmation that clauses 49 and 50 provide the enabling legislation for the potential introduction of a UK-wide mandatory water efficiency labelling scheme linked to minimum standards. Recent research has shown this is the single biggest policy measure the government could introduce to bring down water consumption. Otherwise the bill should introduce a mandatory UK water efficiency labelling scheme, for water using products linked to minimum standards.

The bill should include a power to establish 'no abstraction zones' around priority freshwater habitats where there is evidence of damage by abstraction.

Small waterbodies and wetland habitats form an essential but overlooked part of our water environment. The bill should require a strategic programme for furthering their conservation to be set out at a catchment scale, under the framework of a national Nature Recovery Network, and with targets set as part of a wider biodiversity framework.

Clauses on Land Drainage powers must also be amended to ensure that these powers do not undermine the objectives of the bill and to ensure that widespread expansion of Internal Drainage Boards does not take place without the appropriate governance.

Clause 80 is a welcome provision to improve water abstraction. But the bill delays action until 2028 to address urgent issues such as pressure on our globally important chalk streams. The time frame for action must be reduced with appropriate support for users to transition.

### **Biodiversity gain (Clauses 90-92 and Schedule 14)**

Done well, biodiversity gain could help contribute to the restoration of biodiversity, deliver the ambitions of the 25 Year Environment Plan and help respond to the climate and ecological emergencies, if it operates and is assessed against a national plan to restore nature and ecosystems.

We are concerned that newly created habitat, as part of developers' biodiversity gain requirements, could be destroyed after 30 years and key types of development are currently out of scope. The level of gain must be more ambitious, and there should be stronger assurances that, for example, the mitigation hierarchy will be adhered to and that existing protections and requirements cannot be undermined or combined with biodiversity gain.

**Biodiversity gain habitats must be secured and maintained in perpetuity, or the system could lead to overall losses.** Clause 91(2)(b) and Schedule 14(9)(3) would allow gain sites to be destroyed after 30 years, losing any carbon storage benefits and ecological gains.

**Nationally Significant Infrastructure Projects (NSIPs) and other large scale infrastructure projects should be included in biodiversity gain and exceptions should be limited.** NSIPs can be some of the most damaging developments for nature but if appropriately located and planned and designed well, they offer opportunities for biodiversity gain. Provision should be made to include large scale infrastructure developments (including NSIPs) within the scope of biodiversity gain. Unfortunately, exemptions are potentially very wide. Paragraph 17(b) of Schedule 14 would enable the Secretary of State to exempt any type of development in the future. The bill should avoid blanket exemptions and should instead set out a process for considering exemptions (for example, in relation to brownfield sites) through public consultation. In addition, we would

like reassurance that development orders will not be used as a way to bring forward large scale developments like new towns without requiring biodiversity gain.

**The bill should be explicit that the [mitigation hierarchy](#), existing designations and statutory and planning protections for sites and species, are not undermined by biodiversity gain.** We welcome the statement in the Explanatory Notes that biodiversity gain is additional to any existing legal or policy requirements for statutory protected areas and their features. However, this needs to go further. Clarity is needed on other statutory requirements and policies covering development in relation to protected species, non-statutory designated habitats, designated landscapes and the historic environment in a similar way. The bill provides scope to exclude irreplaceable habitats from biodiversity gain (Schedule 14, Part 2 (18)(1)). The bill must require that future regulations are brought forward to exclude irreplaceable habitats ensuring that biodiversity gain will not provide a loophole for damage to and destruction of irreplaceable habitats such as ancient woodland.

**The level of biodiversity gain must be more ambitious.** The government has mandated ten per cent gain. This is less ambitious than current practice of some local authorities. Twenty per cent net gain would be more commensurate with the scale of need. We welcome the statement in the response to the [Net Gain Consultation](#) that ten per cent should not be viewed as a cap on the aspirations of developers who want to go further. However, the minister must provide a clear statement to facilitate ambitious developers and local planning authorities to go higher than ten per cent where appropriate. There must also be a commitment to monitor and review practice, such that the level of gain can be increased in future if evidence demonstrates this is possible and needed.

### **Duty to conserve and enhance biodiversity (Clauses 93-94)**

Public authorities have a vital role to play in turning around the state of nature. The [current duty](#) on public bodies to have regard to the need to conserve biodiversity is weak and ineffective. The bill proposes three welcome steps: (1) it expands the duty to have regard to the need to enhance biodiversity; (2) it creates an obligation to plan for appropriate actions to fulfil the duty; and (3) it requires certain public authorities to report on actions pursuant to the duty.

The following improvements should be made to the new duty:

- The duty should **specify that it covers the exercise of all public bodies' functions**, rather than its current focus, which appears to be limited to making a plan to achieve the biodiversity objective.
- The provisions in the duty remain too open ended to guide everyday action: the bill should **require action to further biodiversity conservation from all authorities, including clearly requiring public authorities to act to further the conservation of the species and habitats, listed by the Secretary of State under section 41 of the NERC Act, and for the government to consult on and publish guidance for public authorities on how the duty should be fulfilled.**
- The main difficulty that many public authorities have in enhancing biodiversity is severe financial constraint. In planning their actions, **authorities should be required to set out an estimate of the likely budgetary needs and constraints**, which should be submitted to HM Treasury.

- **The biodiversity duty should apply to the private sector as well as public bodies.**
- Clause 94(8) should also require a reviewing and advising public authority to be designated to **audit the reports** produced.

### Local Nature Recovery Strategies (Clauses, 93(5), 95-99)

Local Nature Recovery Strategies (LNRs) could enable a wide range of organisations to contribute to the measures needed to address the biodiversity crisis and deliver the ambitions of the 25 Year Environment Plan, in particular by supporting the creation of a Nature Recovery Network. By identifying local biodiversity priorities, including restoration opportunities, they could deliver policy integration and better value for money at the same time as saving nature.

It is important that locally developed LNRs are consistent with the development of a national Nature Recovery Network, helping to connect the different mechanisms that can help to recover nature, for example Environmental Land Management. The bill now includes a helpful duty for the Secretary of State to inform relevant authorities of opportunities to contribute to a national network. There is, however, no provision for the government to undertake any work to identify those opportunities, nor any system of sign off to confirm that LNRs will contribute to the development of a coherent national network. These clauses should include a process for 1) sign-off for LNRs by Natural England to confirm they contribute to a national network; and 2) a requirement for the Secretary of State to produce a Nature Recovery Network opportunity strategy to inform its development.

The biggest shortcoming of this part of the bill is that the duty to use the strategies is very weak. It is included in the duty to conserve and enhance biodiversity in Clause 93(5), requiring public authorities to have regard to the strategies in making plans to conserve or enhance biodiversity. **The duty should be a much stronger requirement to take the strategies into account in the exercise of public functions, including in the statutory planning system and in spending decisions.** The results should be part of the Clause 90 biodiversity reporting duty to ensure oversight.

To be effective, it is essential that the strategies properly influence policy and decision making in key areas, such as planning, Environmental Land Management and biodiversity net gain. In this way, they will provide the strategic impetus for action to create an ecologically coherent national Nature Recovery Network. For example, on planning, there must be a clear and strengthened link between the strategies and spatial planning, such as how strategic and local plans should take account of the strategies, as well as how the strategies link to development management decisions.

The bill should ensure that onsite and offsite net gain biodiversity increases, funds secured from the purchase of 'biodiversity credits', and funds for land management are spatially targeted through the strategies and make a meaningful contribution to nature's recovery. This approach should consider the possibility of identifying areas where investment can provide multiple benefits, where improved ecological function can improve air and water quality, promote natural flood management, or enhance landscape character, as outlined in [Greener UK's briefing](#) on a strategic approach to environmental planning.

Proposed Ramsar sites, potential Special Protection Areas and Local Wildlife Sites have been omitted from the meaning of a nature conservation site in Clause 97(3). Along with the statutorily designated sites, Local Wildlife Sites form a vital core from which nature can disperse and recover throughout the Nature Recovery Network. **To identify local biodiversity priorities fully, Local Wildlife Sites should be included in the habitat map.**

Of course, it is necessary to link local with national ecological considerations, so there should be a requirement for all strategies to contribute to the development of an ecologically coherent network of sites in the form of a national Nature Recovery Network.

### **Tree felling and planting (Clauses 100 and 101)**

We welcome the plans to require the consultation of local communities before beginning street tree felling programmes. It is important that this is properly resourced if it is to be a meaningful consultation and this should be ring fenced. The technical detail of how this will be applied in practice must also show that it is drawing on the experience of local communities across England and not contain loopholes that leave valued trees vulnerable.

In early 2019, the government consulted on this and two other measures. The other two were a duty to report tree losses and gains and a statutory local authority tree strategy requirement. These latter two have not been taken forward. In para 5.6 of [its response](#) to the consultation, the government indicated that reporting on tree felling and planting would be encompassed within the wider reporting system through this bill and that it will be publishing best practice guidance on local tree strategies (para 6.4). We look forward to working with the government to ensure that these are as robust as possible.

We welcome the strengthening of the Forestry Commission's powers in relation to illegal felling which must also be properly funded.

We note that the bill does not include a requirement for the government to produce a national tree strategy for England, as is the case in Scotland. Given that work is already underway to develop such a strategy, **committing to this would be a relatively straightforward amendment to the bill that would send out a positive signal on the importance the government attaches to trees and woodlands.**

### **Conservation covenants (Clauses 102-124 and Schedule 16)**

The bill introduces a system of conservation covenants, whereby "responsible bodies" approved by the Secretary of State can enter into private arrangements with landowners. These arrangements oblige the current landowner and future landowners to abide by "restrictive" or "positive" obligations to do with the management of the land for the benefit of its conservation for environmental or historic purposes. The National Trust's use of covenant agreements is a good example of their environmental benefits. The section of the bill on covenants is based on a Law Commission [draft Conservation Covenants Bill](#). We have concerns that, in its current form, covenants would not act as an effective legal mechanism to secure sites in perpetuity.

Paragraph 3(2)(c) of Schedule 16 enables the Upper Tribunal to take account of whether the obligation serves 'the public good' when considering whether to discharge or modify a conservation covenant. Without any further definition, it is unclear how the Tribunal would interpret 'public good', risking covenants being too easily discharged or modified.

Similarly, Paragraph 3(2)(a)(ii) of Schedule 16 allows the Tribunal to consider changes to enjoyment of the land when discharging or modifying a covenant, which again may give undue leeway to a landowner to avoid fulfilling obligations under a covenant.

Clause 104(5)(b) has been modified from the Law Commission draft bill to enable bodies (other than public bodies or charities) whose “main activities” relate to conservation become a responsible body. Under the draft bill it was only bodies where “at least one of the purposes or functions” are related to conservation. It is difficult to judge whether or not this would make it easier for private companies to become responsible bodies. **A stronger formulation would be a combination of the two, such as “bodies whose primary purpose or function relate to conservation”.**

### Regulation of chemicals (Clause 125 and Schedule 19)

The bill gives the Secretary of State the power to amend the UK REACH (Registration, Evaluation, Authorisation and restriction of Chemicals) and the REACH Enforcement Regulations 2008 to ensure a smooth transition to a UK chemicals regime. The bill creates a mechanism for the government to amend the main text of this UK REACH law, although it also lists a number of protected articles which cannot be modified.

Amendments to UK REACH will need to be made through further regulations. [Schedule 20](#) of the bill states these can only be made if they are consistent with Article 1 of REACH, which sets out its aims and scope. Paragraph 1(6)(b) of the Schedule says the Secretary of State must, before beginning consultation on any amending regulations, publish an explanation of why they are consistent with Article 1, in “the manner which the Secretary of State considers appropriate”.

**We are concerned about granting the Secretary of State such a sweeping power to amend the main UK REACH text, as this could be used to reduce the level of protection for the public and the environment from hazardous chemicals.**

This is exacerbated by recent experience of pesticides legislation in which an accidental weakening of laws relating to endocrine disrupting chemicals nearly slipped through. The error, [spotted by the UK Trade Policy Observatory](#), was eventually [corrected by the government](#), but it highlights the risks of allowing changes to such significant areas of public protection law to technical secondary legislation on which there is often no public consultation.

**We will be examining the individual REACH articles in depth to establish which ones should be added to the protected list. As a minimum, we believe that Article 33 on information in the supply chain and a right to know for consumers should be added to the protected list.**

Furthermore, the proposed stand alone UK system does not provide the same level of protection of the public and the environment from harmful chemicals as the REACH Regulation. This is the most advanced regulation system in the world, and is managed by the European Chemicals Agency (ECHA). The optimal outcome would be for the UK to negotiate continued participation in the REACH system, via associate membership of or very close co-operation with ECHA, as part of its future relationship with the EU.

## Commencement (Clause 131)

The arrangements for commencement of the various provisions are set out in Clause 131. A handful of provisions will come into force on the day on which the Environment Act is passed, some will come into force within two months following Royal Assent and the majority will come into force on “such day as the Secretary of State may by regulations appoint”, meaning the timescale is less clear.

Clause 131(3) makes provision for Part 1 on environmental governance to come into force in this latter, more flexible category. Clause 131(6) makes similar provision for Part 2 (environmental governance in Northern Ireland).

**Parts 1 and 2, especially the clauses on the OEP, should either come into force on the day of Royal Assent or within a two month time limit. This is necessary because of the need to ensure that the OEP is set up by 1 January 2021 to avoid a gap in environmental governance.**

### For more information, please contact:

Ruth Chambers, senior parliamentary affairs associate, Greener UK  
e: [rchambers@greener-alliance.org.uk](mailto:rchambers@greener-alliance.org.uk)  
t: 020 7630 4524

### On behalf of Greener UK and Wildlife & Countryside Link

# GREENER UK

---

